



Fisheries New Zealand

Tini a Tangaroa

Report and recommendations on the submissions and the subject matter of the proposed National Environmental Standard for Marine Aquaculture

Prepared in accordance with section 46A(4)(c) of the Resource Management Act 1991

Fisheries New Zealand Technical Paper No: 2020/06

Prepared by Fisheries New Zealand

ISBN No: 978-1-99-002576-1 (online)

ISSN No: 2624-0246 (online)

June 2020



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1. Introduction

The proposed National Environmental Standard for Marine Aquaculture (proposed NES) is a national environmental standard being developed under sections 44 and 46A of the Resource Management Act 1991 (RMA).

The policy objective of the proposed NES is to:

Develop a more consistent and efficient regional planning framework for the management of existing marine aquaculture activities and on-farm biosecurity management, while supporting sustainable aquaculture within environmental limits

The proposed NES would achieve this by setting nationally consistent rules and requirements for regional councils¹ to:

- a) provide a more certain and efficient replacement consent, realignment and change of species application process for existing marine farms, while ensuring farms meet best environmental practice; and
- b) implement consistent biosecurity management requirements on all marine farms²

To seek feedback on the subject matter of the proposed NES, in June 2017 Fisheries New Zealand³ publicly released the discussion document '*Proposed National Environmental Standard for Marine Aquaculture*' (discussion document) along with a series of technical reports that were used to develop and assess the proposed NES.

The discussion document set out the subject matter of the proposed NES, indicative NES regulations to give an indication of what the regulations could look like,⁴ and asked a range of general and specific questions for submitters.

Consultation with the public and iwi authorities occurred from 14 June 2017 to 8 August 2017. During consultation, Fisheries New Zealand held 18 public meetings and hui on the proposed NES, and this feedback has been considered alongside the formal submissions. A total of 107 submissions were received on the proposal. Targeted engagement also occurred on the draft regulations (an exposure draft process) with key stakeholders in April 2020.

The purpose of this report is to summarise the comments made in submissions, and outline recommendations for the proposed NES in accordance with sections 46A(4)(c) of the RMA and to consider the matters set out in section 51(1) of the RMA. It is intended to provide a summary of the main issues raised in submissions rather than provide a detailed analysis of individual submission points.

This report is structured as follows:

- **Section 1:** introduces the purpose of this report
- **Section 2:** provides an overview of the proposed NES, including the background to the development of the proposed NES
- **Section 3:** provides an overview of the submission process, and the nature and number of submissions received
- **Section 4:** provides an overview of the subject matter of the replacement consents (including realignment) provisions of the proposed NES; summarises and analyses the submissions and feedback received on that subject matter; and provides recommendations to respond to submissions and feedback

¹ In this report the term 'regional councils' refers to both regional councils and unitary authorities.

² Note, see further analysis and recommendations in section 6 regarding the removal of the biosecurity management requirements from the proposed NES.

³ At the time Ministry for Primary Industries (MPI). The team working on the proposed NES is now part of Fisheries New Zealand, a business unit of MPI.

⁴ Noting at the time that should the proposal proceed a final NES regulations would be prepared by the Parliamentary Counsel Office in accordance with that office's requirements and drafting guidelines.

- **Section 5:** provides an overview of the subject matter of the change of species provisions of the proposed NES; summarises and analyses the submissions and feedback received on that subject matter; and provides recommendations to respond to submissions and feedback
- **Section 6:** provides an overview of the subject matter of the biosecurity management plan provisions of the proposed NES; summarises and analyses the submissions and feedback received on that subject matter; and provides recommendations to respond to submissions and feedback
- **Section 7:** provides an overview of the cross-cutting issues of the proposed NES (including tangata whenua values and cumulative effects); summarises and analyses the submissions and feedback received on these issues; and provides recommendations to respond to submissions and feedback
- **Section 8:** considers the proposed NES in light of the matters in Part 2 of the RMA
- **Section 9:** considers the proposed NES in light of the New Zealand Coastal Policy Statement 2010 (NZCPS 2010) and Hauraki Gulf Marine Park Act 2000
- **Section 10:** provides a high level overview of the matters raised in submissions that are considered to be out of scope of the proposed NES
- **Section 11:** provides a conclusion to this report

2. Overview of the proposed National Environmental Standard for Marine Aquaculture

2.1 DEVELOPMENT OF THE PROPOSED NES

Aquaculture has been subject to a number of legislative reforms, including major initiatives in 2004 and 2011, and ongoing Government support through non-legislative measures.

Marine aquaculture is primarily managed under the RMA by regional councils. Regional councils prepare regional coastal plans which state the objectives, policies and rules for managing aquaculture, and identify where aquaculture should and should not be located. Regional coastal plans must give effect to the NZCPS 2010, which is prepared by the Minister of Conservation. All regional coastal plans must also be approved by the Minister of Conservation.

Marine farms require resource consents from councils to occupy the common marine and coastal area. The term of these coastal permits usually range from 20 years to a maximum term of 35 years. There is no right to automatic renewal of these consents and consent holders must apply for replacement consents.

The majority of the 1149 existing marine farms in New Zealand were authorised prior to the RMA coming into force, primarily under the Marine Farming Act 1971. The 2004 amendment to the RMA deemed those existing authorisations to be RMA resource consents with a term of 20 years, expiring in 2024/25.⁵

From 2013, the Ministry for the Environment (MfE), Department of Conservation (DOC) and Fisheries New Zealand embarked on a process to identify issues to be prioritised for national direction under the RMA. This included an examination of a number of options to address the problems associated with uncertainty about the process for replacement consent applications for existing marine farms and the need for a consistent approach to on-farm biosecurity management.

In 2015 the Government agreed to begin developing national direction to provide greater efficiency and certainty for the process associated with marine farm replacement consent applications, and encourage better biosecurity management in marine aquaculture.

To assist with the development of options, Fisheries New Zealand has been working with MfE and DOC, and established an Aquaculture Reference Group comprising members of the aquaculture industry, regional councils, Te Ohu Kaimoana and the Environmental Defence Society. The

⁵ Refer to Appendix A for more detail on the history of marine farm consenting in New Zealand
June 2020

Aquaculture Reference Group met eight times prior to consultation on the proposed NES (between August 2015 and March 2017).

Fisheries New Zealand also undertook extensive engagement with iwi and key stakeholders during the development of the proposed NES, including meeting with regional councils (individually and through special interest groups), hui with iwi in key aquaculture regions, and meetings with other interested parties on an ad hoc basis.

A preliminary economic analysis was prepared by the New Zealand Institute for Economic Research (NZIER) to analyse the economic costs and benefits of the proposed NES.

In 2017 the Government approved consultation with the public and iwi on the subject matter of the proposed NES. This subject matter was set out in the proposed NES discussion document, with supporting information including indicative regulations that was released on the Fisheries New Zealand website. Consultation took place over an eight week period that closed on 8 August 2017.

Following initial drafting by Parliamentary Counsel Office, targeted engagement occurred (an exposure draft process) with a selected group of technical experts made up of regional councils, aquaculture industry and Te Ohu Kaimona, as well as one independent reviewer. Feedback from that process is incorporated into the analysis and recommendations contained in this report.

2.2 OVERVIEW OF THE PROPOSED NES (AS CONSULTED)

The policy objective of the proposed NES is to:

Develop a more consistent and efficient regional planning framework for the management of existing marine aquaculture activities and on-farm biosecurity management, while supporting sustainable aquaculture within environmental limits

The proposed NES, as consulted, seeks to achieve this policy objective in the following manner:

- Most replacement consents for existing marine farms would be processed as non-notified,⁶ restricted discretionary activities.
- Matters of discretion would be limited to the key potential environmental impacts (e.g. effects on the seabed, tangata whenua values, interactions with marine mammals and seabirds) that councils need to continue to monitor and manage through consent conditions. These matters of discretion were determined based on extensive review of the environmental impacts of aquaculture.
- Consideration of adverse effects on outstanding areas⁷ would be limited to marine farms within outstanding areas (and not those adjacent to outstanding areas).
- Small scale realignments of existing marine farms would be enabled, particularly where realignment would reduce adverse effects on the seabed environment or move the marine farm out of an area with outstanding natural character or landscape values.
- On-farm innovation would be enabled through allowing certain types of species change as a restricted discretionary activity.

All marine farms (existing and new) would be required to prepare, implement and keep up to date biosecurity management plans to manage biosecurity risks from farm activities and protect all users of the marine environment from pests and diseases.

Where reference is made to clauses of the proposed NES, the reference and discussion relates to the indicative regulation's provisions as consulted (refer to Appendix F of the discussion document).

3. Overview of submissions

This section provides a high level overview of the statistics and themes of the 107 submissions received on the proposed NES during the formal consultation period, as well as an overview of the approach taken to analyse submissions. A list of submitters is contained in Appendix B.

⁶ Noting that special circumstances and other RMA notification exceptions may apply.

⁷ That is, areas of outstanding natural character, outstanding natural features, and outstanding natural landscapes

3.1 HIGH LEVEL OVERVIEW OF SUBMISSIONS

3.1.1 Submissions by location

Submissions were received from across the country, with most coming from the key aquaculture regions.⁸ Of the 107 submissions received, the largest proportion are from the top of the South Island, particularly Golden Bay and Marlborough. Most of the Golden Bay submissions were focused on how the proposed NES could address the Wainui Bay spat catching farms.

The location where those providing submissions are located is outlined in Table 1.

Table 1: Locations from which submissions were received

Region	Number of submissions	Percentage
Northland	5	4.7%
Auckland	12	11.2%
Waikato ⁹	15	14%
Bay of Plenty	5	4.7%
Taranaki	1	0.9%
Hawke's Bay	1	0.9%
Wellington	8	7.5%
Tasman ¹⁰	20	18.7%
Nelson	5	4.7%
Marlborough	14	13.1%
West Coast	1	0.9%
Canterbury	3	2.8%
Otago	1	0.9%
Southland	9	8.4%
Not stated	7	6.5%
Total	107	100%

3.1.2 Submissions by sector

Of the 107 submissions received, the largest proportion are from the aquaculture industry (30.8%) followed by interested individuals (23.4%). Just over half of the aquaculture industry submissions (17) were based on a standard template developed by Aquaculture New Zealand. No submissions were received from territorial authorities.

An overview of the number of submissions by sector is provided in Table 2.

⁸ Northland, Auckland, Waikato, Bay of Plenty, Tasman, Marlborough, Canterbury, Southland – these regions were where the majority of public meetings and hui were held during the consultation period.

⁹ Including 8 submissions from the Coromandel

¹⁰ Including 17 submissions from Golden Bay

Table 2: Submissions by sector

Sector	Number of submissions	Percentage
Aquaculture industry	33	30.8%
Interested individual	25	23.4%
Iwi organisation	14	13.1%
NGO or community group	14	13.1%
Other¹¹	13	12.1%
Regional council or unitary authority	8	7.5%
Total	107	100%

3.1.3 Position on the proposed NES expressed in submissions

Of the 107 submissions received, 55.1% support the NES, either completely (3.7%) or with modification (51.4%).

32.7% of submitters oppose the NES, either completely (10.3%) or in part (22.4%). Note 11 of the submissions that oppose the NES in part were solely focused on whether and how the NES might address the Wainui Bay spat catching farms.

The majority of submissions by both the aquaculture industry and regional councils support the NES with modifications. Half of the submission received by iwi organisations support the NES with modifications.

An overview of the position of submitters is provided in Table 3, with a more detailed breakdown by sector provided in Figure 1.

Table 3: Position on proposed NES

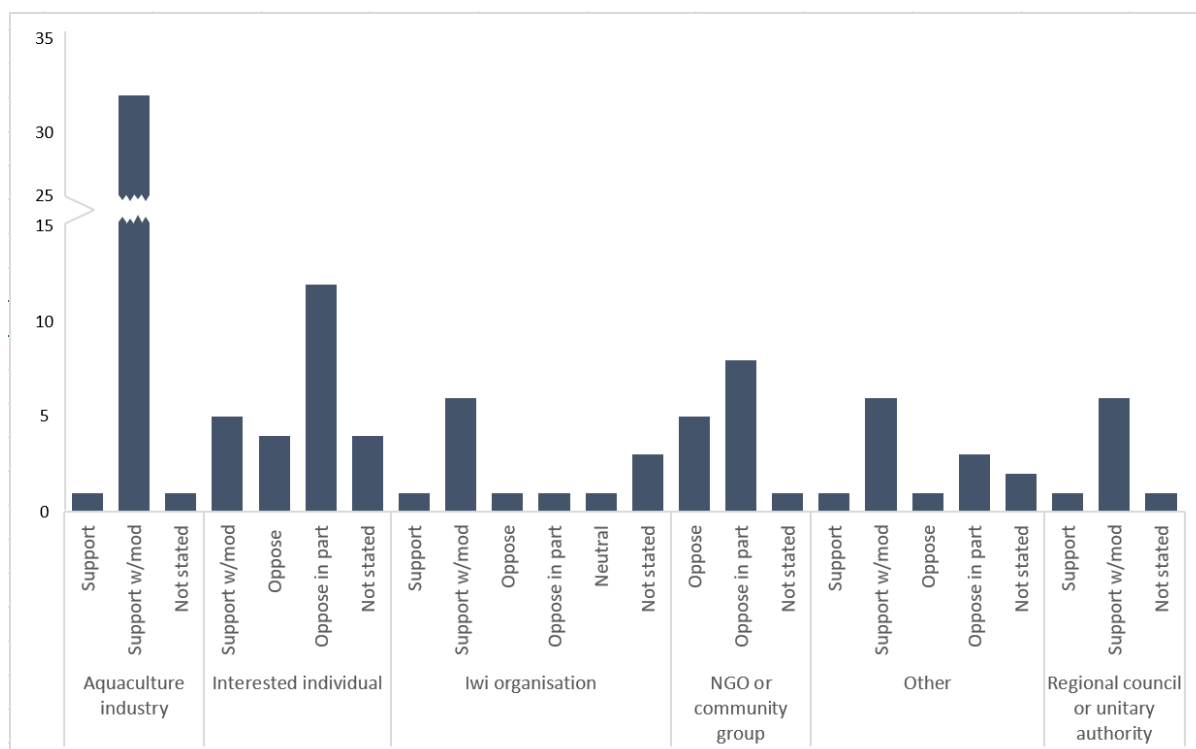
Position	Number of submissions	Percentage
Support	4	3.7%
Support with modification¹²	55	51.4%
Neutral	1	0.9%
Oppose in part¹³	24	22.4%
Oppose	11	10.3%
Not stated	12	11.2%
Total	107	100%

¹¹ e.g. fishing and tourism companies, professional bodies, conservation boards

¹² i.e. supports the NES but suggested amendments

¹³ i.e. oppose only a particular part (or parts) of the NES

Figure 1: Position on proposed NES (by sector)



3.1.4 Overview of themes raised in submissions

54% of submitters provided feedback on all three of the key components of the proposed NES (replacement consents; change of species; biosecurity). 92.5% of submissions commented on replacement consents, 55.1% commented on change of species and 70.1% commented on biosecurity. A high level overview of the theme of submissions, by sector, is provided in Table 4.

Table 4: High level overview of submission theme (by sector)

Submitter type (total number of submissions by that sector)	Commented on replacement consents	Commented on change of species	Commented on biosecurity
Aquaculture industry (33)	31	28	28
Interested individual (25)	25	10	11
Iwi organisation (14)	13	8	11
NGO or community group (14)	13	4	9
Other (13)	10	6	9
Regional council/unitary authority (8)	7	3	7
Total (% of total submissions)	99 (92.5%)	59 (55.1%)	75 (70.1%)

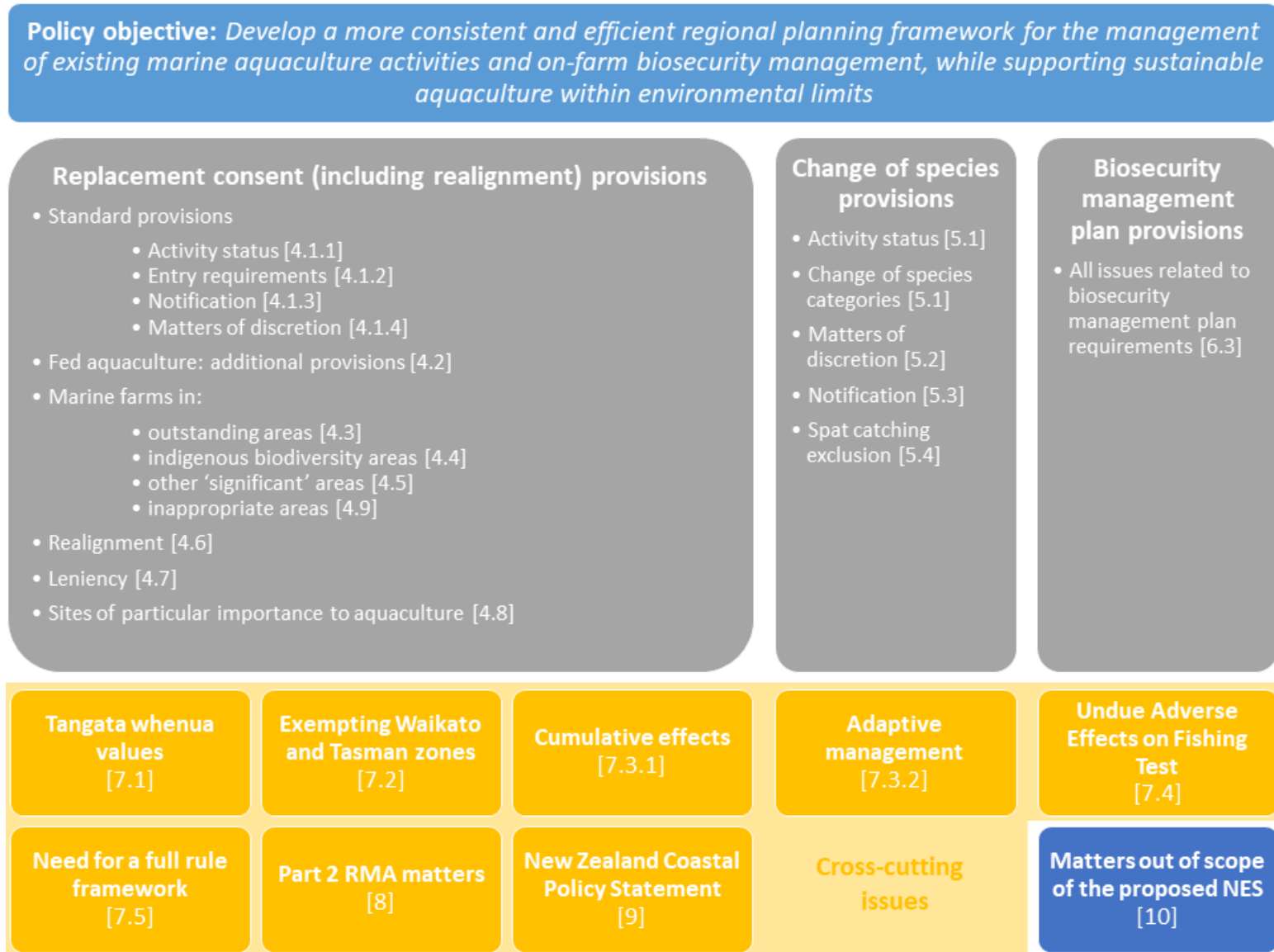
62% of submitters provided feedback on cross-cutting issues, including how tangata whenua values are addressed, the exemption of the Wilson Bay and Tasman aquaculture zones from the replacement consent and change of species provisions, cumulative effects, and adaptive management.

20% of submitters raised questions about whether the proposed NES is the most appropriate tool to address the policy objective. As discussed in section 2.1, there has been extensive consideration of the different options to address the policy objective. These different options were assessed in detail in both the discussion document and the Regulatory Impact Statement for the proposed NES, so no further consideration is given in this report.

33% of submitters provided feedback on matters out of scope of the proposed NES.

Figure 2 provides an overview of submission themes and where each theme is considered in this report.

Figure 2: Overview of submission themes and where each theme is considered in this report (in brackets)



3.2 APPROACH TO ANALYSIS OF SUBMISSIONS ON THE PROPOSED NES

Following formal consultation on the proposed NES, Fisheries New Zealand have continued to work with MfE and DOC to address the issues identified through consultation and to refine the proposed NES. In summary this involved:

- Further engagement with the Aquaculture Reference Group, to provide input and advice on the issues raised in submissions, and potential options to respond to those issues. This included three meetings between November 2017 and March 2018.
- Direct engagement with tangata whenua, to determine how best the proposed NES can address tangata whenua values.
- Direct engagement with key stakeholders, to better understand and respond to the issues raised in their submissions.
- Targeted engagement on the draft regulations (an exposure draft process) with key stakeholders in April 2020.
- Further technical analysis, to respond to matters raised by submissions, including reports on:
 - Current and future spat production, prepared by NZIER¹⁴
 - Addressing marine farm biosecurity, prepared by Stantec¹⁵
 - Cumulative effects, prepared by Stantec¹⁶
- Economic cost benefit analysis, prepared by NZIER in 2018,¹⁷ including additional analysis prepared in 2020.¹⁸
- Draft section 32 evaluation report, prepared by Stantec in 2018.¹⁹
- Final section 32 evaluation report, prepared by Stantec in 2020.²⁰
- Independent peer review commissioned by DOC of consistency of the proposed NES with the NZCPS 2010.²¹

This technical analysis and engagement has informed the analysis of issues raised in submissions and the recommendations in this report.

¹⁴ NZIER (2018) *Current and future spat production: Prospects and constraints*. Report prepared for Ministry for Primary Industries, June 2018.

¹⁵ Stantec (2018) *Proposed National Environmental Standards for Marine Aquaculture – Addressing Marine Farm Biosecurity*. Prepared for Ministry for Primary Industries, May 2018.

¹⁶ Stantec (2018) *Proposed National Environmental Standards for Marine Aquaculture – Cumulative Effects*. Prepared for Fisheries New Zealand, February 2018.

¹⁷ NZIER (2018) *Analysis of proposed NES on marine aquaculture. Cost benefit analysis in support of the Section 32 analysis for the National Environmental Standard Marine Aquaculture*. Report prepared for Fisheries New Zealand, October 2018.

¹⁸ NZIER (2020) *Key points. National Environmental Standard Marine Aquaculture*. Report prepared for Ministry for Primary Industries, June 2020.

¹⁹ Stantec (2018) *National Environmental Standard for Marine Aquaculture – Section 32 Evaluation Report*. Prepared for Fisheries New Zealand, October 2018 (final draft).

²⁰ Stantec (2020) *National Environmental Standard for Marine Aquaculture – Section 32 Evaluation Report*. Prepared for Fisheries New Zealand, June 2020.

²¹ Allan Planning and Research Ltd (2018) *Review of the proposed National Environmental Standard for Marine Aquaculture (NES:MA) for consistency with the New Zealand Coastal Policy Statement 2010*. Prepared for the Department of Conservation, October 2018.

4. Replacement consents (including realignment): analysis and recommendations

4.1 STANDARD PROVISIONS FOR REPLACEMENT CONSENTS

4.1.1 Activity status

4.1.1.1 Overview of subject matter

The proposed NES recognises that existing marine farms have either:

- For those marine farms approved prior to the RMA, they have been in the water for a significant period of time (some of them for 30 or more years); or
- For those marine farms approved under the RMA, that an initial RMA assessment was completed at the time the consent applications for the site were first made and that a complete reassessment may not be necessary when consents are replaced

On this basis, replacement consents for existing marine farms, provided they meet the entry requirements discussed in section 4.1.2 below, are proposed to have a restricted discretionary activity status.²² The only exception to this is for existing marine farms which have been identified in a proposed or operative regional coastal plan as being in an area which is inappropriate for existing aquaculture.²³

4.1.1.2 Submission summary

The question²⁴ posed in the discussion document regarding the activity status for replacement consents for existing marine farms received a high level of feedback (63 submitters mentioned this issue, 59% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 39 submitters supported the proposed NES prescribing a restricted discretionary activity status, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations, interested individuals and regional councils.
- 27 submitters requested that the activity status should be more lenient, i.e. controlled. All except five of these submissions also indicated support of the restricted discretionary status approach, should controlled activity status not be pursued. The five additional submissions were from the aquaculture industry, an iwi organisation, Waikato Regional Council and the Resource Management Law Association.
- 19 submitters opposed the proposed NES prescribing a restricted discretionary activity status seeking a more stringent standard activity status, primarily NGO or community groups, interested individuals and iwi organisations.

Overview of submissions supporting a restricted discretionary activity status

The main reasons given by those submitters who supported a restricted discretionary activity status for replacement consents are summarised below:

- It would still allow potential risks to be identified, assessed and managed
- It was more likely to be broadly acceptable than controlled activity status
- Marine farm leases and licences granted before the RMA were subject to a more limited assessment so a restricted discretionary activity status is appropriate for these farms

²² Refer to Appendix C for further explanation of activity classes under the RMA.

²³ Refer to section 4.9 for further discussion on this issue.

²⁴ Question 2 – refer to Appendix D

- A more restrictive activity status would not meet the policy objectives of the proposed NES and would be inconsistent with Policy 8 (Aquaculture) of the NZCPS 2010
- It would ensure that the replacement consent process was not a prolonged and expensive undertaking, and would encourage ongoing investment
- It would be a good move towards ensuring increased certainty and consistency of consenting process for existing farmers

Support for restricted discretionary activity status from aquaculture industry submitters was often caveated by only being in support if other provisions of the proposed NES were retained, notably notification preclusions (i.e. public and limited notification being precluded)²⁵ and the ability for councils to impose a more lenient activity status.²⁶

Overview of submissions requesting a controlled activity status

The main reasons given by those submitters who requested a more lenient (i.e. controlled) activity status are summarised below:

- Controlled activity status is appropriate for existing marine farms as they are an accepted part of the existing environment and are generally in appropriate locations
- The effects of existing marine farms have already been considered as part of the original application and by way of the review functions of councils under the RMA
- Any ongoing management issues can be appropriately addressed through consent conditions
- The majority of consented salmon farms have been subject to intense public scrutiny, and consent authorities have determined that salmon farming is appropriate in these locations
- Some councils (e.g. Northland) already have controlled activity status for existing marine farms
- If the objective is to provide greater certainty then a restricted discretionary activity status may not achieve this

Overview of submissions opposing a restricted discretionary activity status

The main reasons given by those submitters who opposed a restricted discretionary activity status for replacement consents are summarised below:

- It presumes an in-depth knowledge of the environment and the effects of existing marine farming that is not currently available
- It takes no account of environmental changes
- Many marine farms were established before the RMA and the NZCPS 2010 and have not been tested against today's standards
- Restricted discretionary activity status should only apply where a regional council has carried out a strategic planning exercise as required by Policy 7 (Strategic planning) of the NZCPS 2010 and the marine farm is determined to be in an appropriate location
- A broad brush consent status for all aquaculture was not appropriate, including where there is significant public opposition
- It would not lead to ongoing sustainable aquaculture development
- Marine farms should not be automatically renewed, particularly where the public coastal space could be more valuable for recreational or other activities
- It would confer a perpetual right of occupation of the coastal marine area

²⁵ Refer to section 4.1.3 for further discussion on this issue.

²⁶ Refer to section 4.7 for further discussion on this issue.

- Iwi will have no power to influence applications
- Marine farms with a history of poor management and where adverse effects are more likely should have a discretionary or non-complying activity status

Most submitters who opposed the restricted discretionary activity status considered that marine farming should be a fully discretionary activity.

4.1.1.3 Analysis

Submissions supporting a restricted discretionary activity status

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report.

Submissions requesting a controlled activity status

Few submitters offered any rebuttal to the points raised in the discussion document about the difficulties with a controlled activity classification, or provided detailed reasoning for why a controlled activity status was preferred and appropriate. As the majority of the submissions were received from aquaculture industry submitters, the reasons for preferring controlled activity classification are considered to be self-evident. However, the concern remains that classifying all existing marine farms as controlled activities runs the risk of effectively determining that their existing location is 'suitable' and sustainable in terms of the RMA. This would require a region-by-region strategic planning process which would be more appropriately undertaken by councils through the regional coastal plan development process, rather than at a national scale through the proposed NES.

A full consideration of the sustainability and suitability of all deemed permits (which are estimated to represent approximately 64% of existing marine farms) has not been completed in all regions. Reviews carried out on the deemed permits under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 were for the purpose of making conditions consistent with the RMA. Consistent with case law however, a condition cannot be imposed a consent that will frustrate the exercise of the consent, and the area covered by the permit could not be amended. Matters such as a marine farm being located over a reef or biogenic habitat, for example, would therefore not have been able to be addressed as part of that consent review.

While the three salmon farm sites in Marlborough that were granted by the Board of Inquiry in 2013 were subject to significant public scrutiny, most other salmon farms sites in Marlborough, Canterbury and Southland have not been to date, and controlled activity status cannot be justified for all salmon farm sites.

In Northland, the operative regional coastal plan provides for replacement consents for marine farms which were already operating at the time the plan was notified in the mid-90s as a controlled activity, with replacement consents for any marine farms initially consented after the plan was notified considered as a discretionary activity. The proposed Northland Regional Plan (notified in 2017) provides for replacement consents as a controlled activity status for marine farms located outside of significant areas. Most of the other aquaculture regions are not at an equivalent stage with their planning frameworks and extension of the Northland approach to the rest of the country is therefore not recommended.

The policy objective of the proposed NES is to develop a more consistent and efficient regional planning framework for the management of existing marine aquaculture management activities...while supporting sustainable aquaculture within environmental limits. The objective of greater certainty of process was not therefore the single driving force behind the work, and using a controlled activity status as the default position will not address a situation where an existing farm is not currently operating within environmental limits.

Submissions opposing a restricted discretionary activity status

There is a basic disagreement between these submitters and analysis undertaken to support the proposed NES, on the level of knowledge of the effects of marine farming. The discussion document takes the position (through Appendix G of that document and the matters of discretion that have been

developed²⁷) that sufficient information is available on the overall effects of marine farming but not necessarily at the individual farm or bay level.

A restricted discretionary activity does not confer a perpetual right of occupation, as an application for a replacement consent can be turned down based on any of the matters of discretion. There is no presumption of a replacement consent. As such there is no right of automatic renewal for a restricted discretionary activity, as some submitters appear to believe.

The submitter proposal that a restricted discretionary activity status apply after regional councils have carried out the analysis required by Policy 7 (Strategic planning) of the NZCPS 2010 is similar to an option that was considered during the development of the proposal however it was discarded as unworkable. The strategic planning required to give effect to the NZCPS 2010 can (and is required to) still occur and the proposed NES provides for it through provisions enabling more lenient activity status²⁸ and addressing existing marine farms in inappropriate areas.²⁹

Many of the other matters raised by submitters were considered in the development of the discussion document, and are acknowledged implications of the approach that has been taken. No substantive further information has been provided by submitters in relation to the views expressed. A discretionary or non-complying activity, or the maintenance of the status quo of regional variability, will not achieve the policy objective of the proposal.

4.1.1.4 Recommendations

No changes are recommended in response to submissions.

4.1.2 Entry requirements

4.1.2.1 Overview of subject matter

The proposed NES set out entry requirements which an application for replacement consent must meet before it can be considered as a restricted discretionary activity.

In order to be considered an existing farm, a marine farm must hold at least a current coastal permit to occupy the coastal marine area, and may hold a series of other consents as well such as a coastal permit to disturb the seabed to place anchors and a consent to take and discharge seawater and organic material during harvest.

For a marine farmer to be able to apply for a replacement consent as a restricted discretionary activity under the proposed NES, the farm must also:

- be located in the same location as authorised by the current coastal permit for occupation
- be occupying the same, or less area, than authorised by the current coastal permit
- be using structures and anchoring systems that are materially the same as the current ones
- be farming the same species as those authorised by the current coastal permits
- for fed aquaculture, be within the feed limits contained in the conditions of the current consent

If the marine farm cannot meet these entry requirements then:

- if no current permit is held, or the extent of area occupied is proposed to increase, the application is considered to be for new space and is not covered by the proposed NES; or
- consent can be applied for a change of species under other provisions of the NES, which would allow structures and anchoring systems to change³⁰; or
- consents can be applied for, for realignment.³¹

²⁷ And now subsequently refined in response to submissions, refer to section 4.1.4 for further discussion on matters of discretion.

²⁸ Refer to section 4.7 for further discussion on this issue.

²⁹ Refer to section 4.9 for further discussion on this issue.

³⁰ Refer to section 5 for further discussion on this issue.

³¹ Refer to section 4.6 for further discussion on this issue.

4.1.2.2 Submission summary

Four submitters provided submissions on the issue of off-site marine farms: three with specific regard to how the proposed NES would treat previously off-site marine farms in Waikato; one referring to how the proposed NES would treat off-site marine farms in general.

One submitter recommended giving regional councils discretion to impose more lenient entry requirements regarding feed limits. The submitter noted that once water quality standards have been developed, the entry requirement should be to meet the standard rather than not exceed feed limits.

No other submissions were received related to the entry requirements for an application for replacement consent under the proposed NES.

4.1.2.3 Analysis

How the NES treats previously off-site marine farms in Waikato

There are a number of marine farms in Waikato that were first established under old legislation pre-dating the RMA (i.e. had marine farming leases or licences). Some of these farms were off-site, i.e. they were not actually located where the initial lease or licence stated they should be located (whether wholly or in part). The Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 sought to address off-site farms by enabling a onetime amendment to the consent to update the coordinates to the geographic location of the farm. These Waikato marine farms took up this opportunity and were issued revised consents to rectify the off-site issue. So these farms are now consented for their current location.

Submitters have identified a potential concern with the way the operative Waikato Regional Coastal Plan is drafted,³² as follows:

- Rule 16.5.3 provides for replacement consent applications for *current* marine farms as a discretionary activity. Footnote 21 of the plan states that the word “current” refers only to those marine farming structures referenced in the Marine Farming Maps and Schedule of Current Marine Farms in Appendix III of the Plan, provided that where the location of a structure deviates from the position in which it was originally consented to, the position originally consented to shall be the only position relevant for the purpose of this rule.

The underlined section is the point of issue for these submitters. As the previously off-site farms do not fit into the underlined section of Rule 16.5.3, the concern is that they would instead default to the prohibited rule 16.5.6. If that was the case, then the standard provisions for replacement consents would apply as the clause in the proposed NES consulted on which addresses marine farms located in inappropriate areas³³ only applies to plans made operative after 1 January 2019 (i.e. not the operative Waikato Regional Coastal Plan).

How the proposed NES would treat off-site farms generally

If a marine farm is off-site, i.e. it is not actually located where the consent states it should be located (whether wholly or in part) then the proposed NES provisions do not apply to the part of the farm which is located off-site.

How the proposed NES address feed limits for fed aquaculture

It is not proposed to allow more leniency with regard to increased feed limits. However an entry requirement related to feed limits is not now considered to be necessary as addressing feed limits as a matter of discretion would allow councils to utilise monitoring /feedback loops to consider benthic effects.

4.1.2.4 Recommendations

It is recommended that the requirement that feed limits do not exceed those contained in the conditions applying under the current coastal permit as set out in the proposed NES is removed and is addressed as a matter of discretion.

³² Note that these submitters want a resolution whereby the previously off-site farms are considered under the NES as a restricted discretionary activity.

³³ Refer to section 4.9 for further discussion on this issue.

4.1.3 Notification

4.1.3.1 Overview of subject matter

The proposed NES aims to provide a consistent approach to the notification of replacement consent applications for existing marine farms by precluding public and limited notification. Public notification of consent applications for existing marine farms can add substantial costs and time to the processing of these applications and tends to unnecessarily traverse issues better addressed at the plan development stage.

The RMA contains provisions that require councils to notify applications even where an NES precludes public or limited notification, as follows:

- Under section 95B council's must provide limited notification of consent applications to affected protected customary rights groups, affected customary marine title groups (for accommodated activities, which includes existing aquaculture) and holders of statutory acknowledgements that have been identified as an affected party
- Under sections 95A(9) and 95B(10) council's must provide limited or public notification of consent applications if special circumstances apply.

Also of relevance is section 62 of the Marine and Coastal Area (Takutai Moana) Act 2011 which requires that applicants must consult with groups which have applied for customary marine title prior to lodging consent applications.

4.1.3.2 Submission summary

The question³⁴ posed in the discussion document regarding the notification preclusions for replacement consents for existing marine farms received a high level of feedback (74 submitters mentioned this issue, 69% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 38 submitters supported the notification preclusions in the proposed NES, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations, interested individuals and regional councils.
- 21 submitters opposed the notification preclusions in the proposed NES, primarily NGO or community groups, interested individuals and Auckland Council.
- 9 submitters requested that more applications should be notified, including some regional councils and interested individuals.
- 15 submitters provided feedback on the exceptions to the notification preclusions in the proposed NES, primarily iwi organisations and regional councils.

Overview of submissions supporting the notification preclusions in the proposed NES

The main reasons given by those submitters who supported the notification preclusions for replacement consents are summarised below:

- Marine farms have already been through a public process of some kind (either at the plan development stage or consent application stage, sometimes both)
- Non-notification is essential for the proposal to meet its objectives
- The wider community would still have an opportunity to raise concerns about the impact of aquaculture through participation in future plan development processes
- There are benefits in terms of certainty and encouraging ongoing investment in the industry
- Special circumstances may provide opportunity for notification in appropriate cases

³⁴ Question 12 – refer to Appendix D
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Support for the restricted discretionary activity status from aquaculture industry submitters was often caveated by only being in support if the notification preclusions were retained.

Overview of submissions opposing the notification preclusions in the proposed NES

The main reasons given by those submitters who opposed the notification preclusions for replacement consents are summarised below:

- The proposed NES would take the assessment of sustainable management entirely away from public scrutiny, and allow long term consents to be issued uncontested
- Using the reasoning that effects have already been realised is not an appropriate reason for excluding further public involvement
- Independent analysis of applications would not occur
- Regional council staff do not have the requisite local knowledge to assess if an activity is causing problems
- Often more detailed information on the operation of the marine farm which can usefully inform decision-makers are only made available at the consent application stage (e.g. matters such as navigational safety)
- Members of the public are motivated to be involved on a site-specific basis, i.e. where a particular marine farm occurs in the places they value
- Non-notification does not safeguard the community, is unfair, inequitable and undemocratic
- Marine farms occupy a public space therefore the public should be consulted on whether that should be allowed to continue
- If public interest considerations (such as public access matters under section 6 RMA) are accepted to be relevant then it is hard to sustain a position that excludes public involvement
- Regional councils should retain the right to determine whether to notify an application or not due to the varying nature of both aquaculture activities and the coastal environment
- Non-notification will not allow change to be addressed and promotes perpetual occupation
- One submitter recommended that if the public was to lose a voice in the process, then it should gain one through a bespoke process allowing members of the public to provide councils with information to inform decision-making, without directly being able to submit on applications.

Overview of submissions requesting more applications be notified

The main reasons given by those submitters who have requested more applications be notified are summarised below:

- Regional councils should be able to assess applications on a case-by-case basis in certain circumstances (for example, where the marine farm is having significant adverse effects on the marine environment), to determine whether notification is warranted
- The Wainui Bay spat catching farms should be publicly notified
- Applications involving supplementary feeding, those within or adjacent to outstanding areas, or those within sensitive rare habitats should be publicly notified
- Only allow non-notification where the marine farm has already been subject to an RMA consent process and is in an area which has been identified through a comprehensive planning process as being suitable for aquaculture
- Public health units should have the opportunity to comment on a replacement consent application if there has been a previous history of disease outbreaks from shellfish contamination in the previous ten years

- Standard RMA notification tests should be applied to replacement consent applications for farms larger than 10 hectares
- Should Maritime New Zealand be notified of any consent applications?

Note that 8 out of 9 of these submitters did not express support or opposition to the proposed approach. The other submitter also opposed the approach.

Overview of submissions providing feedback on the exceptions to the notification preclusions in the proposed NES

The main reasons given by those submitters who provided feedback on the exceptions to the notification preclusions in the proposed NES are summarised below:

- Most submissions supported the presumption of non-notification, but sought an expansion on the exceptions which would allow for limited notification
- Notify any iwi/groups with statutory acknowledgements in or relating to the common marine and coastal area, i.e. automatically recognise these groups as affected
- Notify any iwi groups with an interest in the area
- Notify affected iwi and hapu for any consent application where impacts on protected customary rights have not been previously assessed
- Notify applicants for customary marine title (as required under the Marine and Coastal Area (Takutai Moana) Act 2011) and extend this to holders of customary rights under that Act
- Clearly define what is meant in the indicative NES regulations by 'statutory exceptions' to ensure the proposed NES is applied as intended

4.1.3.3 Analysis

Submissions supporting the notification preclusions in the proposed NES

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, particularly regarding the fundamental importance of the preclusion of notification to achieving the objectives of the proposed NES, and the ability for the wider community to engage on where aquaculture is appropriate and how it should be managed in a more strategic manner through the plan development process.

Submissions opposing the notification preclusions in the proposed NES

Many submitters were concerned about losing the opportunity to voice concerns about existing marine farms if notification is precluded and believed that public notification of replacement consent applications is fundamental given that the marine farms are located in public space and issues such as public access require public input.

A key principle of the proposed 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 NZCPS 2010. This is starting to happen through second generation coastal planning, with all councils expected to have at least a proposed plan notified by 2022. All members of the public have an opportunity to input into the development of plans through the submissions and hearing process. There is scope for councils to identify existing marine farms as inappropriate through the plan-making process, which would result in different notification requirements under the proposed NES.³⁵

While public engagement at a consent level can enhance the quality of decision-making for new marine farms or where significant changes are proposed to existing marine farms, the effects of existing marine farms that are seeking no or only minor changes are already apparent and will have been managed for some time. Public engagement at the consent application stage should focus on the extent of any change of the marine farm's impact on the environment. For most existing marine

³⁵ Refer to section 4.9 for further discussion on this issue.
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farms therefore, the potentially lengthier process that results from the notification of resource consent applications (with the resulting additional time and costs) is not necessary.

The proposed NES therefore generally precludes limited and public notification for replacement consent applications, to reduce instances of the appropriateness of existing marine farms being discussed on a consent-by-consent basis. Where a council has identified an existing farm as being in an inappropriate location it retains the discretion under the usual provisions of the RMA to notify or limited notify that application.

It is important to note that there may be situations where a council decides to notify (public or limited) an application based on special circumstances, which has been defined by case law as “outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique”.³⁶ This will be determined on a consent-by-consent basis by councils as required under sections 95A(9) and 95B(10) of the RMA.

Some submitters were concerned that precluding notification would result in more detailed independent information about the operation and effects of a marine farm not being able to be considered by decision-makers. Councils can still request further information from applicants if required under section 92 of the RMA. With regard to the bespoke process suggested by one submitter which would allow members of the public to provide councils with information to inform decision-making without directly being able to submit on applications, this is beyond the scope of the proposed NES.

Submissions requesting more applications be notified

Allowing councils to notify on a case-by-case basis where significant adverse effects are occurring

This approach would be difficult to draft into a workable regulation and would potentially leave considerable discretion to councils to determine which farms could be notified, thereby reducing the ability of the proposed NES to meet its objectives.

Wainui Bay spat catching farms should be publicly notified

Issues related to the Wainui Bay spat catching farms are discussed in more detail in section 4.8.

Fed aquaculture and those in outstanding areas or significant habitats

As discussed earlier in this section, the proposed NES is based on the principle that public engagement of existing marine farms best occurs at the plan development stage. The matters of discretion for replacement consents in the proposed NES will enable decision-makers to adequately address issues related to these farms without the need for further public engagement. Recent examples of salmon farms applying for replacement consents in Marlborough shows that while applications were publicly notified they did not proceed to hearings based on submissions. The issues raised in submissions would still be appropriately addressed through the matters of discretion contained in the proposed NES, including those related to tangata whenua values.³⁷

Notification preclusions dependent on previous consenting process and/or strategic planning having occurred

This approach was considered during the development of the proposed NES but discarded due to difficulties in drafting workable regulation.

Notification of public health units in certain circumstances

The primary concern of public health units is around areas becoming inappropriate for aquaculture due to degraded water quality from upstream influences. This does not justify any higher standing with regard to notification and, if there is an issue, is better addressed at the plan development stage.

Notification for marine farms larger than 10 hectares

The rationale put forward by the submitter for applying standard RMA notification tests to larger marine farms is that these marine farms may have more significant adverse effects over time and information from the public would be useful to assist decision-makers determine the consent applications. As discussed earlier in this section, the proposed NES is based on the principle that

³⁶ *Far North DC v Te Runanga-iwi o Ngati Kahu* [2013] NZCA 221 at [36].

³⁷ Refer to section 7.1 for further discussion on how tangata whenua values are proposed to be addressed.

public engagement of existing marine farms best occurs at the plan development stage. It is not considered necessary to deviate from this approach based on the marine farm size.

Notification of Maritime New Zealand

Under the navigational safety matters of discretion in the proposed NES decision-makers will take into account relevant information available from Maritime New Zealand. Most regional councils have a harbourmaster who will usually review and comment on marine farm consent applications (including seeking advice from Maritime New Zealand). As such no change is considered necessary.

Submissions providing feedback on the exceptions to the notification preclusions in the proposed NES

Many submitters from iwi organisations requested ‘automatic’ notification of groups with statutory acknowledgements in the relevant area, with others requesting that any iwi groups be notified. The NES cannot override the RMA statutory provisions by removing council discretion to determine who is an affected party, and it also cannot make exceptions to the preclusion of limited notification, e.g. it cannot state that limited notification is precluded except to iwi authorities. However, changes are proposed to the NES which will improve pre-application engagement with tangata whenua, in part in recognition of these submissions. These are discussed in greater detail in section 7.1.

With regard to submissions discussing the Marine and Coastal Area (Takutai Moana) Act 2011, since these rights and obligations are statutory requirements there is no need for further reference in the proposed NES. However, implementation guidance should note relevant rights and obligations from this Act.

One submitter requested that clauses 16 and 38 of the proposed NES as consulted on be updated to clearly define what is meant and to ensure the proposed NES is applied as intended. This request for clarification is accepted.

4.1.3.4 Recommendations

Provide greater clarity about the intent of the notification provisions by including text in the relevant regulations that clarifies that applications are not to be publicly notified or given limited notification unless public or limited notification is required under the Act.

4.1.4 Matters of discretion

4.1.4.1 Overview of subject matter

The proposed NES specifies the matters that a council can consider when making a decision on a replacement consent application for an existing marine farm as a restricted discretionary activity. The matters of discretion have been carefully drafted to ensure the matters are not phrased so widely that the activity becomes a de facto discretionary activity. The matters are focused on the key effects of aquaculture that need to continue to be managed, including biophysical, social and cultural effects, and are outlined below:

- Timing of occupation – particularly in relation to seasonal activities such as spat catching, where the original coastal permits issued may have been contingent on only a limited period of occupation of a site each year
- Continued reasonable public access and navigational safety – through the layout, positioning, lighting and marking of marine farms, and ensuring integrity and security of marine farm structures, including anchoring systems
- Significant adverse effects on seabed features such as reefs and biogenic habitats underneath and in close proximity to the marine farm
- Marine mammal and seabird interactions with marine farms – particularly entanglement, but not habitat exclusion³⁸
- Effects on tangata whenua values

³⁸ Refer to section 4.4.3.2 for further discussion on this issue.

- Management of biosecurity risks
- Management of noise, rubbish and debris
- Administrative matters such as consent duration and review, information and monitoring requirements, and the imposition of administrative charges, coastal occupation charges, financial contributions and bonds

Note that additional matters of discretion apply to replacement consent applications in outstanding areas, those which involve supplementary feeding, realignment consent applications and change of species consent applications. Further discussion on those matters is contained in the relevant sections of this report.

4.1.4.2 Submission summary – high level themes

The discussion document did not pose specific questions on matters of discretion, however 31 submissions (29% of all submitters) were received about the matters proposed in the NES,³⁹ which have been summarised at a high level as follows:

- 6 submitters (3 iwi organisations, 1 aquaculture industry, Environment Southland, and the Southland Regional Development Strategy) supported the matters of discretion as consulted
- 4 submitters (3 iwi organisations and Aquaculture New Zealand) said they would not support making the matters of discretion more restrictive
- 2 submitters (1 aquaculture industry and the Resource Management Law Association) supported making the matters of discretion more lenient
- 12 submitters thought the matters of discretion should be more restrictive or that more matters of discretion should be included to ensure environmental effects were addressed adequately, including effects on the seabed and water quality.
- Some submitters made suggestions for further refinement of the matters of discretion, or making definitions clearer
- Some areas were highlighted where guidance would be appropriate, including clarifying definitions and what information should be used to assess applications, and potential management techniques

More detailed analysis and recommendations based on these submissions is contained in the following section.

4.1.4.3 Submission summary, analysis and recommendations

Table 5 summarises the submissions received on specific matters of discretion, as they were consulted, and provides analysis and recommendations. Table 6 summarises the submissions received which provided feedback and suggested matters of discretion beyond the provisions consulted on, along with analysis and recommendations based on those submissions.

³⁹ Not including submissions received on tangata whenua values and cumulative effects, which are discussed in sections 7.1 and 7.3 respectively.

Table 5: Submissions received on the matters of discretion as consulted

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>a. The duration and lapsing of the consent and review conditions</p>	<p>One submitter requested this matter be expanded to include conditions restricting public access where that is reasonably necessary for safety, security or biosecurity reasons.</p>	<p>Public access can be addressed under matter (c) and biosecurity under matter (i). <i>No change recommended.</i></p>
<p>b. Timing of occupation in relation to seasonal activities such as spat catching</p>	<p>One submitter sought to narrow this matter to where such conditions have previously been imposed on a previous consent for the site.</p>	<p>Further narrowing of this matter as suggested may prevent change of use or flexibility to vary conditions in the future in response to change in circumstances. <i>No change recommended.</i></p> <hr/> <p>Additional analysis on the issue of occupation identified that salmon farms often contain consent conditions enabling exclusive occupation with respect to certain parts of the marine farm. Recommendation: Include a matter of discretion specific to marine farms requiring supplementary feeding to consider exclusive occupation, if sought.</p>
<p>c. The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, in relation to:</p> <ul style="list-style-type: none"> i. ensuring continued reasonable public access (including recreational access) in the vicinity of the marine farm ii. navigational safety, including the provision of 	<p>A number of submitters sought clarification of this matter with regard to the Maritime Transport Act 1994 and Maritime New Zealand, including a suggestion to refer directly to the Maritime Transport Act 1994 (and any successor legislation) in matter (c)(ii).</p>	<p>The addition suggested is not necessary to achieve the purpose of the matter of discretion. Implementation guidance could refer to relevant Maritime New Zealand guidance. All regional councils have a harbourmaster function and most have a dedicated harbourmaster that consent officers can seek advice from regarding navigation matters.⁴⁰ <i>No change recommended.</i></p>

⁴⁰ Note that in some regions the harbourmaster is delegated Maritime New Zealand powers

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>navigation warning devices and signs</p>		
<p>d. Integrity and security of the structures, including the anchoring systems</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>e. <i>[tangata whenua values, such as effects on waahi tapu, taonga] – note that this is a placeholder matter that needs further discussion with iwi authorities as part of the consultation process for the proposed NES: Marine Aquaculture</i></p>	<p>Refer to section 7.1 for summary of submissions on this issue.</p>	<p>Refer to section 7.1 for analysis and recommendations on this issue that ensure that there is a specific matter of discretion included</p>
<p>f. Significant adverse effects on reefs and/or biogenic habitat underneath and within 20 metres of the marine farm</p>	<p>Two regional council submitters noted that in their regions (Waikato and Marlborough) effects may occur at a distance beyond 20 metres, so sought confirmation that the distance of 20 metres will provide sufficient protection for reefs and biogenic habitats located nearby existing marine farms.</p> <p>Two submitters disagreed with limiting consideration of seabed effects to ‘significant’ adverse effects and reefs and biogenic habitats only within 20 metres of marine farms.</p> <p>Submitters raised questions about whether completely new seabed assessments would be required, or whether existing information can be relied on.</p>	<p>Some submitters sought clarification on why the distance within which significant adverse effects on reefs and biogenic habitats can be considered has been limited to 20 metres for the replacement consent matter of discretion. The 20 metres figure was based on an MPI report which indicated that “benthic effects are most pronounced directly beneath farm sites, reduce rapidly with distance, and are usually difficult to detect within 20 to 50 metres away”.⁴¹ Submitters highlighted that in some cases effects can extend beyond 20 metres, in some cases up to 115 metres away. Based on analysis of information provided by Waikato Regional Council⁴², while effects at 50 metres are detectable, effects at 115 metres are minor or less than minor. Further advice from central government science advisors confirms that it is still appropriate for</p>

⁴¹ Ministry for Primary Industries (2013) *Overview of ecological effects of aquaculture*, page 17.

⁴² Cawthron Institute (2012) *Assessment of benthic and water column effects from inshore Coromandel mussel farms – Report No. 2134*

Matters of discretion – as consulted	Submissions	Analysis and recommendations
		<p>inter-tidal⁴³ and sub-tidal⁴⁴ marine farms to have a 20 metre limit.</p> <p>A workshop involving both central government science advisors and independent science experts provided additional advice on the definitions for reef and biogenic habitat, as follows:⁴⁵</p> <ul style="list-style-type: none"> • Biogenic habitat: natural habitat created by the physical structure of living or dead organisms or by their interaction with the substrate. Biogenic habitats occur in a wide variety of environments and may be associated with hard (reef) or soft (sediment) substrates. They include areas of biogenic “reef” formed by rigid or semi-rigid organisms (e.g. beds of horse mussels, bryozoans, sponges, larger hydroids, rhodoliths, shell hash) and seaweed and seagrass beds. Excludes bio-fouling organisms attached to marine farming structures.⁴⁶ • Reef: means exposed hard substrate formed by geological processes and includes areas of bedrock, boulders or cobble. Excludes sand or gravel shoals. <p>In addition to the definitions, the workshop participants agreed to specific criteria / triggers to provide clearer guidance about minimum quality and scale. These can be viewed in Appendix E.</p>

⁴³ an intertidal marine farm is an aquaculture activity where the species and the structures on which they are grown are not covered by water at all stages of the tidal cycle (for instance rack oyster culture)

⁴⁴ a subtidal marine farm is an aquaculture activity where the species are grown on lines or structures that, apart from surface floats, are submerged at all stages of the tidal cycle (for instance green-lipped mussel cultivation)

⁴⁵ Note: these definitions were fine-tuned as a result of exposure draft feedback, including the addition of a separate definition for 'regionally significant benthic species', recognising that these are not all captured by the 'biogenic habitat' definition.

⁴⁶ Note: although *irregular seabed created by burrows and bioturbation* is also “biogenic habitat”, this habitat type has been excluded from the definition for the purposes of the NES.

Matters of discretion – as consulted	Submissions	Analysis and recommendations
		<p>Recommendations⁴⁷:</p> <p>Amend the matters of discretion to ensure that the effects on reefs and biogenic habitat and regionally significant benthic species underneath and within 20 metres of the surface structures of the <u>an inter-tidal marine farm and 20 metres of</u> from the boundary of the consented area of <u>a sub-tidal marine farm are included.</u></p> <p>Include definitions of ‘inter-tidal marine farm’, ‘sub-tidal marine farm’, ‘reef’, ‘biogenic habitat’, and ‘regionally significant benthic species’.</p> <p>Include specific criteria and triggers for what constitutes a reef and biogenic habitat as detailed in Appendix E.</p> <hr/> <p>The intent of the proposed NES is that while the general effects of shellfish farming are well understood and do not require further significant assessment, it is important to ensure farms are not located over important biogenic or reef habitats or regionally significant benthic species. New assessments are not necessarily required. Existing surveys which meet modern requirements may be sufficient. Existing surveys could be verified by an appropriately qualified expert to check that robust methods were used and determine whether any significant changes would have been likely since the survey was completed. This is generally a matter for councils to determine, and applicants should consult with councils before applying.</p> <p><i>No change recommended</i></p>

⁴⁷ Refer to section 4.4.4 for additional recommendations regarding this matter of discretion.

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>g. Management practices to minimise marine mammal and seabird interactions with the marine farm, including entanglement</p>	<p>A number of submitters sought to expand this matter of discretion to include habitat exclusion effects.</p>	<p>As discussed in section 4.4.3.2, effects on habitat exclusion are most relevant to an entire bay or broader spatial area, rather than specific sites. As such, this is best addressed through the plan development stage rather than a specific matter of discretion in the proposed NES. Should issues arise with respect to adverse interactions between marine mammals or seabirds and specific marine farm/s through the plan development stage, the proposed NES has mechanism to ensure these effects are appropriately addressed at the consent application stage.</p>
<p>h. Adverse effects of offshore* farms on marine mammals</p> <p>* That is, marine farms that are not located within enclosed waters such as harbours, sounds, bays and those that are not located close to the coast in more open waters.</p>	<p>Submitters sought a review of this matter of discretion (including the definition of offshore) to clarify its intent.</p>	<p>The existing marine farms which pose highest risk of adverse effects on marine mammals are those located in Bay of Plenty (off the coast of Opotiki), Hawke's Bay, Marlborough (a site off D'Urville Island and a site in Clifford Bay), and Canterbury (Pegasus Bay).⁴⁸ It is anticipated that there will likely be future growth in offshore marine farms so the proposed NES needs to ensure there is adequate assessment of marine farms in coastal waters where the risk of marine mammal entanglement is highest.</p> <p>The proposed NES contained a matter of discretion related to effects of offshore farms on marine mammals. Central government science advisors have provided a definition of what should be considered an offshore marine farm for the purpose of this matter of discretion. The definition is based on a series of parameters including whether the farm is not located within a harbour or large bay, within the enclosed water limits, within 500 metres of the coast (including islands). Refer to footnote 51 for exact wording⁴⁹ and Appendix G for maps.</p>

⁴⁸ Refer to map in Appendix F

⁴⁹ Note that this definition was refined during the Parliamentary Counsel Office drafting phase, primarily to avoid referencing regulations and rules external to the RMA.

Matters of discretion – as consulted	Submissions	Analysis and recommendations
		<p>Central government science advisors also advise that the key risk with regard to potential adverse effects of offshore marine farms is entanglement of large whales. The matter of discretion should therefore be refined to focus on the adverse effects associated with entanglement with large whales.</p> <p>Recommendations:</p> <p>Include a new meaning for offshore marine farms that captures both existing offshore marine farms and those areas that are 'offshore'.</p> <p>Amend the matter of discretion as follows: “Adverse effects of entanglement of large whales⁵⁰ in offshore marine farms⁵¹”</p>
<p>i. Management of biosecurity risks</p>	<p>One submitter sought to confine the matter of discretion to only relate to the Biosecurity Management Plans which will be required under the proposed NES.⁵²</p>	<p>This matter of discretion was intended to be broad to allow councils to set conditions to address broader biosecurity concerns than just management plans, e.g. should there be any biosecurity implications of certain species or feeds. Narrowing it in the way proposed would prevent that. Also note changes to proposed approach with respect to the biosecurity management plan requirements of the proposed NES.</p> <p><i>No change recommended.</i></p>

⁵⁰ Large whales is defined as Sperm whale (*Physeter macrocephalus*) and all baleen whales (Order Mysticeti except pygmy right whale *Caperea marginata*)

⁵¹ Offshore marine farms are defined as:

- a) For existing marine farms initially granted consent prior to the date of gazettal of the NES, the five current offshore farms (located in Bay of Plenty (off the coast of Opotiki), Hawke’s Bay, Marlborough (a site off D’Urville Island and a site in Clifford Bay), and Canterbury (Pegasus Bay))
- b) For marine farms initially granted consent after the date of gazettal of the NES, marine farms that are not located:
 - a. within harbours [based on the legal boundary descriptions contained in Fisheries (Auckland Kermadecs Commercial Fishing) Regulations 1986, Fisheries (Central Area Commercial Fishing) Regulations 1986, Fisheries (Challenger Area Commercial Fishing) Regulations 1986, Fisheries (South-East Area Commercial Fishing) Regulations 1986, and Fisheries (Southland and Sub Antarctic Areas Commercial Fishing) Regulations 1986]
 - b. within the enclosed water limits [as defined in Maritime NZ’s Maritime Rule 20, accessed here: <https://www.maritimenz.govt.nz/rules/part-20/>]
 - c. within Golden Bay (line between Farewell Spit lighthouse and Separation Point)
 - d. within Tasman Bay (line between Guilbert Point and Pepin Island)
 - e. within the Firth of Thames (line between Cave Point and Waimango Point)
 - f. within 500 metres of the coast (including islands) outside of the enclosed water limits

⁵² Refer to section 6 for further discussion on this issue.

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>j. Management of noise, rubbish and debris</p>	<p>One submitter sought to clarify whether noise associated with vessels, equipment and machinery working on the marine farm could be logically connected to the activity for the purpose of section 108AA of the RMA.</p>	<p>Section 108AA is intended to clarify the need for a causal link between a consent condition and adverse effects in any application decision.</p> <p>Any potential noise effects from vessels, equipment and machinery used for aquaculture activities associated with a specific application would fall within adverse effects of the activity on the environment, and therefore would be 'directly connected' for the purposes of section 108AA(1)(b).</p> <p><i>No change recommended.</i></p>
<p>k. Information, monitoring and reporting requirements</p>	<p>One submitter suggested confining this matter of discretion to requirements relevant to the specified matters of discretion.</p> <p>One submitter suggested that councils should be able to rely on existing information, to reduce costs to applicants.</p>	<p>It is not necessary to specify that the requirements outlined in this matter of discretion are confined to the other matters of discretion in the proposed NES.</p> <p>The proposed NES does not set out what information councils must require from applicants to assess effects. This will differ depending on the council and the marine farm and some councils may rely on existing information where it is still up-to-date and relevant.</p> <p><i>No change recommended.</i></p>
<p>l. Administrative charges, coastal occupation charges, financial contributions and bonds (or alternative mechanisms to recover the cost of the repair or removal of abandoned or derelict farms and reinstatement of the environment</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>

Table 6: Submissions received which raise additional issues about matters of discretion beyond those consulted

Additional issues raised by submitters	Submissions	Analysis and recommendations
Applying fed aquaculture matters of discretion to all marine farms	One submitter suggested that the matters of discretion which apply to fed aquaculture marine farms ⁵³ should apply to all applications, and then councils and the applicant decide which ones are relevant.	The additional matters of discretion for fed aquaculture have been drafted to apply to only to fed aquaculture due to the difference in potential effects. It would not be efficient for councils to be required to consider potential effects that the activity is not likely to cause. <i>No change recommended.</i>
Rewrite matters of discretion to allow decision-makers to decline consents	Some submitters suggested some of the matters of discretion only allow effects to be addressed through management conditions, rather than through consent decline. The submitters thought this was not appropriate, and councils should be able to decline consents based on all matters of discretion.	Decision-makers could theoretically decline consent based on any of the matters of discretion listed in the proposed NES. The matters of discretion have been intentionally drafted to focus on conditions to address those key effects of aquaculture that need to be managed on a consent-by-consent basis. <i>No change recommended.</i>
Fisheries resources	One submitter proposed a matter of discretion to assess effects of marine farms on fisheries resources where such an assessment was not made when the original consent was granted. Another submitter suggested this should not automatically be a matter of discretion, but that councils could be allowed to identify areas where fisheries resources could be considered in consents.	Effects on fisheries resources (by the predecessor organisations to Fisheries New Zealand) would only have been considered for applications between July 1993 and January 2005. Since then effects on fisheries resources have been a relevant requirement under the RMA, and undue adverse effects on fishing have been assessed for new marine farms by Fisheries New Zealand. Scientific advice suggests the effects of existing marine farms on fisheries resources are not clear and it is hard to generalise, however any adverse effects are likely to be minor. While farms can provide artificial habitat, it is unclear whether this supports increased populations or simply attracts fish away from other habitats. The ability to consider effects of farms on reefs and other biogenic habitats and regionally significant

⁵³ Refer to section 4.2.1 for further discussion of this issue.

Additional issues raised by submitters	Submissions	Analysis and recommendations
		<p>benthic species may act as a proxy (at least in part) to help address potential adverse effects on fish populations.</p> <p>Based on the above analysis a matter of discretion for all marine farms in relation to effects on fisheries resources (to address site specific issues) is not required.</p> <p><i>No change recommended.</i></p>
Water quality	Some submitters requested an additional matter of discretion around effects on water quality, including effects of stocking density	<p>Effects of marine farms on water quality are broader than just site specific so are best addressed, if necessary, through the plan development stage rather than on a consent-by-consent basis.⁵⁴</p> <p><i>No change recommended.</i></p>
Monitoring of water quality	One submitter requested an additional matter of discretion requiring the monitoring of water quality from a food safety perspective	<p>Water quality for food safety is best addressed through planning and broader scale monitoring programmes rather than on a consent-by-consent basis.</p> <p><i>No change recommended.</i></p>
Inclusion of water quality standards	A number of submitters requested the addition of water quality standards for sediment and nutrients, pesticides and other chemicals used in farming to ensure effects are no more than minor.	<p>The provision of scientific standards is beyond the scope of the proposed NES, as water quality standards should apply to all activities, rather than just be limited to aquaculture.</p> <p><i>No change recommended.</i></p>
Require adoption of best practice design and operational practices	One submitter requested a matter of discretion which required adoption of best practice design and operational practices, to avoid locking in old technologies	<p>The entry requirements⁵⁵ for the replacement consent provisions include that the structures are materially the same (i.e. the same or similar). This would allow some slight variation in the structures used and adaptation to better equipment.</p> <p>Where changes were made outside of this entry requirement, there may be cases where this would fall</p>

⁵⁴ Refer to section 7.3 for further discussion on this issue from a cumulative effects perspective.

⁵⁵ Refer to section 4.1.2 for further discussion on this issue.

Additional issues raised by submitters	Submissions	Analysis and recommendations
		<p>under the proposed change of species provisions.⁵⁶ The proposed NES is not intended to apply to significant changes in practice, which potentially may have quite different effects to the existing marine farm. In such cases it would be more appropriate to apply for a new consent at the site.</p> <p><i>No change recommended.</i></p>
<i>Climate change and ocean acidification</i>	Some submitters requested additional matters of discretion to address adaptation to climate change and ocean acidification	<p>While important, these issues will require a broader scale approach than can be achieved on a consent-by-consent basis, and are therefore best addressed at the plan development stage.</p> <p><i>No change recommended.</i></p>
<i>Smothering of benthic communities by shell drop and other debris</i>	One submitter requested a matter of discretion to address shell drop and other farm debris smothering benthic communities	<p>This issue would be able to be managed through the matter of discretion focused on effects on reefs and biogenic habitats and benthic species.</p> <p><i>No change recommended.</i></p>
<i>Changes to populations of predatory species</i>	One submitter requested a matter of discretion to address changes in populations of predatory species such as starfish as a result of the marine farm	Should this be an issue it could be addressed through the existing biosecurity risk matter of discretion.
<i>Nutrient depletion (including phytoplankton)</i>	One submitter requested a matter of discretion regarding nutrient depletion (including phytoplankton)	Refer to section 7.3 for further discussion on this issue.
<i>Impacts on other users of the coastal environment</i>	One submitter requested a matter of discretion regarding impacts on other users of the coastal environment including yachties and vessels.	<p>Navigational safety concerns, which appear to be this submitters concern, can be addressed either through the matter of discretion related to the layout, positioning, density, lighting, and marking of marine farm structures within a marine farm or through the plan-making process.</p> <p><i>No change recommended.</i></p>
<i>Landscape and natural character</i>	Some submitters requested a matter of discretion on effects on landscape and natural character (i.e. areas that are not outstanding)	Refer to section 4.3 for further analysis on this issue.

⁵⁶ Refer to section 5 for further discussion on this issue.

Additional issues raised by submitters	Submissions	Analysis and recommendations
<p>Positive effects</p>	<p>Some submitters requested a matter of discretion regarding the positive effects of marine farming</p>	<p>A review of proposed and operative second generation coastal plans⁵⁷ indicates that positive effects matters of discretion are not typically included for replacement consent rules.</p> <p>The positive effects of marine farming tend to instead be provided for in relevant policies in coastal plans (i.e. most coastal plans in aquaculture regions will have policies recognising the benefits of aquaculture) and are a fundamental basis for why the proposed NES has been developed.</p> <p>Many of the positive ecological effects of marine farming can still be assessed under the proposed NES due to the way in which the matters of discretion have been worded (i.e. using the term ‘effects’ rather than ‘adverse effects’, which covers both adverse and positive effects).</p> <p>Positive social and economic effects are considered to be adequately covered by existing plan policies and the fact that a proposed NES has been developed.</p> <p><i>No change recommended.</i></p>

⁵⁷ In Northland, Auckland and Bay of Plenty

4.2 FED AQUACULTURE: ADDITIONAL PROVISIONS

4.2.1 Matters of discretion

4.2.1.1 Overview of subject matter

In addition to the matters of discretion which apply to all marine farms under the proposed NES⁵⁸, some further specific matters are relevant to marine farms where supplementary feeding is required as part of normal operations (such as finfish farms):

- conditions to avoid, remedy or mitigate water quality and seabed effects, including fallowing and rotation
- significant adverse effects on seabed features such as reefs and biogenic habitats further away from the marine farm
- use of additives, antibiotics, therapeutants and antifouling
- effects of underwater lighting (used to manage the rate at which fish mature) and operational lighting from structures such as barges and sea pens
- discharges of odour

Note that additional matters of discretion also apply to replacement consent applications in outstanding areas and realignment consent applications. Further discussion on those matters is contained in the relevant sections of this report.

4.2.1.2 Submission summary, analysis and recommendations

Table 7 summarises the submissions received on specific matters of discretion for fed aquaculture, as they were consulted, and provides analysis and recommendations. Table 8 summarises the submissions received which provided feedback and suggested matters of discretion for fed aquaculture beyond the provisions consulted on, along with analysis and recommendations based on those submissions.⁵⁹

⁵⁸ Refer to section 4.1.4 for further discussion on these matters of discretion.

⁵⁹ Note the high level submissions analysis contained in section 4.1.4.2 is also relevant to the matters of discretion for fed aquaculture.

Table 7 Submissions received on the matters of discretion for fed aquaculture, as consulted

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>a. Management of effects on water quality and benthic values</p>	<p>One submitter suggested that the term ‘benthic environment’ be used instead of ‘benthic values’, given that what is managed through Environmental Quality Standards is change to the benthic environment.</p>	<p>‘Environment’ is defined in the RMA and may have a clearer meaning in that context than values. The term ‘benthic environment’ would be a more constrained definition than the broader RMA definition of ‘environment’.</p> <p>Recommendations:</p> <p>Amend the additional matter of discretion as follows: <i>Management of the effects of the activity on water quality and <u>the benthic environment</u> values</i></p> <p>Include a definition of ‘benthic environment’ in the proposed NES.</p>
<p>b. Significant adverse effects on reefs and/or biogenic habitat</p>	<p>No submissions received on this matter, although note the submissions received on the equivalent matter under clause 12(f).⁶⁰</p>	<p>Recommendation:</p> <p>Consequential amendments based on analysis and recommendations contained in sections 4.1.4.3 and 4.4.2.2.</p>
<p>c. Use of antibiotics, therapeutants and antifouling</p>	<p>One submitter requested a definition of the term ‘therapeutants’ to ensure it covers the range of substances that might be used now and in the future to address animal health issues on the marine farm. The submitter also sought a review of the use of the term ‘therapeutants’ to ensure it is the most appropriate term.</p>	<p>Central government science advisors support retaining the term ‘therapeutants’ to differentiate from any other type of additive. The suggested definition is additives to the marine farming system for the purpose of improving farmed stock health.</p> <p>Recommendation:</p> <p>Include the following definition of ‘therapeutants’: <i>Therapeutants means additives to the marine farming system for the purpose of improving farmed stock health.</i></p>

⁶⁰ Refer to section 4.1.4.3 for more discussion on this issue.

Matters of discretion – as consulted	Submissions	Analysis and recommendations
		<p>Further analysis also indicates that this matter of discretion could be amended so that there are two separate matters of discretion, as antibiotics and therapeutants that are used to address animal health issues, has a different intent antifouling that is applied to equipment.</p> <p>Recommendations:</p> <p>Add separate matter of discretion to specifically address 'antifouling'</p>
<p>d. Fallowing and rotation</p>	<p>Submitters noted that fallowing and rotation is a management practice that could be introduced using other matters of discretion rather than needing a specific matter of discretion.</p>	<p>Fallowing and rotation is primarily used as a management technique for effects on the benthic environment, which would be covered under the matter of discretion 'Management of the effects of the activity on water quality and the benthic environment' recommended above.</p> <p>It also plays a significant role overseas in managing disease, which would be covered under the matter of discretion related to the management of biosecurity risk. Both of these matters of discretion are sufficiently broad enough to allow decision-makers to impose a fallowing and rotation condition as a management technique, rather than having a specific matter of discretion. Therefore this matter of discretion could be removed.</p> <p>Recommendation:</p> <p>Delete this matter of discretion.</p>
<p>e. Underwater lighting</p>	<p>One submitter suggested confining this matter of discretion to the management of underwater lighting to reasonably minimise effects on amenity.</p>	<p>The submitter seeks to constrain this matter of discretion to amenity, thereby excluding potential ecological effects of underwater lighting. However, advice from Cawthron Institute for the Marlborough salmon farm relocation project⁶¹ is that management</p>

⁶¹ <https://www.mpi.govt.nz/dmsdocument/16153-assessment-fo-environmental-effects-of-underwater-lighting-for-salmon-farm-relocation-sites-prepared-by-cawthron>

Matters of discretion – as consulted	Submissions	Analysis and recommendations
		practices are required to prevent underwater lighting from having adverse effects on ecology, including wild fish. <i>No change recommended.</i>
f. Any other lighting of structures	One submitter suggested modifying the matter of discretion to focus on the management of lighting structures to reasonably minimise effects on amenity.	Lighting of structures may be relevant to managing other effects, such as effects on seabirds at night. Narrowing the matter of discretion to amenity would therefore not be appropriate. <i>No change recommended.</i> ⁶²
g. Discharges of odour	One submitter suggested modifying the matter of discretion to focus on the management of odour to reasonably minimise effects on amenity.	Odour effects from fed aquaculture need to be managed to minimise effects on amenity. There is no evidence of needing to manage odour for other reasons, e.g. attraction of seabirds to marine farms. It is therefore reasonable to constrain this matter of discretion along the lines suggested by the submitter. Recommendation: <u>Amend the matter of discretion so that it covers management practices to minimise adverse effects of discharges of odour on amenity values</u>

Table 8 Submissions received which raise additional issues about matters of discretion for fed aquaculture, beyond those consulted

Additional issues raised by submitters	Submissions	Analysis and recommendations
Biosecurity risks from added feed	One submitter suggested including extra provision for potential biosecurity implications from added feed.	This issue would be able to be managed through the matter of discretion related to the management of biosecurity risk. <i>No change recommended.</i>

⁶² Note: during the Parliamentary Counsel Office drafting phase this matter of discretion was amalgamated with the underwater lighting matter of discretion.

Additional issues raised by submitters	Submissions	Analysis and recommendations
<i>Shark management</i>	One submitter noted that the New Zealand King Salmon marine farms approved by the Board of Inquiry had conditions imposed to address the relationship between salmon farming and sharks.	<p>Research commissioned for the Marlborough salmon farm relocation project⁶³ found that methods developed for handling marine mammals are unlikely to be transferable to large sharks, and consideration should be given to the development of methods for the live release of shark species.</p> <p>Shark interaction mitigation measures may include:</p> <ul style="list-style-type: none"> • Good farm husbandry, which minimises the number of fish dying in the cages; • Prompt removal of dead fish from cages; • Utilisation of predator exclusion nets or shark-resistant materials in cage construction. <p>Recommendation:</p> <p>Add new matter of discretion as follows: <i>Management practices to minimise shark interactions with the marine farm.</i></p>
<i>Visual appearance of surface structures</i>	Tasman District Council requested an additional matter of discretion for fed aquaculture replacement consents which would enable decision makers to impose conditions requiring recessive, non-reflective colours on any structures, or require that they be maintained in a neat and tidy condition.	<p>A matter of discretion is required for fed aquaculture replacement consents which enables conditions to be imposed relating to location, density, materials, colour, and reflectivity of structures (i.e. the visual appearance of the surface structures).</p> <p>The matter of discretion needs to be appropriately confined so as to not become a de facto matter of discretion around landscape, natural character and/or visual amenity.</p> <p>Recommendation:</p> <p>Add new matter of discretion as follows (or similar intent): <i>Management of the visual appearance of surface structures in relation to their location, density, materials used, colour and reflectivity</i></p>

⁶³ Taylor, P & Dempster, T. (2016) *Effects of salmon farming on the pelagic habitat and fish fauna of the Marlborough Sounds and management options for avoiding, remedying and mitigation adverse effect*

4.2.2 Submissions requesting different treatment for fed aquaculture

4.2.2.1 Overview of issue

While the proposed NES consulted on does provide additional matters of discretion for fed aquaculture, it does not treat these marine farms differently with regard to activity status⁶⁴, entry requirements⁶⁵ or notification requirements.⁶⁶

4.2.2.2 Submission summary

The questions⁶⁷ posed in the discussion document regarding how the proposed NES should treat replacement consents for existing fed aquaculture received a number of submissions (44 submitters mentioned this issue, 41% of total submissions). Most submitters had a particular focus on salmon farming.

One submitter suggested that it was inappropriate to include fed aquaculture in the proposed NES due to a lack of knowledge about the effects of salmon farming.

Many submitters requested that fed aquaculture have a more stringent activity status (i.e. discretionary or non-complying).

One submitter was concerned that the use of a restricted discretionary activity status would not prevent increased intensity of farming.

Many submitters requested that more stringent notification requirements apply to fed aquaculture (either the standard RMA notification requirements or a specific requirement that the applications be publicly notified).

Many submitters requested more matters of discretion or more restrictive entry requirements.

4.2.2.3 Analysis

Including fed aquaculture in the proposed NES is not appropriate

With regard to perceived lack of knowledge about the effects of salmon farming, the additional matters of discretion set out above⁶⁸ are considered to be sufficient to address management of potential effects. These are based on analysis of recent consent decisions regarding salmon farms along with best available scientific knowledge.

Restricted discretionary activity status for fed aquaculture is not appropriate

The analysis undertaken in section 4.1.1.3 equally applies with regard to fed aquaculture. The matters of discretion are considered to be sufficient to manage the potential effects of fed aquaculture. Applying a more stringent activity status (i.e. discretionary or non-complying) will not result in better management of effects.

Regarding the concern that use of a restricted discretionary activity status would not prevent increased intensity of farming, the matters of discretion specific to fed aquaculture are designed to ensure relevant effects associated with the activity are appropriately managed.

More stringent notification requirements for fed aquaculture

Refer to section 4.1.3.3 for analysis on this issue.

More matters of discretion or restrictive entry requirements

Where submitters specified these they have been analysed in the relevant sections of this report.⁶⁹

4.2.2.4 Recommendations

No changes are recommended in response to submissions.

⁶⁴ Refer to section 4.1.1 for further discussion on this issue.

⁶⁵ Refer to section 4.1.2 for further discussion on this issue.

⁶⁶ Refer to section 4.1.3 for further discussion on this issue.

⁶⁷ Questions 4, 6, 7, 12 – refer to Appendix D

⁶⁸ Refer to section 4.2.1 for further discussion on this issue.

⁶⁹ Refer to section 4.2.1 for analysis of suggested matters of discretion and section 4.1.2 for analysis of suggested entry requirements.

4.3 MARINE FARMS IN OUTSTANDING AREAS: ADDITIONAL PROVISIONS

4.3.1 Overview of subject matter

Section 6 of the RMA identifies the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development, along with the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development, as matters of national importance.

Objective 2 of the NZCPS 2010, along with Policies 13 (Preservation of natural character), 14 (Restoration of natural character) and 15 (Natural features and natural landscapes), provide further policy direction achieving the purpose of the RMA with respect to the sustainable management of natural character, natural features and natural landscapes in the coastal environment.

The proposed NES aims to provide a clear mechanism for how the effects of marine farms on areas of outstanding natural character, outstanding natural features, and outstanding natural landscapes (collectively termed 'outstanding areas' for the purpose of this report) are to be managed. An adverse effect on an outstanding area is created when the condition (in terms of natural character) or level of outstanding-ness (in terms of landscape) is reduced.

The approach of the proposed NES as set out in clauses 2 and 37 of the indicative NES regulations consulted on clearly delineated exactly which marine farms require an assessment of the adverse effects on the values and characteristics that make an area outstanding. The mechanism to achieve this is by applying a matter of discretion on this issue only to farms located within an outstanding area identified in a proposed or operative regional policy statement or regional coastal plan, rather than those adjacent to them.

In response to situations of minor overlap between existing marine farms and outstanding areas in some plans (notably the Proposed Marlborough Environment Plan), the proposed NES consulted on defined 'within' as a marine farm that has more than 1% of its consented area within an outstanding area.

4.3.2 Submission summary

The questions⁷⁰ posed in the discussion document regarding the approach of the proposed NES to outstanding areas received a high level of feedback (62 submitters mentioned this issue, 58% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 31 submitters supported the proposed approach or sought a more lenient approach, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations and regional councils
- 18 submitters opposed the proposed approach, primarily NGO or community groups, interested individuals, and iwi organisations,
- 49 submitters provided general feedback on the proposed approach (a number of these submitters also either supported or opposed the proposed approach)

4.3.2.1 Overview of submissions supporting of the proposed approach

The main reasons given by those submitters who supported the proposed approach are summarised below:

- The proposed NES needs to provide the additional matter of discretion regarding outstanding areas to ensure these areas of significance are properly considered
- Outstanding areas were not considered in the applications for older marine farms operating under deemed coastal permits so it is appropriate they are considered in this way under the proposed NES

⁷⁰ Questions 8 and 11 – refer to Appendix D
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- Aquaculture generally has no or minor effects on outstanding areas
- Most farms have been in place for years and the outstanding areas have been assessed with those farms in situ

A number of submitters requested the proposed NES provide greater certainty for marine farmers about the effect of existing marine farms on outstanding areas, as summarised below:

- Adopt the Auckland Unitary Plan approach, i.e. require plans to state the impact existing aquaculture has on the outstanding areas
- Have a sunset clause for the outstanding areas matter of discretion in the proposed NES, i.e. allow time for plans to adopt the same approach as Auckland Unitary Plan, then remove the outstanding areas matter of discretion once that process has been completed
- Existing marine farms in Auckland should be exempted from the outstanding areas matter of discretion given the Auckland Unitary Plan indicates they do not have an adverse effect
- The outstanding areas matter of discretion should not apply where these effects have already been considered in previous consent applications
- Provide guidance on how to assess effects of marine farms on outstanding areas
- The Minister should determine through the proposed NES exactly which farms should be subject to the outstanding areas matter of discretion, using best available information

A number of submitters supported the proposed approach of providing a margin of error to address situations of minor and technical overlaps between marine farms and outstanding areas, however raised a few issues, as summarised below:

- A higher margin of error than 1% should be used in the definition of 'within' (ranging from 2% to 5%)
- Include provisions to address mapping scale issues

Two submitters requested a more lenient approach to marine farms in outstanding areas, summarised below:

- A distinction should be made between marine farms that were in place before the outstanding area was identified in a regional policy statement or regional coastal plan and marine farms that were developed after an outstanding area was identified
- Marine farms in outstanding areas should not have an additional matter of discretion

4.3.2.2 *Overview of submissions opposing the proposed approach*

The main reasons given by those submitters who opposed the proposed approach are summarised below:

- The proposed approach does not allow for the consideration of effects on areas of natural character, natural features and natural landscapes that are not outstanding as required by Policies 13 and 15 of the NZCPS 2010 (i.e. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on [other natural features and natural landscapes] [natural character in all other areas] of the coastal environment)
- As subordinate legislation, an NES must be consistent with the purpose of the RMA. This means the NES must give effect to the NZCPS 2010 as it 'gives substance to Part 2's provisions in relation to the coastal environment'
- Concerns about how councils will give effect to the NZCPS 2010 in their plans when the proposed NES as consulted on restricts consideration of these effects
- Policy 14 of the NZCPS 2010 requires restoration of natural character, not further degradation

- Marine farms do not have to be within an outstanding area to have an adverse effect on the values and characteristics that make that area outstanding (e.g. a marine farm adjacent to a headland which has been identified as an outstanding natural landscape or feature)
- Existing marine farms are influencing the extent of outstanding areas identified in coastal plans (with the Proposed Marlborough Environment Plan being used as an example, where outstanding areas often stop near the boundary of a marine farm)

A number of submitters opposed to the approach requested changes, as summarised below:

- The proposed NES should introduce an identified buffer zone next to outstanding areas to enable effects of marine farms adjacent to outstanding areas to be considered
- Marine farms in outstanding areas are inappropriate and should be removed
- The proposed NES should make it clear that the landscape values of a particular area must be assessed as if the existing aquaculture activity were not there
- The proposed NES should either be more stringent or enable councils to provide greater stringency in their plans for marine farms in outstanding areas (e.g. discretionary or non-complying activity status, public notification)

4.3.2.3 *Overview of submissions providing general feedback on the proposed approach*

A number of submitters raised concerns about the state of mapping and identification of outstanding areas in some regions, as summarised below:

- A few industry submissions discussed concerns around how outstanding areas have been mapped and identified at Banks Peninsula (where the entire peninsula is currently identified as outstanding) and requested for specific direction in the proposed NES for these farms
- Some submitters noted mapping is still being worked through via the planning process in Marlborough
- Mapping of outstanding areas is not expressly required by the RMA and NZCPS 2010, therefore a lack of mapping should not prevent consideration of effects on those areas
- Some plans have not identified outstanding areas in a proposed or operative plan yet (e.g. Waikato Regional Council with regard to areas of outstanding natural character). Concern was raised that marine farmers may apply early once the proposed NES is gazetted to avoid consideration of effects on outstanding areas. Waikato Regional Council requested the proposed NES not be implemented in their region until a proposed plan is in place to avoid this issue

Submitters also sought clarification on a few aspects of the proposed approach, as summarised below:

- The relationship between Clause 2 [outstanding areas] and Clause 5 [inappropriate areas] of the indicative regulations as proposed with the discussion document might mean that marine farms in outstanding areas cannot be considered inappropriate under Clause 5
- There was confusion about whether outstanding areas had to be identified in both an operative and a proposed plan (rather than in an operative or proposed plan)

4.3.3 **Analysis**

4.3.3.1 *Submissions supporting the proposed approach*

The general points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report.

Auckland Unitary Plan approach

The Auckland Unitary Plan approach to assessing the effects of existing marine farms on the values and characteristics that make an area outstanding was adopted as a way to provide greater certainty to those marine farms.

By way of background, approximately 80% of existing marine farms in the Auckland region are located within outstanding areas, as identified in the Auckland Unitary Plan. As a result of mediation and expert advice from a landscape architect, the Independent Hearings Panel recommended (and the Auckland Council adopted) the following approach:

- Amending the assessment tables within the relevant schedules of the Auckland Unitary Plan which set out the qualities and characteristics of the outstanding areas to ‘acknowledge’ the existing marine farms (e.g. noting that ‘*Parts of the Bay contain marine (oyster) farms, but this does not compromise the coastline’s current natural values overall*’⁷¹ and ‘*Some bays contain existing marine (mussel) farms, but this does not compromise Great Barrier’s current natural values overall*’⁷²); and
- Replacement consent applications for existing marine farms in outstanding areas are provided for as a restricted discretionary activity with a matter of discretion focused on the effects of the marine farm on the characteristics and qualities that contribute to the area’s values.⁷³

Analysis indicates that the current approach in the Auckland Unitary Plan likely provides sufficient certainty with respect to this issue for the existing marine farms in outstanding areas in Auckland, however this has not yet been tested in a consent process (these marine farms’ consents are not due to expire until 2024). There is no reason to make specific amendments to the proposed NES to exempt these Auckland marine farms from the outstanding areas matter of discretion, as in practice, the proposed NES when introduced would maintain the status quo in Auckland with regard to how the effects of existing marine farms on the values and characteristics that make an area outstanding are assessed.

A similar approach has been adopted in the Proposed Bay of Plenty Regional Coastal Environment Plan for the existing marine farms located in Ohiwa Harbour, however it has not been adopted in other recent proposed/operative planning documents (e.g. Proposed Marlborough Environment Plan, Northland Regional Policy Statement).

The Environment Court has recently considered this concept in more detail in *Western Bay of Plenty District Council v Bay of Plenty Regional Council*, stating:⁷⁴

“Policy 15(a) [of the NZCPS 2010], read together with the rest of that policy, requires that regional policy statements and regional and district plans identify what is to be protected in order to avoid inappropriate subdivision use and development which could adversely affect whatever is protected. This may include the identification of what may be an “adverse” effect or otherwise be “inappropriate” in the context of a particular feature or landscape or a specific element of that feature or within that landscape.”

This direction from the Environment Court, both in that case and in others⁷⁵, may indicate a shift to plans containing greater analysis of the effects of existing activities (including aquaculture) on outstanding areas, which is consistent with one of the aims of the proposed NES seeking to shift decisions from the consent application stage to the plan development stage. However, as the concept is broader than just aquaculture, it is not appropriate that the proposed NES provide direction on the matter. It is also not clear at this stage that this approach will become common planning practice, as such the suggested sunset clause concept is unwarranted.

Previous consent applications having considered effects on outstanding areas

There is a question as to whether assessments under previous resource consent applications have been as rigorous as would be required now, particularly those consented pre-NZCPS 2010. The

⁷¹ Auckland Unitary Plan, Schedule 7: Outstanding Natural Landscapes Overlay Schedule, p7

⁷² *ibid*, p74

⁷³ Auckland Unitary Plan, Chapter F, F2. Coastal – General Coastal Marine Zone, p81

⁷⁴ *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147 (7 September 2017) at [128].

⁷⁵ For example: *Friends of Nelson Haven and Tasman Bay Incorporated v Tasman District Council* [2018] NZEnvC 46 (16 April 2018) at [99].

proposal to not apply the outstanding areas matter of discretion to farms where effects have been considered previously would also not be feasible within the construct of an NES as it would be trying to codify a case-by-case consideration of farms, and would only be appropriate if the previous assessments were acceptable. It would also make the NES unreasonably inflexible with regard to changes to outstanding areas through future planning processes.

Additional guidance on how to assess effects of marine farms

It is beyond the scope of the NES to provide guidance on landscape assessment methodology. The *Review of the effect of NZCPS 2010 on RMA decision-making* has identified that there is an “absence of widely accepted consistent methodologies (particularly for identifying outstanding areas and assessing the effects on them)”.⁷⁶ That report flagged that the development of consistent assessment methodologies is a key focus for future work⁷⁷ and it is understood that the New Zealand Institute of Landscape Architects is leading a project to address this. Any work with regard to methodologies for assessing the effects of marine farms on outstanding areas is best addressed through that project.

Minister determines and specifies in the proposed NES which farms are subject to additional assessment regarding outstanding areas

While this could theoretically be done (in regions where mapping has been recently completed, and where reliable information is available on the effects of existing marine farms on outstanding areas⁷⁸) it would only be a snapshot of one point in time (i.e. it could only use the information available at the time the proposed NES is gazetted) and would be unreasonably inflexible with regard to changes to outstanding areas through future planning processes.

Minor and technical overlaps between existing marine farms and outstanding areas

The issue of the size of the margin of error needed to address situations of minor and technical overlaps is primarily focused on the Proposed Marlborough Environment Plan. Analysis indicates that increasing the margin of error from 1% to 5% would only have a small impact on reducing the number of marine farms within outstanding areas in Marlborough under the proposed plan (8 fewer farms would be considered ‘within’). In addition, submissions on the Proposed Marlborough Environment Plan have sought to resolve the issue of minor and technical overlaps. The Hearings Panel has not yet released decisions on this matter, however in reply to evidence the landscape expert on behalf of the Marlborough District Council has recommended that a review of mapping occur to clearly identify which farms are either wholly within or wholly outside outstanding areas.⁷⁹

One submitter requested provisions to address mapping scale issues. As this is a landscape assessment methodology issue (and not solely related to aquaculture) it is beyond the scope of the NES.

Requests for a more lenient approach to marine farms in outstanding areas

The suggestion to include a distinction between marine farms that were in place before an outstanding area was identified and those established after identification would deviate from the intent of the proposed NES as consulted on. Notably the NES needs to be flexible and adaptable to changes to outstanding areas through future planning processes. This logically includes enabling councils and communities (and, on appeal, the Environment Court) through planning processes to identify new and alter the extent of outstanding areas. It is possible that a marine farm that previously was not in an outstanding area under an earlier regional coastal plan now is (and vice versa), a current example being the change in extent of outstanding areas in the Proposed Marlborough Environment Plan compared to the operative Marlborough Sounds Resource Management Plan.⁸⁰

⁷⁶ Department of Conservation (2017) *Review of the effect of the NZCPS 2010 on RMA decision-making: Part 1 – Overview and key findings*, p. 9

⁷⁷ Department of Conservation (2017) *Review of the effect of the NZCPS 2010 on RMA decision-making: Part 1 – Overview and key findings*, p. 50

⁷⁸ Note the Environment Court’s finding relevant to this in *Friends of Nelson Haven and Tasman Bay Incorporated v Tasman District Council* [2018] NZEnvC 46 (16 April 2018) at [103].

⁷⁹ Proposed Marlborough Environment Plan, Section 42A report – Reply to Evidence – Topic 5: Natural Character & Landscape – Technical Mapping, Values and Overlays (Report prepared by James Bentley, Principal Landscape Architect, Boffa Miskell Ltd), pages 5 and 18.

⁸⁰ Another example being *Whangaroa Maritime Recreational Park Steering Group v Northland Regional Council* [2014] NZEnvC 92 (24 April 2014) at [86].

The suggestion not to include an additional matter of discretion for marine farms in outstanding areas would not be consistent with purpose of the RMA with respect to natural character, natural features and natural landscapes. There is an acknowledgement and a desire from most submitters for effects of marine farms on outstanding areas to be appropriately considered.

Notwithstanding the above analysis, it is proposed that councils are able to introduce a more lenient activity status (i.e. controlled) for marine farms in outstanding areas through the plan development process.

4.3.3.2 *Submissions opposing the proposed approach*

Consistency with New Zealand Coastal Policy Statement 2010

There is no requirement within the RMA that states an NES must give effect to the NZCPS 2010, as some submitters have suggested. The RMA is silent on the relationship between an NES and the NZCPS 2010. In practice, an NES should be developed to be consistent with the NZCPS 2010,⁸¹ and as such an analysis of the consistency with the NZCPS 2010 follows.

Policies 13(1)(a) and 15(a) of the NZCPS 2010 both have similar directives which require the adverse effects on outstanding natural landscapes and features and on area of outstanding natural character be avoided. The Supreme Court⁸² has confirmed that the word “avoid” means to “not allow” or “prevent the occurrence of”. In the context of Policies 13 and 15 of the NZCPS 2010 this results in an environmental bottom line approach. Policies 13(1)(a) and 15(a) are addressed by applying an additional matter of discretion to marine farms within areas identified in operative or proposed regional policy statements or regional coastal plans as outstanding. See below for further analysis on the consideration of effects on outstanding areas of marine farms adjacent to those areas.

Policies 13(1)(b) and 15(b) of the NZCPS 2010 both require significant adverse effects on areas of natural character, natural features, and natural landscapes that are not outstanding are to be avoided. Policy 13(1)(c) requires that councils map or otherwise identifying areas that are of at least high natural character. In recent practice this tends to result in the identification of areas of high, very high, and outstanding natural character. Policy 15 does not contain the same requirements to identify a category of natural landscapes and features other than outstanding. What constitutes a significant adverse effect with regard to natural character, natural features and natural landscapes is context specific with no set criteria codified in the NZCPS 2010 or elsewhere. However, such criteria are being established by way of relevant Environment Court decisions.

There are also examples of plans providing qualitative criteria, for example, Appendix 4 of the Proposed Marlborough Environment Plan sets out the criteria to be used for determining significant adverse effects on natural character, as follows:

1. Character and degree of modification, damage, loss or destruction;
2. Duration and frequency of effect (for example, long-term or recurring effects);
3. Magnitude or scale of effect (for example number of sites affected, spatial distribution, landscape context);
4. Irreversibility of effect (for example loss of unique or rare features, limited opportunity for remediation, the costs and technical feasibility of remediation or mitigation);
5. Resilience of heritage value or place to change (for example ability of feature to assimilate change, vulnerability of feature to external effects)

A review of council decisions and court cases on consent applications for both existing⁸³ and new aquaculture⁸⁴ shows that there have only been occasional instances of proposed marine farms having a significant adverse effect on landscape or natural character, and that in all of these cases the marine farm was new (i.e. there were no structures currently in the water). Therefore the NES as proposed would not apply. The above analysis suggests the likelihood of existing marine farms having significant adverse effects on areas of natural character, natural features, and natural landscapes is low. That is particularly so where, as is often the case, the existing marine farm is one of a group of

⁸¹ Refer to section 9 of this report for further discussion on this issue.

⁸² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38

⁸³ Focusing on the two regions where replacement consenting is primarily occurring: Northland and Marlborough.

⁸⁴ Considering decisions from across the country.

marine farms each with a different consent expiry so that at any one time the “existing environment” always contains one or more existing marine farms. Marine farms applying to realign or change species using existing or similar structures are also unlikely to create significant additional adverse effects. Based on current consenting practice it would be reasonable to conclude that it is not necessary to include additional requirements or matters of discretion as requested with respect to avoiding significant adverse effects on natural character, natural features and natural landscapes.

Policies 13(1)(b) and 15(b) of the NZCPS 2010 also require that adverse effects on areas of natural character, natural features, and natural landscapes that are not outstanding are avoided, remedied or mitigated. With regard to replacement consenting and realignment, it is anticipated that any adverse effects on areas that are not outstanding can be adequately mitigated through the entry requirement that the structures be materially the same as the current structures. With respect to replacement consent applications, the effects of the ongoing operation of the marine farm on natural character, natural features and natural landscapes will not change if consent is granted (although, in theory, the effects could decrease if consent is declined). It is not expected that the intensity of effects associated with any change of species consent applications would increase to a great degree compared to what is currently consented. Based on current consenting practice it would be reasonable to conclude that it is not necessary to amend the proposed NES as consulted on to include additional requirements or matters of discretion with respect to avoiding, remedying or mitigating adverse effects on natural character, natural features and natural landscapes.

Policy 14 of the NZCPS 2010 promotes the restoration or rehabilitation of the natural character of the coastal environment. Policy 14(a) and (b) are both focused on the plan development stage. Policy 14(c) addresses the inclusion of restoration or rehabilitation conditions on resource consents, however the majority of examples listed under Policy 14(c) are not relevant to the ongoing operation of a marine farm. This is reinforced by a review of council decisions and court cases on consent applications for existing aquaculture which indicates Policy 14 does not tend to be a consideration for decision-makers during replacement consenting. Policy 14 therefore appears to best be addressed, in the context of existing aquaculture, through strategic planning during the plan development stage, rather than on a consent-by-consent basis.

Marine farms adjacent to outstanding areas

The NES approach with regard to outstanding areas was developed on the basis that the greatest likelihood of adverse effects from existing marine farms on outstanding areas is from those marine farms located within outstanding areas.

The same approach of using the location of aquaculture within an outstanding area as a trigger as to whether an additional matter of discretion (on the effects on the values and characteristics that make the area outstanding) has been used in the proposed Northland Regional Plan, which has a controlled activity rule for replacement consent applications outside of outstanding areas (with no matter of control related to landscape / natural character) and a restricted discretionary rule for replacement consent applications within outstanding areas (with a matter of discretion on effects on outstanding areas). Analysis of submissions on the proposed Northland Regional Plan indicate there are no submissions specifically opposing this approach, although some submitters do seek more stringent (e.g. discretionary) activity statuses for marine farms in outstanding areas. Recent replacement consenting practice in Northland is consistent with the proposed plan’s approach with over 30 consents granted without consent conditions specific to landscape or natural character. This is because the consents have largely been considered under the operative coastal plan’s controlled activity rule which does not provide a matter of control with respect to landscape or natural character.

Anecdotal discussions with other councils indicates that this approach is consistent with their understanding, i.e. that the existing marine farms with the greatest likelihood of adverse effects on outstanding areas are those that are located within outstanding areas.

A review of over 50 council decisions for replacement consent applications⁸⁵ in Marlborough over the past three years, as well as all replacement consent applications for marine farms with minor and

⁸⁵ Note often ‘replacement consent’ applications in Marlborough include marine farm realignments and extensions – of those decisions reviewed 36% include either a realignment or extension. Also, the majority of applications were for mussel farms, aside from two salmon farm applications and one oyster farm application.

technical overlaps with outstanding areas and/or located within the Coastal Marine Zone 1⁸⁶ has been carried out. This review indicates that for all of these applications the decision maker (including independent hearings commissioners in some cases) concludes that the continued existence of the marine farm will have a no more than a minor effect (or in some cases less than minor effect) on landscape values and/or natural character and/or that the effects would be acceptable.

Recent case law⁸⁷ is indicating a change in landscape assessment methodology and planning practice towards more detailed schedules within plans containing information on the values and characteristics that make an area outstanding and that are sought to be protected, as well as more detailed statements on current uses and existing modifications (e.g. existing marine farms). Of particular note, the statements on current uses and modifications inevitably focus only on those current uses and modifications which are located within the outstanding area, which highlights these are the activities that are of most interest regarding potential adverse effects.

Current replacement consenting practice in Marlborough and Northland (where approximately 60% of New Zealand's marine farms are located), along with current council planning practice, indicates that the adverse effects on outstanding areas arising from the ongoing operation of existing marine farms adjacent to outstanding areas are no more than minor. Therefore, it is reasonable to conclude that, at a national level, no change is needed to the proposed NES as consulted on with respect to this issue.

The suggestion of a buffer zone next to outstanding areas to ensure adjacent marine farms are also assessed with regard to adverse effects on the outstanding area is considered unnecessary, based on the above analysis and because there is no agreed distance in landscape assessment practice which can be used (buffer zones are not common place in planning practice with regard to landscapes and aquaculture⁸⁸). Furthermore, any buffer zone in regard to landscape would need to be established having regard to the likely viewpoint and thus would vary from one marine farm to another which is an unworkable proposition. It would also be unreasonable to expand (potentially significantly, depending on the buffer distance used) the number of marine farms required to undertake further landscape and natural character assessment under the proposed NES provisions when there is a high likelihood that these marine farms do not have an adverse effect on outstanding areas.

Influence of marine farms on identification of outstanding areas

This is an issue with methodology used to identify and map outstanding areas, which is beyond the scope of the NES.

The general approach to this issue in landscape assessment practice is that the impact of the existing modification (e.g. a marine farm) is considered, and where the magnitude and extent of the effect is too great on the naturalness of the area, that area is excluded from being considered outstanding. In the Proposed Marlborough Environment Plan, this results in some marine farms being located within outstanding areas, and the presence of some marine farms appearing to influence the extent of outstanding areas. In the Auckland Unitary Plan situation, the outstanding areas have been identified with the existing marine farm located within them, and the plan specifically states the existing farms do not compromise the outstanding-ness of the area.

Appropriateness of marine farming within outstanding areas

Just because a farm is in an outstanding area is not a reason for it to be considered inappropriate and removed.⁸⁹ The test is whether the activity of marine farming has an adverse effect on the values and characteristics that make the area within which the marine farm is located outstanding. It is recognised that there are existing marine farms in outstanding areas that are not having adverse effects on values and characteristics that make the area outstanding (e.g. Auckland Unitary Plan).

⁸⁶ Coastal Marine Zone 1 is where marine farms are a prohibited activity through Rule 35.6 of the operative Marlborough Sounds Resource Management Plan, unless provided for by other rules. There are a number of existing marine farms located within this zone which are provided for as either controlled, restricted discretionary or discretionary activities.

⁸⁷ *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147 (7 September 2017)

⁸⁸ Proposed Marlborough Environment Plan, Section 42A Hearings Report for Hearing Commencing Monday 19 February 2018, Report dated 20 November 2017, Report on submissions and further submissions Topic 5: Landscapes – Issues, Objectives, Policies, and Methods (Report prepared by Maurice Dale, Consultant Senior Planner, Boffa Miskell Ltd), page 57.

⁸⁹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38 at [29].

How marine farms are assessed within outstanding areas

For replacement consent applications, landscape effects are assessed on the basis of the marine farm not being in place, as the submitter has suggested.⁹⁰ Case law is less clear when it comes to consideration of the effects of existing marine farms on outstanding areas at the plan development stage.

Irrespective of this, it would be inappropriate to specify an assessment approach within the proposed NES as it is a) a methodology issue best addressed through further development of landscape assessment methodologies, and b) the issue is broader than just aquaculture, and in the case of landscape assessments, the coastal environment.

Providing or enabling greater stringency within proposed NES for marine farms in outstanding areas

The proposed NES as consulted on provides for marine farms located within outstanding areas as a restricted discretionary activity, with a matter of discretion around outstanding areas. This enables councils to grant or decline consent based on the adverse effects of the marine farm on the values and characteristics that make the area outstanding, in the same way it could if considering the application as a discretionary or non-complying activity.⁹¹ As such, having a more stringent activity status is a disproportionate and unnecessary response. The additional matter of discretion is sufficient to address this effect. A more stringent activity status would make no tangible difference to the consideration of that particular effect.

The proposed approach to notification for replacement consent applications for most existing marine farms, including those in outstanding areas (i.e. precluding full and limited notification) is fundamental to achieving the objective of the proposed NES (and discussed in more detail in section 4.1.3, including exceptions to the NES notification preclusions). Outstanding areas are based on mapped or otherwise identified areas in proposed and operative regional policy statements and regional coastal plans. In line with the general intent of the proposed NES (i.e. moving key decisions and public input on outstanding areas from the consent application to the plan development stage), notification is therefore restricted at the consent application stage.

Allowing councils to be more stringent with regard to marine farms where they have been determined to have adverse effects on the values and characteristics which make an area outstanding is unnecessary as one of the following situations would apply:

- At the consent application stage, the proposed NES as consulted on has a matter of discretion that allows for consideration of that effect and accordingly the consent could be declined (based on the principle of the RJ Davidson decision⁹²)
- At the plan development stage, it will likely be considered inappropriate (based on the principle of the King Salmon decision⁹³) and a regional council will be able to set more stringent rules for these types of activities in its regional coastal plan as set out in the proposed NES as consulted on.

4.3.3.3 Submissions providing general feedback on the proposed approach comments

State of mapping and identification of outstanding areas in some regions

Several submitters have noted an issue about the entirety of Banks Peninsula being identified as an outstanding area. There is nothing particularly unique about the Banks Peninsula situation compared to some other regions. It is not appropriate to comment on the landscape assessment methodology used to inform council identification of outstanding areas. This is best addressed by industry and council through further mapping and assessment to inform future plan development or resource consent processes.

The proposed NES as consulted on recognises that (in some regions) existing identification of outstanding areas has occurred and also provides for future identification to occur through plan

⁹⁰ For example, *Ngati Rangī Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948 (7 December 2016) at [64] and [65].

⁹¹ Refer to Appendix C for further explanation of activity classes under the RMA.

⁹² *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

⁹³ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38
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development processes which may modify the spatial extent of outstanding areas. The extent to which the operative and proposed regional policy statements and regional coastal plan outstanding area overlays are considered when assessing a consent application will be up to the decision-maker, and will likely depend on how far through the plan development process the landscape and/or natural character provisions have progressed.

Generally, councils do map or otherwise identify outstanding areas in their regional policy statements and/or regional coastal plans. As second generation planning continues it is anticipated that all aquaculture regions will have mapped or otherwise identified outstanding areas either in proposed and/or operative plans by 2022. The proposed NES as consulted on recognises that plans may identify outstanding areas in ways other than by mapping.⁹⁴

Submissions identified that there are some regions where outstanding areas have not been identified. Analysis indicates that this is the case in two regions where aquaculture is currently located:⁹⁵

- Waikato: Waikato Regional Council has commissioned a report⁹⁶ which identifies areas of outstanding natural character in the coast. Nine marine farms are located in these 'draft' outstanding areas. The council will undertake further engagement and refinement of the report before deciding to include the outstanding areas identified in the report in its proposed regional coastal plan, which is due to be notified by 2021.
- Southland: The *Southland Coastal Natural Character Study 2018* identified Bluff Harbour as an Area of Outstanding Natural Character. Seven marine farms are located within this 'draft' outstanding area. Further landscape advice commissioned by Environment Southland indicates no other locations where marine farming currently occurs in Southland are considered to be outstanding areas. It is possible that these 'draft' outstanding areas will be included in its proposed regional coastal plan which is due to be notified in 2023.

Analysis and further engagement with these regional councils through the exposure draft process concludes that it would be inappropriate to use these reports as the basis for applying a matter of discretion in the proposed NES with respect to outstanding areas, as the reports have not yet been endorsed by the respective regional councils to be used in the future regional coastal plan reviews.

Submissions seeking clarification about the proposed approach

The intention is that marine farms located in outstanding areas can also be determined through a future planning process to be in inappropriate areas. This approach was set out in the proposed NES as consulted on as it allowed for councils after the NES is gazetted to identify areas as being inappropriate for existing aquaculture and to assess replacement consents in those areas as discretionary activities. This would supersede outstanding areas in those situations. Final drafting of the proposed NES will need to make this clear.

It also needs to be made clear that the term "outstanding area" could also include any other term which includes the word outstanding that is identified in a proposed or operative regional policy statement or a proposed or operative regional coastal plan.

For the outstanding areas matter of discretion to be triggered the marine farm will need to be located within an outstanding area identified in one or more of the following: an operative regional policy statement; a proposed regional policy statement; an operative regional coastal plan; or a proposed regional coastal plan. Final drafting of the proposed NES will need to make this clear.

4.3.4 Recommendations

Ensure that final drafting of the proposed NES is clear that the inappropriate areas clause of the regulations (currently clause 5) supersedes the outstanding areas clause (currently clause 2).

⁹⁴ The indicative provisions contained in Appendix F of the NES discussion document included the following definition for 'identified': mapped, or identified by GPS or NZTM coordinates, or clearly named and identified by description of physical boundaries, or named if it is a physical feature that has clear boundaries (e.g. a harbour).

⁹⁵ Note the Wainui Bay spat catching farms may also be located within an outstanding area which has not yet been identified in an operative or proposed regional coastal plan. Recommendations about how the proposed NES should address these farms are contained in section 4.8 of this report.

⁹⁶ R Ryer, J Bentley, L Saunders and Dr S De Luca (2016) *Natural character study of the Waikato coastal environment* June 2020

Ensure that the term “outstanding area” could also include any other term which includes the word outstanding that is identified in a proposed or operative regional policy statement or a proposed or operative regional coastal plan.

Ensure that any application for an existing marine farm located in an outstanding area identified in one or more of the following: an operative regional policy statement; a proposed regional policy statement; an operative regional coastal plan; or a proposed regional coastal plan, triggers the need for the effects of the activity on the values and characteristics that make the area, feature, or landscape outstanding to be assessed as a matter of discretion.

4.4 MARINE FARMS IN INDIGENOUS BIODIVERSITY AREAS

4.4.1 Overview of issue

Section 6(c) of the RMA identifies the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance. Objective 1 of the NZCPS 2010, along with Policy 11 (Indigenous biological diversity (biodiversity)) provide further policy direction achieving the purpose of the RMA with respect to the sustainable management of indigenous biodiversity in the coastal environment.

The approach of the proposed NES as consulted on aims to provide for the management of indigenous biodiversity at a site specific level through targeted matters of discretion for replacement consents, realignment or change of species applications which focus on significant seabed values such as reefs or biogenic habitats and the management of marine mammal and seabird interactions with marine farms. The proposed NES as consulted on also restricts realignments into areas identified as having significant ecological values in operative or proposed regional policy statements and regional coastal plans.

While Policy 11 of the NZCPS 2010 provides similar policy direction to Policies 13 (with respect to natural character) and 15 (with respect to natural features and natural landscapes), a similar matter of discretion for effects of existing marine farms on areas of indigenous biodiversity was not included in the proposed NES consulted on. This was because the areas identified by regional councils under Policy 11 to date have tended to be either wide in extent (sometimes without clear boundaries) or very confined and because the matters of discretion were considered to provide appropriate flexibility for councils to ensure that decisions on consent applications have regard to the requirements of Policy 11.

4.4.2 Submission summary

The discussion document posed broad questions⁹⁷ about whether the proposed NES should use areas identified in plans as containing indigenous biodiversity as a trigger for a specific matter of discretion regarding indigenous biodiversity (due to the similar approach taken in the proposed NES for outstanding natural character, outstanding natural features and outstanding natural landscapes). The discussion document did not pose specific questions on matters of discretion, however a number of submissions were received which discussed how the matters of discretion addressed indigenous biodiversity and Policy 11 of the NZCPS 2010.

40 submitters (37% of total submissions) mentioned indigenous biodiversity and Policy 11, as follows:

- 23 submitters supported the approach of the proposed NES with regard to indigenous biodiversity and Policy 11, primarily from aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand) and one regional council
- 11 submitters requested the proposed NES include a matter of discretion with regard to protecting indigenous biodiversity areas identified under Policy 11, primarily environmental non-governmental organisations, community groups and regional councils
- 9 submitters provided general feedback on how the NES should provide for Policy 11 matters (including relevant matters of discretion)

⁹⁷ Questions 9 and 10 – refer to Appendix D
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4.4.2.1 *Overview of submissions supporting the proposed approach*

The main reasons given by those submitters who supported the proposed approach are summarised below:

- The wider impacts of marine farming on significant indigenous biodiversity areas is better addressed at a broader scale during the plan development process, rather than consent-by-consent
- Indigenous biodiversity in the marine environment is not well understood
- The proposed NES takes a pragmatic approach to addressing indigenous biodiversity
- The proposed matters of discretion adequately address Policy 11 of the NZCPS 2010
- The biggest threat to indigenous biodiversity are ocean acidification, bottom trawling and increased sedimentation from rivers, not aquaculture.

4.4.2.2 *Overview of submissions requesting specific matter of discretion protecting indigenous biodiversity*

Submitters requested a specific matter of discretion protecting indigenous biodiversity be included and some that Important Bird Areas should be used as a trigger for a matter of discretion to ensure effects on relevant seabird species can be taken into account for reasons that are summarised below:

- Concern that the matters of discretion do not satisfactorily address Policy 11 of the NZCPS 2010 and as such fails to meet appropriate environmental protection standards
- Identification of indigenous biodiversity areas has not been wide in extent (e.g. Auckland, Bay of Plenty, Marlborough), and even if it were the case it is not relevant to the way in which the effects of aquaculture on these areas should be managed
- Habitat exclusion, with particular concern for King Shags in Marlborough was not satisfactorily addressed

4.4.2.3 *Overview of submissions providing general feedback on how the proposed NES should provide for indigenous biodiversity*

A number of submitters provided general feedback on how the proposed NES should provide for Policy 11 matters, as summarised below:

- Clarification on why the distance within which significant adverse effects on reefs and biogenic habitats can be considered has been limited to 20 metres for the replacement consent matter of discretion 12(f)
- Sought matter of discretion 12(g) to be expanded to include habitat exclusion
- Sought a review of the definition of 'offshore' in matter of discretion 12(h) to clarify the intent of this matter of discretion
- Sought additional matter of discretion for fed aquaculture addressing shark management

4.4.3 Analysis

4.4.3.1 *Submissions supporting the proposed approach*

The general points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report with the exception of the note below.

With regard to indigenous biodiversity not being well understood, while this may be the case in some regions at the moment, it is anticipated that over time research and monitoring will contribute to a better understanding of indigenous biodiversity in the coastal environment.⁹⁸

⁹⁸ In light of this uncertainty and lack of information, it is appropriate that the precautionary principle is adopted in these circumstances with regard to indigenous biodiversity.

4.4.3.2 Submissions requesting specific matter of discretion protecting indigenous biodiversity

Concern about how the proposed matters of discretion address Policy 11 of the NZCPS 2010

Policy 11(a) of the NZCPS 2010 requires that indigenous biodiversity in the coastal environment is protected through avoiding adverse effects on the following species, areas or habitats:

- i. *Indigenous taxa listed as threatened or at risk in the New Zealand Threat Classification System lists:* Species that meet this category which are of most relevance to an assessment of existing marine farms are certain marine mammals, seabirds and marine invertebrates. The key potential adverse effects relate to entanglement, disturbance from human activity associated with the maintenance and operation of marine farms, habitat exclusion, and in the case of marine invertebrates, effects on reefs and biogenic habitats. The effects and risks of entanglement and disturbance from human activity is considered to be relatively low⁹⁹ and can be managed through changes recommended below to the matters of discretion contained in the NES as consulted on. Offshore marine farms have a broader matter of discretion in the NES as consulted on recognising the higher risk for adverse effects but it is recommended that these are amended to specifically address the entanglement of large whales. Habitat exclusion is discussed in more detail below. Effects on marine invertebrates living on reefs and biogenic habitats can be managed through small changes to the matters of discretion related to these matters contained in the NES as consulted on discussed earlier.¹⁰⁰ Changes recommended in relation to entry requirements for realignment will ensure that they do not occur in significant marine ecological areas. In addition the qualifier 'significant adverse' is recommended to be removed from in order to be consistent with Policy 11(a) NZCPS 2010 (which requires any adverse effects to be avoided).
- ii. *Taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened:* Species that meet this category which are likely to be of most relevance to an assessment of existing marine farms are certain marine mammals, seabirds and, potentially, fish. Any potential adverse effects (if any) on the species on this list would either be considered under the matters of discretion discussed in subpoint (i) above, (iii) below, or by the proposed additional matters of discretion for fed aquaculture regarding shark management.¹⁰¹ Marine farms are not understood to have adverse effects on other species of fish listed by the International Union for Conservation of Nature and Natural Resources.¹⁰²
- iii. *Indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare:* The general approach to the matters of discretion in the proposed NES as consulted on is that they are focused on managing site-specific issues. Of particular relevance to this point are the matters of discretion which address effects on reefs, biogenic habitat and/or regionally significant benthic species.¹⁰³ Broader scale issues (e.g. ecological values of a bay) require a broader scale assessment which is best achieved during the plan development stage, rather than on a consent-by-consent basis.
- iv. *Habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare:* Effects on reefs, biogenic habitats, and/or regional significant benthic species are addressed through the matters of discretion discussed earlier.¹⁰⁴ Where there are site specific impacts of a marine farm on marine mammals and seabirds this could be addressed through the recommended changes to matters of discretion related to management practices outlined below. Habitat exclusion is addressed in more detail below.
- v. *Areas containing nationally significant examples of indigenous community types:* Not considered to be a relevant issue.

⁹⁹ Noting the Environment Court has found that King Shag's can be adversely impacted by human activity associated with marine farming, refer *Clearwater Mussels Limited v Marlborough District Council* [2018] NZEnvC 88 (8 June 2018) at [117].

¹⁰⁰ Refer to Table 8 in section 4.2.1.2 for further discussion on this matter of discretion.

¹⁰¹ Ibid.

¹⁰² For example, refer to: Taylor, P & Dempster, T. (2016) *Effects of salmon farming on the pelagic habitat and fish fauna of the Marlborough Sounds and management options for avoiding, remedying and mitigation adverse effect*

¹⁰³ Refer to Table 5 in section 4.1.4.3 for further discussion on this matter of discretion.

¹⁰⁴ Refer to Table 5 in section 4.1.4.3 for further discussion on this matter of discretion.

- vi. *Areas set aside for full or partial protection of indigenous biological diversity under other legislation:* There are no existing marine farms within such areas.

Policy 11(b) of the NZCPS 2010 requires that indigenous biodiversity in the coastal environment is protected through avoiding significant adverse effects and avoiding, remedying and mitigating adverse effects on other species, habitats and areas of indigenous biological diversity. These issues are either addressed through the matters of discretion proposed (if site specific issues) or are best addressed at the plan development stage (if broader scale issues).

Analysis of current consenting practice in Northland (for replacement consents) and Marlborough (for replacement, realignment and extension consents) has been undertaken. In Northland the operative regional coastal plan has a controlled activity rule with a matter of control relevant to indigenous biodiversity, however none of the replacement consent decisions have included conditions specific to indigenous biodiversity. In Marlborough, the analysis indicates that standard conditions around indigenous biodiversity tend to focus on minimising interactions with seabirds or marine mammals (e.g. removing non-biodegradable debris from the coastal marine area). Approximately 20% of decisions analysed identify sensitive reefs or biogenic habitats nearby or within the consent area of the marine farm which result in either realignments away from the sensitive habitat or reductions in lines to avoid placing them over the sensitive habitats. Approximately 20% of decisions analysed discuss King Shag and/or dusky dolphins and impose conditions enabling a review of conditions in the event that further studies reveal significant adverse effects from existing marine farming activities on these species.

Based on this analysis, the matters of discretion contained in the proposed NES (as modified in response to submissions,¹⁰⁵ including the removal of the qualifier 'significant adverse' from matters of discretion related to on effects on reefs, biogenic habitat, and/or regionally significant benthic species, satisfactorily address the site specific issues relevant to Policy 11 for marine farm replacement, realignment and change of species consent applications. Any broader scale issues are best addressed at the plan development stage reflecting that effects on indigenous biodiversity often occur across broad spatial areas and are caused by multiple stressors (for instance, recent reports by NIWA¹⁰⁶ and MfE and Statistics New Zealand¹⁰⁷ found that stressors can include ocean acidification and sedimentation resulting from changes in land use, and that these are greater threats to marine indigenous biodiversity than aquaculture). Should issues arise during the plan development stage with respect to the impacts of existing marine farms on indigenous biodiversity then this can be addressed using one or more of the following provisions:

- The plan could identify the marine farm as inappropriate thereby enabling assessment as a discretionary (or more stringent) activity¹⁰⁸
- The plan could introduce an adaptive management approach and future replacement, realignment or change of species applications would be able to introduce conditions pertinent to the adaptive management approach on the marine farm¹⁰⁹
- The marine farm could utilise the realignment provisions if adverse effects can be avoided, remedied or mitigated through a minor realignment¹¹⁰

Identification of indigenous biodiversity areas in council planning documents

While Policy 11 of the NZCPS 2010 does not require councils to map and identify areas of significant indigenous biodiversity, recent council planning practice indicates that this is happening as councils give effect to this policy. The discussion document noted that identified areas of indigenous biodiversity were not proposed to be used as a trigger for a matter of discretion relating to effects on indigenous biodiversity, in part because the areas identified by regional councils under Policy 11 to date have tended to be either wide in extent (sometimes without clear boundaries) or very confined.¹¹¹

¹⁰⁵ Refer to sections 4.1.4 and 4.2.1 for further discussion on these matters of discretion.

¹⁰⁶ MacDiarmid, A.; McKenzie, A.; Sturman, J.; Beaumont, J.; Mikaloff-Fletcher, S.; Dunne, J. (2012) *Assessment of anthropogenic threats to New Zealand marine habitats*. New Zealand Aquatic Environment and Biodiversity Report No. 93.

¹⁰⁷ Ministry for the Environment & Statistics New Zealand (2016) *New Zealand's Environmental Reporting Series: Our marine environment 2016*

¹⁰⁸ Refer to section 4.9 for further discussion on this issue.

¹⁰⁹ Refer to section 7.3.2 for further discussion on this issue.

¹¹⁰ Refer to section 4.6 for further discussion on this issue.

¹¹¹ And in part because the matters of discretion are considered to provide appropriate flexibility for councils to ensure that decisions on consent applications have regard to the requirements of Policy 11.

A number of submitters disagreed with this analysis and requested that a specific matter of discretion protecting indigenous biodiversity be included for those marine farms within identified areas of indigenous biodiversity.

Four aquaculture regions have identified areas of indigenous biodiversity in response to Policy 11, as follows:

- *Northland*: a broad extent of the coast has been identified in the Proposed Northland Regional Plan as Significant Ecological Areas, including some areas where existing marine farms are located. The rules for replacement consents use the Significant Ecological Areas as a trigger for both a change in activity status (from controlled to restricted discretionary) and an additional matter of discretion on effects on significant marine ecology (noting both the controlled and restricted discretionary activity rules includes a matter of control/discretion on effects on marine mammals and birds, reflecting that the plan also identifies the entire coastal marine area as a Significant Marine Mammal and Seabird Area). A review of the assessment sheets which support the identification of the Significant Ecological Areas indicates that the matters of discretion proposed in the NES would satisfactorily ensure indigenous biodiversity in these areas is protected.
- *Auckland*: The Auckland Unitary Plan maps Significant Ecological Areas at a relatively broad extent in some areas of the coast (e.g. large sections of bays and harbours), including a number of areas where existing marine farms are located. Two tiers of Significant Ecological Areas are identified: M1, which are areas considered to be most vulnerable to adverse effects of inappropriate subdivision, use and development; and M2, which are areas which are still of significance but are more robust than M1. While the presence of a Significant Ecological Area does trigger an additional matter of discretion for marine farms within the area (effects on the ecological values of the area) in practice this may not actually make a difference to the consenting process for those farms, given there is a matter of discretion which applies to all marine farms regarding effects on coastal processes and ecological values. A review of the assessment sheets¹¹² which support the identification of the Significant Ecological Areas indicates that the matters of discretion as set out in the recommendations below would satisfactorily ensure indigenous biodiversity in these areas is protected.
- *Bay of Plenty*: The Regional Coastal Environment Plan maps Indigenous Biological Diversity Areas at a relatively broad extent in some areas of the coast (e.g. large sections of harbours, including the entire Ohiwa Harbour where existing marine farms are located). Two tiers of Indigenous Biological Diversity Areas are identified, directly mirroring Policy 11(a) and 11(b) of the NZCPS 2010. Applications for replacement consent within an Indigenous Biological Diversity Area A (i.e. those areas related to Policy 11(a) of the NZCPS 2010) triggers a change of activity status (from controlled to restricted discretionary). A matter of control / discretion is prescribed for all marine farms on measures to avoid, remedy or mitigate adverse effects on ecology. A review of the assessment sheets¹¹³ which support the identification of the Indigenous Biological Diversity Areas indicates that the matters of discretion as set out in the recommendations below would satisfactorily ensure indigenous biodiversity in these areas is protected.
- *Marlborough*: The Proposed Marlborough Environment Plan maps Ecologically Significant Marine Sites in two ways: site specific (e.g. specific ecological sites such as reefs) and broad scale (e.g. Admiralty Bay for dolphins). The aquaculture provisions of the plan have not yet been notified. A review of the report¹¹⁴ used to support the identification of the Ecologically Significant Marine Sites indicates the matters of discretion as set out in the recommendations below would satisfactorily ensure indigenous biodiversity in these areas is protected (noting habitat exclusion discussion below which is of relevance to broad scale areas).

¹¹² Schedule 4 of the Auckland Unitary Plan

¹¹³ Schedule 2 of the Proposed Bay of Plenty Regional Coastal Environment Plan

¹¹⁴ Davidson RJ; Duffy CAJ; Baxter A; DuFresne S; Courtney S; Hamill P. (2011) *Ecologically significant marine sites in Marlborough, New Zealand*. Coordinated by Davidson Environmental Limited for Marlborough District Council and Department of Conservation

While councils are making progress in identifying areas of significant indigenous biodiversity in their regional coastal plans, analysis indicates that using these areas as a trigger for an additional matter of discretion protecting indigenous biodiversity is not necessary as indigenous biodiversity in these areas is protected with respect to potential impacts of existing marine farms by the changes to matters of discretion recommended below.

Concern about how the proposed NES addresses habitat exclusion, particularly King Shags

Some submitters raised concerns that habitat exclusion was not satisfactorily addressed. Habitat exclusion is most relevant to an entire bay or broader spatial area, rather than specific sites. Effects on habitat exclusion are not directly addressed by the matters of discretion for replacement and change of species applications, however are addressed for realignment applications with respect to the new space the marine farm is being realigned into.¹¹⁵

The potential impacts of marine farms with regard to habitat exclusion on King Shags in Marlborough was raised by a number of submitters. Recent Environment Court decisions have considered potential habitat exclusion effects on King Shags for extensions, new space and replacement consent applications, as follows:

- *Admiralty Bay*¹¹⁶: the Court considered applications to extend existing mussel farms further into Admiralty Bay and found that “there have been no recordings of King Shag foraging within marine farms in Admiralty Bay or Current Basin (or in any other bays with high densities of marine farms such as Forsyth and Beatrix Bays) and we accept that the presence of marine farms appears to preclude King Shag from foraging under marine farms”.¹¹⁷ Based on this, the Court found that the extensions of the existing marine farms would result in habitat exclusion which would fail to meet Policy 11(a) of the NZCPS 2010.¹¹⁸ Similar effects are able to be considered for a realignment application, where a marine farm is moving into new space.
- *Beatrix Bay*¹¹⁹: the Court considered an application for a new mussel farm in Beatrix Bay and the majority found that the marine farm would have “an adverse effect [particularly from an accumulative basis] on the foraging and feeding habitat of King Shag... which cannot be avoided as directed by policy 11 of the NZCPS 2010”.¹²⁰ Similar effects are able to be considered for a realignment application, where a marine farm is moving into new space. The majority judgment gave an afterword about King Shags noting that “more robust research needs to be carried out both on New Zealand King Shag population structures and on the interrelationships between stressors on this species before the industry can expand (or even perhaps continue at the same level) in outer Pelorus Sound”.¹²¹ The minority judgement noted the need for an industry wide adaptive management approach for King Shag.¹²² Consideration of adaptive management regimes is enabled through the recommended new matter of discretion related to an adaptive management approach in relation to replacement, realignment and change of species applications.
- *Pig Bay*¹²³: the Court considered an application for replacement consents for two mussel farms in Pig Bay (outer Port Gore). The Court found that there was not enough evidence to make a reliable finding on whether the continuation of the marine farms would have an adverse effect on King Shag habitats and stated that “the evidence makes it abundantly clear that effective risk management, so as to avoid extinction of the King Shag, should be approached on a Sounds-wide strategic basis”.¹²⁴ The Court did find that the proposal would potentially have an adverse effect on King Shags through human activity associated with the

¹¹⁵ Refer to section 4.6 for further discussion on this issue.

¹¹⁶ *Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council* [2016] NZEnvC 151 (9 August 2016)

¹¹⁷ *Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council* [2016] NZEnvC 151 (9 August 2016) at [62].

¹¹⁸ Note this decision also addressed habitat exclusion with regard to dusky dolphins. Other decisions have also addressed the effects of new marine farms on dolphin habitat exclusion, such as Hector’s dolphins in *Clifford Bay Marine Farms Limited v Marlborough District Council* C131/2003 [2003] NZEnvC 348

¹¹⁹ *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 (9 May 2016)

¹²⁰ *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 (9 May 2016) at [275].

¹²¹ *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 (9 May 2016) at [300].

¹²² *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 (9 May 2016) at [325].

¹²³ *Clearwater Mussels Limited v Marlborough District Council* [2018] NZEnvC 88 (8 June 2018)

¹²⁴ *Clearwater Mussels Limited v Marlborough District Council* [2018] NZEnvC 88 (8 June 2018) at [72].

maintenance and operation of the farms.¹²⁵ As discussed earlier, such effects are able to be considered through the changes to matters of discretion recommended below.

There is an acknowledged lack of information about King Shags which is limiting the ability for decision-makers to fully assess potential impacts. To improve knowledge further research into King Shags is being co-funded by the Marine Farming Association and New Zealand King Salmon Ltd.

The Environment Court decisions discussed above are pointing towards this issue being best addressed at the plan development stage, potentially through the introduction of an adaptive management regime. The Proposed Marlborough Environment Plan is therefore the best mechanism to manage this issue (and would equally be the case in other regions for other habitat exclusion scenarios). Should issues arise during the plan development stage with respect to the impacts of existing marine farms on habitat exclusion then this is addressed through the NES using one or more of the following:

- The plan could identify the marine farm/s as being in an inappropriate area thereby triggering assessment as a discretionary (or more stringent) activity¹²⁶
- The plan could introduce an adaptive management approach and future replacement, realignment or change of species applications would be able to introduce conditions pertinent to the adaptive management approach on the marine farm¹²⁷

Use of Important Bird Areas as a trigger for a matter of discretion

Important Bird Areas identify seabird colonies and broad scale areas where used by these colonies for feeding, maintenance behaviours and social interactions. These areas appear to cover all existing marine farms in New Zealand,¹²⁸ so using them as a filter for a matter of discretion would not be meaningful. Irrespective of that point, the risks of entanglement and disturbance from human activity is considered to be relatively low¹²⁹ and can be managed through the matters of discretion recommended below to be amended from those in the proposed NES consulted on. The habitat exclusion discussion in the section above is also relevant to this point.

4.4.3.3 Submissions providing general feedback on how the proposed NES should provide for indigenous biodiversity

The points raised by these submitters are analysed further in the matters of discretion analysis contained in sections 4.1.4.3 and 4.2.1.2. Refer to those sections for relevant recommendations.

4.4.4 Recommendations

Amend entry requirements for realignment to ensure new areas are not located in significant marine ecological areas.

Amend the matters of discretion which focus on reefs, biogenic habitats and regionally significant benthic species to remove the qualifier 'significant adverse' in order to be consistent with Policy 11(a) of the NZCPS 2010 (which requires any adverse effects to be avoided).

Amend the matters of discretion that focus on marine mammal and seabirds to ensure:

- management practices are to minimise adverse interactions between marine mammals or seabirds and the marine farm, including entanglements, injury, and mortality
- [For realignment applications] where there is a new area to be occupied, conditions relating to adverse effects of the activity on marine mammals and seabirds are considered
- the adverse effects of the entanglement of large whales in offshore marine farms is considered.

¹²⁵ *Clearwater Mussels Limited v Marlborough District Council* [2018] NZEnvC 88 (8 June 2018) at [117].

¹²⁶ Refer to section 4.9 for further discussion on this issue.

¹²⁷ Refer to section 7.3.2 for further discussion on this issue.

¹²⁸ Forest & Bird (2014) *New Zealand Seabirds: Sites at Sea, Seaward Extensions, Pelagic Areas*. The Royal Forest & Bird Protection Society of New Zealand, Wellington, New Zealand, page 5.

¹²⁹ Noting the Environment Court has found that King Shag's can be adversely impacted by human activity associated with marine farming, refer *Clearwater Mussels Limited v Marlborough District Council* [2018] NZEnvC 88 (8 June 2018) at [117].
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4.5 MARINE FARMS IN OTHER ‘SIGNIFICANT’ AREAS

4.5.1 Overview of issue

The proposed NES as consulted on uses the presence of an existing marine farm within an outstanding area as a trigger for an additional matter of discretion on the adverse effects on the values and characteristics that make an area outstanding, when applying for a replacement consent, realignment or change of species application.

Sections 6 and 7 of the RMA and various NZCPS 2010 policies also specify other ‘significant’ areas which regional coastal plans often identify.¹³⁰ The proposed NES as consulted on does not use other ‘significant’ areas identified in plans as a trigger for specific matters of discretion regarding adverse effects on these areas, instead relying on the general matters of discretion to address potential adverse effects.¹³¹

4.5.2 Submission summary

The discussion document posed broad questions¹³² about whether the proposed NES should use other ‘significant’ areas identified in plans as a trigger for specific matters of discretion regarding adverse effects on these areas.

10 submitters (9% of total submissions) suggested ‘significant’ areas¹³³ which should trigger specific matters of discretion, as follows:

- 3 submitters suggested areas of significance to tangata whenua identified under Policy 2 (The Treaty of Waitangi, tangata whenua and Māori heritage) of the NZCPS 2010
- 4 submitters suggested areas of historical heritage, with 3 of these submitters particularly focused on Wainui Bay in the Tasman District and its historical importance
- 2 submitters suggested recreational boating and navigation
- 1 submitter suggested proximity to dwellings
- 1 submitter suggested climate change
- 1 submitter suggested water quality
- 1 submitter suggested areas where endemic wild stock species occur at some or all of the year

4.5.3 Analysis

Potential effects on areas of significance to tangata whenua (such as those identified in regional coastal plans in response to Policy 2 (The Treaty of Waitangi, tangata whenua and Māori heritage) of the NZCPS 2010) are addressed through the proposed approach to tangata whenua values, discussed in section 7.1 of this report.

Impacts of existing aquaculture on historic heritage is not understood to be a significant issue. Using Wainui Bay in the Tasman District as an example, the Environment Court when considering a recent private plan change¹³⁴ did not find the existing spat catching farms to be inconsistent with the heritage objectives and policies in the RMA, NZCPS 2010 or Tasman Resource Management Plan. Effects on historic heritage are addressed as a matter of discretion for realignment applications under the proposed NES.¹³⁵

Recreational boating and navigation issues are addressed through the existing public access and navigational safety matters of discretion of the proposed NES.

¹³⁰ Refer to section 4.4 for further discussion on indigenous biodiversity areas.

¹³¹ Refer to section 4.1.4 for further discussion on these matters of discretion.

¹³² Questions 9 and 10 – refer to Appendix D

¹³³ Not including indigenous biodiversity areas, which are discussed in section 4.4

¹³⁴ Private Plan Change Request 61: Wainui Bay Spat Catching

¹³⁵ Refer to section 4.6 for further discussion on this issue.

Presence of existing marine farms in relation to dwellings is a broad scale issue best addressed at the plan development stage. If the concerns relate to amenity issues, amenity effects related to noise, odour, rubbish and debris can be addressed through the matters of discretion.

Climate change is a broad scale issue best addressed at the plan development stage.

The need for high water quality is recognised as fundamental to aquaculture (see Policy 8 (Aquaculture) of the NZCPS 2010). Policy 21 (Enhancement of water quality) and Policy 23 (Discharge of contaminants) of the NZCPS 2010 supports the intent of Policy 8 and in the context of aquaculture is a broad scale issue best addressed at the plan development stage.

Potential biosecurity issues related to areas where endemic wild stock species occur at some or all of the year can be addressed through the existing biosecurity matters of discretion of the proposed NES.

4.5.4 Recommendations

No changes are recommended in response to submissions.

4.6 REALIGNMENT PROVISIONS

4.6.1 Overview of subject matter

The proposed NES as consulted on recognised that some existing marine farms may not have been ideally positioned when initially consented (e.g. some of the existing consented area might be located over a reef) and provides for small realignments of some existing marine farms (excluding marine farms for aquaculture requiring supplementary feeding) as a restricted discretionary activity.¹³⁶

To apply for a realignment under the proposed NES the application must meet the following entry requirements:

- The marine farm must have a current coastal permit for occupation of the coastal marine area
- The new area must be contiguous to the existing authorised area
- The marine farm must not exceed 10 hectares in size
- No more than a total of one-third of the consented area can be realigned
- To avoid the issue of incremental creep, two-thirds of the realignment must remain within the currently consented area, and the farm must not have been realigned in the past ten years
- The marine farm cannot realign into an area that is identified in an operative or proposed regional coastal plan as non-complying or prohibited for new aquaculture, or into an outstanding natural feature, outstanding natural landscape, area of outstanding natural character, or significant ecological area.
- The consented area to be occupied must be the same or less than that currently authorised
- The structures must be materially the same as those currently authorised (recognising necessary modifications as a result of the realignment)

The matters of discretion for replacement consents under the proposed NES¹³⁷ as consulted on would also apply to realignments, along with some additional matters reflecting the movement of the marine farm into previously unoccupied space:

- Effects on historic heritage
- Effects on the seabed associated with any anchoring system;
- Surrender of the previously occupied space that is proposed to be realigned; and
- Conditions to avoid, remedy or mitigate effects on marine mammals and seabirds.

¹³⁶ Note, these realignments are intended to be processed as a replacement consent for the entire farm (albeit in a realigned location) rather than a piecemeal extension to an existing consent.

¹³⁷ Refer to sections 4.1.4 and 4.2.1.

Councils would apply the standard RMA notification requirements to applications for realignment under the proposed NES as consulted on. There would be no allowance for councils to set more lenient activity classifications.

4.6.2 Submission summary

The questions¹³⁸ posed in the discussion document regarding realignment provisions of the proposed NES received a number of submissions (49 submitters mentioned this issue, 46% of total submissions), with submitters positions as follows:

- 34 submitters supported the proposed approach, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations and regional councils.
- No submitters opposed the proposed approach.
- Two submitters requested a more lenient approach (i.e. a controlled activity status).
- 39 submitters provided general feedback on the realignment provisions, across all submitter types. This included a number of submissions on the additional matters of discretion.

4.6.2.1 Overview of submissions supporting the realignment provisions

The main reasons given by those submitters who supported a restricted discretionary activity status for replacement consents are summarised below:

- The proposal will benefit the environment and reduce adverse effects
- Will enable farms located over seabed habitat with important values or within areas that are no longer considered to be entirely suitable for marine farms to be realigned to a better location
- The additional matters of discretion that have been identified are relevant and sufficient
- The proposed notification requirements are appropriate

4.6.2.2 Overview of submissions requesting more lenient realignment provisions

The submitters requested that realignments be given a controlled activity status under the proposed NES.

4.6.2.3 Overview of submissions providing general feedback on the realignment provisions

The general feedback provided by submitters on the realignment provisions are summarised below:

- Marine farm realignments should not be restricted by size as it is a blunt tool which defeats the intent of the provisions
- Remove the ten year period restricting realignment
- Increase the ten year period restrict realignment
- Remove the entry requirement restricting realignment to one-third of the consented area
- Remove the entry requirement restricting realignment into outstanding areas
- Restrict realignment into areas identified in plans as having high natural character values
- Movement of marine farms in Marlborough from 50m-200m to 100m-300m is not considered a 'minor' realignment
- Include additional restriction to prevent realignment of marine farms into the Cook Strait Cable Protection Zone
- Restrict movement which would create central bay farming

¹³⁸ Questions 12, 17, 18, 19 – refer to Appendix D
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- Fed aquaculture should not be excluded from the realignment provisions
- Non-notification would be more appropriate for realignment provisions
- Realignment should not be used to extend the term of a current consent beyond a plan review timeline

4.6.2.4 Overview of submissions regarding the additional matters of discretion for realignment provisions

The general feedback provided by submitters on the additional matters of discretion for realignment provisions are summarised below:

- Navigation issues need to be considered
- Tidal flow and changes need to be considered
- Ecological impacts need to be considered
- Adverse effects on fisheries resources need to be considered
- Cumulative effects need to be addressed
- Assessment of the benefits of realignment on seabirds and marine mammals should be enabled

4.6.3 Analysis

4.6.3.1 Submissions supporting the realignment provisions

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report.

4.6.3.2 Submissions requesting more lenient realignment provisions

The issues related to using a controlled activity status as a default provision for realignment are similar to those covered under the analysis for submissions requesting controlled activity status for replacement consents¹³⁹ (and are exacerbated in the case of realignment due to movement into new coastal space). As such no change in status is recommended.

However, provision is made for councils to set a more lenient activity status for replacement consents and it would be appropriate to make the same provision for a realignment consent, provided that it still meets the entry requirements, as conceivably a council may wish to make realignments a controlled activity through the development of a future coastal plan.

4.6.3.3 Submissions providing general feedback on the realignment provisions

Size restrictions

The realignment provisions have been limited to 10 hectares because if the provisions allowed for all farms to realign, for some farms that area that could be realigned would be large and the effects of the realignment are likely to tend more towards those which could reasonably be anticipated from a new marine farm (for example, a 100 hectare farm could realign up to 33 hectares, which is a substantial area of new space).

Ten year period restricting realignment

The ten year period restricting realignment is intended to avoid the issue of incremental creep which could enable marine farms to slowly move to a completely new location. RMA requirements state that marine farms should have a consent term of a minimum of 20 years (barring some exceptions), so the ten year time restriction for realignment would prevent the entire farm from moving over the default minimum consent term. As knowledge increases on cumulative effects and Policy 11 of the NZCPS 2010 marine farms may need the flexibility to realign again in the future which makes the ten year restriction acceptable.

¹³⁹ Refer to section 4.1.1.3 for further discussion on this issue.
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Removing the one-third area restriction on realignment

The entry requirements that only one-third of the marine farm can realign (and that two-thirds of the marine farm must remain in the existing consented area) avoids issues of the entire new farm moving into new space.

Realignments into outstanding areas

Realignments into outstanding areas identified in proposed or operative regional coastal plans is restricted in order to align with current planning practice which tends to place more restrictions on the development of new aquaculture within outstanding areas.

However, consideration needs to be given to situations where a marine farm is located in an outstanding area and needs to realign (e.g. in order to move off a reef), however the realigned marine farm would still be either fully or partially within an outstanding area (for example, the proposed Northland Regional Plan contains provisions contemplating such a scenario). Under the proposed NES as consulted such an application would not meet the entry requirements and would therefore be considered under the relevant coastal plan rules (or, should no rules apply, under section 87B of the RMA as a discretionary activity). The intent of the realignment provisions of the proposed NES is to ensure realignments can occur to improve environmental outcomes, so amendments should be made to the provisions to ensure this can take place (and that a matter of discretion allowing consideration of effects on outstanding areas is imposed on such realignment applications).

It is not considered that the same amendment is necessary for realignments of marine farms located within significant marine ecological areas.

Realignments into high natural character areas

A policy decision has been made to apply additional matters of discretion under the proposed NES only to those areas identified as 'outstanding'. Refer to section 4.3 for further discussion on this issue.

Enabling larger realignments in Marlborough

Some submitters understood that the proposed NES would enable marine farms in Marlborough to realign from a 50m-200m coastal ribbon out to 100m-300m. This would not be possible under the proposed realignment provisions as it involves a net increase of space. Draft aquaculture provisions released by Marlborough District Council in 2016 as part of the development of the Proposed Marlborough Environment Plan may have caused some confusion in relation to this issue.

Cook Strait Cable Protection Zone

The Cable Protection Zone runs through coastal marine area in the Marlborough Sounds which is prohibited for new aquaculture in the operative coastal plan. There are currently no marine farms located in or adjacent to the Cable Protection Zone so there will be no possibility of marine farms wanting to realign into the area. As such it is not necessary to have an exclusion in the NES.

Restrict movement which would create central bay farming

This is an issue best addressed at the plan-making level. If a future regional coastal plan determines to prohibit central bay marine farming then realignment could not occur.

Fed aquaculture restriction

Current pen areas for salmon farms in, for example, the Marlborough Sounds, suggest that realigning a third of a supplementary fed marine farm will not provide a meaningful environmental improvement. As the effects on water quality (and to some extent the benthic environment) can be more widespread than for shellfish farms, the effects resulting from realignment may be more complex and need a greater level of assessment.

Notification requirements

Realignment will be altering a farm in a way not contemplated by the replacement consent provisions, including moving into previously unoccupied space, therefore precluding notification is not recommended.

Use of realignment provisions to extend the term of an existing consent beyond a plan review timeline

Prescribing consent duration is beyond the scope of the proposed NES. As with the replacement and change of species provisions, the realignment provisions may result in an existing marine farm being granted consent beyond a plan review timeline, but that is no different to the current situation.

4.6.3.4 Submissions regarding the additional matters of discretion for realignment provisions

Navigation issues

Navigational issues can be appropriately addressed under the matters of discretion for replacement consents¹⁴⁰ which also apply to the realignment provisions.

Tidal flow and changes

A review of the proposed Northland Regional Plan shows hydrodynamic effects are not included as a matter of discretion for realignment. No further information was provided by the submitter to support this inclusion. No change is recommended.

Ecological impacts

The key potential ecological effects of realignment are already able to be managed under the entry requirements and existing matters of discretion. No further matters of discretion are considered necessary.

Fisheries resources

Refer to section 4.1.4.3 for analysis of the potential effects of marine farms on fisheries resources.

Cumulative effects

Refer to section 7.3 for analysis on cumulative effects.

Benefits of realignment

The submitter is correct that the additional matters of discretion for realignment under the proposed NES should be drafted in such a way so as to enable consideration of the positive effects of the proposed realignment, given this is a key reason why the realignment provisions have been included in the proposed NES.

A new matter of discretion for realignment which focuses on the positive effects of the realignment of the marine farm should be included.

4.6.4 Recommendations

Amend the entry requirements to enable realignments of marine farms within outstanding areas to occur.

Amend the additional matters of discretion to add a matter of discretion ensuring effects on outstanding areas are considered where a realigned marine farm is still within an outstanding area.

Amend the additional matters of discretion to add a new matter of discretion which focuses on the positive effects of the realignment of the marine farm.

Enable councils to have a more lenient rule for realignment than restricted discretionary activity.

4.7 LENIENCY

4.7.1 Overview of subject matter

The proposed NES as consulted on enables councils to set more lenient rules (i.e. rules with controlled activity status) for replacement consents than the restricted discretionary activity status prescribed in the regulation. The intention being that this will allow local flexibility (such as in Northland and Marlborough) to continue once the NES is gazetted. In the future, if a council wishes to set a more lenient rule it will need to undertake an active consideration of this through the plan

¹⁴⁰ Refer to section 4.1.4 for further discussion on this issue.
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development process. Where, through consultation with their communities, councils decide to utilise a controlled activity status for replacement consents for existing marine farms, it can be assumed that a full consideration of the environmental, social, economic and cultural effects will have occurred. In this context, a controlled activity status would be appropriate.

4.7.2 Submission summary

The question¹⁴¹ posed in the discussion document regarding leniency received a number of submissions (50 submitters mentioned this issue, 47% of total submissions).

There were divergent views among submitters on how best to address the issue:

- 32 submitters supported the proposed NES enabling councils to set more lenient rules, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations, interested individuals and regional councils.
- 11 submitters opposed the proposed NES enabling councils to set more lenient rules, primarily NGO or community groups and interested individuals.
- 10 submitters provided general feedback on the proposed approach across a variety of submitter types.

4.7.2.1 Overview of submissions supporting the proposed NES enabling leniency

The main reasons given by those submitters who supported the proposed NES enabling councils to set more lenient rules are summarised below:

- It enables councils to undertake strategic and proactive planning in line with Policy 8 of the NZCPS 2010 and provide a controlled activity status where the community has decided it is appropriate to do so
- It provides for regional coastal plans which already have controlled activity rules in place
- Enabling councils to adopt a controlled activity status is more efficient

4.7.2.2 Overview of submissions opposing the proposed NES enabling leniency

The main reasons given by those submitters who opposed the proposed NES enabling councils to set more lenient rules are summarised below:

- If the decision is left to councils they may either be pressured by industry to take a more lenient approach or not have the capability to make a well-informed decision
- A desire for rules to be more stringent (or to give councils the ability to make more stringent rules)
- Leniency would lead to poorer standards and undermine the role of an NES
- Controlled activity status would not be appropriate as the consent could not be declined

4.7.2.3 Overview of submissions providing general feedback on leniency provisions of the proposed NES

The main points raised by those submitters who provided general feedback on the proposed NES enabling councils to set more lenient rules are summarised below:

- The proposed NES should not put existing controlled activity rules in regional coastal plans at risk and suggests amendments to the regulation to ensure this does not occur
- How would leniency work in Bay of Plenty with regard to an existing rule in the coastal plan which enables a 10% extension for existing farms as a controlled activity?
- How would leniency work in Northland with regard to the controlled activity status in the proposed Northland Regional Plan (which was notified in September 2017)?

¹⁴¹ Question 13 – refer to Appendix D
June 2020

- What makes a rule/provision more lenient (activity status, matters of discretion, notification requirement) and who makes this decision?
- Who determine under which rule an applicant applies (e.g. the more lenient rule in the regional coastal plan or the NES regulation)?
- Does the NES enable stringency?

4.7.3 Analysis

4.7.3.1 Submissions supporting the proposed NES enabling leniency

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report.

4.7.3.2 Submissions opposing the proposed NES enabling leniency

Most submitters who opposed leniency considered that replacement consents under the proposed NES should have a discretionary activity status (or at the very least, that councils should be able to make more stringent rules if necessary). Providing a blanket ability for rules to be more stringent would undermine the objective of the proposed NES (and role of an NES as a tool in general).

Specific situations where stringency might be warranted have been raised by submitters (e.g. marine farms in outstanding areas; marine farms in inappropriate areas) and are addressed in the relevant sections of this report.¹⁴²

4.7.3.3 Submissions providing general feedback on leniency provisions of the proposed NES

Ensuring existing controlled activity rules can continue

The suggested clarification of the leniency clause to ensure that existing controlled activity rules in proposed and operative plans can be retained is acknowledged. It is noted that it is the empowering provisions in section 44A(2) of the RMA that enable councils to have more lenient rules in situations where an NES expressly specifies that a rule may be more lenient. As such, rather than using the term 'set' or 'retain' the term 'have' should be used.

Bay of Plenty controlled activity rule

The relevant rule covering replacement consents for some marine farms in the proposed Bay of Plenty Regional Coastal Environment Plan (Rule AQ 2A) provides for both replacement consents and extensions to existing marine farms as a controlled activity.¹⁴³ This is a novel rule in the New Zealand context. No other plans provide for extensions as part of a replacement consent rule (usually these are separate rules with different activity statuses, such as in Waikato and Northland). The policy intent of the proposed NES is that this rule would be able to be retained, and analysis indicates that this is the case as it is more lenient than the proposed NES.

Northland controlled activity rule

The section 32 analysis for the proposed Northland Regional Plan states:

*The NES: Marine aquaculture will have an impact on the Proposed Regional Plan once it is gazetted (expected to be mid-2018). The NES: Marine aquaculture will essentially trump the rules in the Proposed Regional Plan where the NES: Marine aquaculture 'rules' are more lenient. While the intention is to enable regional plans to be more lenient, it's not clear whether such rules in the Proposed Regional Plan would fall into this category, because the Proposed Regional Plan was notified before the (planned) gazettal of the NES: Marine aquaculture.*¹⁴⁴

If the proposed rules becomes operative before the proposed NES is gazetted then there is no issue. If, as is more likely, the proposed NES is gazetted before the proposed rules become operative then there is a transitional issue which arises because the council will not have done the additional section 32 justification required for leniency. However, that omission can be remedied in the further s32AA

¹⁴² Refer to sections 4.3 and 4.9 of this report.

¹⁴³ Note this rule only currently applies to larger offshore sites, not the smaller marine farms located in the outstanding areas in Ohiwa Harbour.

¹⁴⁴ Section 32 analysis report – Proposed Regional Plan for Northland (September 2017), page 294

evaluation which is done when the decisions version is made (assuming the proposed NES has been made prior to that time).

What makes a rule in a regional coastal plan more lenient?

Leniency is tied to activity status, rather than notification requirements or matters of discretion. So in the case of the proposed NES, a more lenient provision in a regional coastal plan would be a controlled activity rule.¹⁴⁵

Who determines under which rule an applicant applies?

In this scenario, section 43B(3) of the RMA states that the more lenient rule in the regional coastal plan would prevail over the rule in the NES.

Does the proposed NES enable stringency?

The wording of the proposed NES contained in the discussion document included a title within the regulations which read “Ability for plans to have more stringent or lenient activity classifications”. This caused confusion for some submitters as the proposed NES, as consulted, did not provide councils with the ability to set more stringent rules. Note that as a result of further analysis it is recommended that councils are enabled to set more stringent rules in certain situations.¹⁴⁶

4.7.4 Recommendations

Clarify that a regional coastal plan may have a more lenient rule for a replacement coastal permit than that of a restricted discretionary activity.

4.8 SITES OF PARTICULAR IMPORTANCE TO AQUACULTURE

4.8.1 Overview of subject matter

The discussion document for the proposed NES posed a question around whether replacement consents for sites of particular importance to the aquaculture industry should be recognised differently, for example, through activity classification and/or matters of discretion.

It was noted that sites that currently hold particular importance for marine farming include those where juvenile shellfish (spat) are collected from the wild for growing to maturity on marine farms, with the mussel spat catching farms at Wainui Bay in the Tasman District being used as an example. The discussion document noted that such sites could be specifically recognised in the proposed NES and sought views on this issue.

4.8.2 Submission summary

The question¹⁴⁷ posed in the discussion document regarding how the proposed NES should provide for sites of particular importance to aquaculture received a high level of feedback (64 submitters mentioned this issue, 60% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 33 submitters supported the general intent of the proposed NES providing for sites of particular importance to aquaculture, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations, and interested individuals.
- 12 submitters opposed the general intent of the proposed NES providing for sites of particular importance to aquaculture, primarily NGO or community groups, iwi organisations and interested individuals.
- 26 submitters supported the proposed NES specifically providing for the Wainui Bay spat catching farms, primarily the aquaculture industry (including 15 submissions based on the

¹⁴⁵ Under section 68A of the RMA aquaculture cannot be given a permitted activity status.

¹⁴⁶ Refer to section 4.9 for further discussion on this issue.

¹⁴⁷ Question 15 – refer to Appendix D

standard template developed by Aquaculture New Zealand), iwi organisations, an interested individual, and Tasman District Council.

- 20 submitters opposed the proposed NES specifically providing for the Wainui Bay spat catching farms, comprising of NGO or community groups and interested individuals. Note for 11 of these submitters this was the only issue they submitted on regarding the proposed NES.
- 23 submitters suggested additional sites of importance for the aquaculture industry (beyond the Wainui Bay spat catching farms), primarily the aquaculture industry, iwi organisations, and an interested individual.

4.8.2.1 Overview of submissions supporting the general intent of the proposed NES providing for sites of particular importance to aquaculture

The main reasons given by those submitters who supported the general intent of the proposed NES providing for sites of particular importance to aquaculture are summarised below:

- Critical spat collection sites should be deemed areas of national importance because much of the industry is dependent on the continuation of these sites
- Controlled activity status would be appropriate for these sites
- Accept in principle so long as environmental bottom lines are not compromised
- Special provision should only be made where a regional coastal plan has identified a particular site as appropriate, where it does not adversely affect a high value area of the coastal environment, and where it is of particular economic value to the industry
- Iwi with Statutory Acknowledgements still need to be notified of any applications for replacement consents at these sites
- The biosecurity management plan requirements of the proposed NES need to still apply to these sites

4.8.2.2 Overview of submissions opposing the general intent of the proposed NES providing for sites of particular importance to aquaculture

The main reasons given by those submitters who opposed the general intent of the proposed NES providing for sites of particular importance to aquaculture are summarised below:

- The value of a site to aquaculture should not override other values at that location
- No valid criteria are specified in the proposed NES for what might make a site of particular importance to aquaculture
- There should be no guarantee for any marine farm because circumstances may change which make the location inappropriate for aquaculture
- It is not the role of the proposed NES to make these judgements, requires a full public process through the plan development or consent application stage
- Hatchery spat is set to make wild caught spat obsolete

4.8.2.3 Overview of submissions supporting the proposed NES specifically providing for the Wainui Bay spat catching farms

The main reasons given by those submitters who supported the proposed NES specifically providing for the Wainui Bay spat catching farms are summarised below:

- These farms are of national significance for mussel spat catching and have provided consistent and reliable spat since around 1980
- These farms provide approximately half of the spat that is used for mussel farming in the Marlborough and Tasman regions, with mussels grown from that spat accounting for around 530 jobs in those regions (and 1300 FTEs in total directly and indirectly in New Zealand) and an estimated \$126 million in annual revenue from domestic and export sales

- This location has unique topographical attributes which make it outstanding in respect of quantity, quality and consistency of spat
- Tasman District Council supported a controlled activity status for these farms as effects could be adequately avoided, remedied or mitigated via conditions

4.8.2.4 Overview of submissions opposing the proposed NES specifically providing for the Wainui Bay spat catching farms

The main reasons given by those submitters who opposed the proposed NES specifically providing for the Wainui Bay spat catching farms are summarised below:

- Concerns about the private plan change¹⁴⁸ which Tasman District Council had accepted and progressed
- Concerns about the impacts of these farms on outstanding areas, including the adjacent Abel Tasman National Park
- Concerns about the amenity impacts of these farms, including noise, light and debris
- Concerns about impacts on important historical sites
- These farms are in an inappropriate location and should not remain there longer than necessary
- These farms should have a discretionary activity status and publicly notified
- No change to the status of these farms should be considered until after the Environment Court hearing on the private plan change has concluded
- There is insufficient evidence as to the value of these farms
- Applying special status to these farms is overkill and not necessary
- The planning framework of the Tasman Resource Management Plan should not be interfered with by the proposed NES
- There are large areas of spat catching allocated outside Wainui Bay and land-based hatchery spat production will likely replace wild-caught spat in the future
- Some of these submitters acknowledged the importance of the site for spat collection and that environmental performance of the farmers at Wainui has improved over recent years

4.8.2.5 Overview of submissions suggesting additional sites of importance for the aquaculture industry

The following additional sites of importance for the aquaculture industry (beyond the Wainui Bay spat catching farms) were suggested by submitters:

- Aotea Harbour, Waikato (mussel spat catching)
- Mahurangi Harbour, Auckland (Pacific oyster spat catching)
- Manaroa, Marlborough (mussel spat catching)
- Garnes Bay, Marlborough (mussel spat catching)
- Deep Clova, Marlborough (mussel spat catching)
- Beatrix, Marlborough (mussel spat catching)
- Wet Inlet, Marlborough (mussel spat catching)
- Sea water intakes for land-based spat hatcheries

¹⁴⁸ Private Plan Change Request 61: Wainui Bay Spat Catching
June 2020

4.8.3 Analysis

4.8.3.1 What constitutes a site of particular importance to aquaculture?

Submissions supporting the general intent of the proposed approach provided clarity on what could be considered a site of particular importance to aquaculture. In particular, they highlighted that certain spat catching farms should qualify because much of their disproportionate value to the wider aquaculture industry which is dependent on the supply of spat to continue to operate.

In response to those submissions, and in acknowledgement of the submissions stating further independent information on the value of these farms is required before making a decision on what constitutes a site of particular importance to aquaculture, further independent advice on current and future opportunities and constraints of spat collection/production in New Zealand was prepared by NZIER.¹⁴⁹

Based on submissions and the NZIER report, analysis concludes that the two primary candidates for sites of particular importance to aquaculture under the proposed NES are the mussel spat catching farms at Wainui Bay (in the Tasman district) and Aotea Harbour (in the Waikato region). With regard to those sites, the NZIER report found that:

- The Wainui Bay spat catching farms account for at least 30% of the top of the South Island production (18,000 tonnes), contributing at least \$80 million in value and 232 jobs. Note, in *Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council* the Environment Court accepted the spat catching group's submission that Wainui Bay accounts for 50% of the spat used in the top of the South Island and \$125 million in value.¹⁵⁰ The difference between the Environment Court finding and NZIER's estimate is due to NZIER using conservative figures and to account for annual variation.
- The Aotea Harbour spat catching farms account for at least 10% of mussel production in Coromandel or 2500 tonnes, equivalent to \$13.8 million in value and 32 jobs.

A common characteristic of both of these sites is that the farms are located within areas where debate on outstanding values is not settled. The Aotea Harbour spat catching farms, while not located in an outstanding area identified in a proposed or operative regional policy statement or regional coastal plan, are likely to be located in areas identified as having outstanding natural character values.¹⁵¹ Whether or not the Wainui Bay spat catching farms are located in an outstanding area is not as clear, and will be discussed in more detail in section 4.8.3.3. As noted in the NZIER report, the uncertainty associated with whether these areas are to be considered outstanding (and, if so, what the impacts of the existing spat catching farms on the values and characteristics that make the area outstanding) increases the uncertainty of spat farming operations which has real economic impacts.¹⁵²

4.8.3.2 Is it possible to provide special provision for these sites of particular importance to aquaculture under the proposed NES?

Under the proposed NES as consulted, replacement consent applications for the Wainui Bay and Aotea Harbour spat catching farms would be considered the same as other marine farms, that is, as restricted discretionary activities with public and limited notification precluded. The standard matters of discretion would apply, as outlined in section 4.1.4.

The change of species provisions would not apply to these farms as they have been established for the sole purpose of spat catching and they are excluded.¹⁵³ The entry requirements for realignment consents would not apply as the area surrounding these farms is classified as prohibited for aquaculture in the relevant regional coastal plans.¹⁵⁴ As consulted, the exemption of the Tasman Aquaculture Management Areas from the replacement consent provisions of the proposed NES does not extend to the Wainui Bay spat catching farms.¹⁵⁵

¹⁴⁹ NZIER (2018) *Current and future spat production: Prospects and constraints*. Report prepared for Ministry for Primary Industries, June 2018.

¹⁵⁰ *Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council* [2018] NZEnvC 046 at [51]-[52].

¹⁵¹ Refer to section 4.3.3.3 for further discussion on this issue.

¹⁵² NZIER (2018) *Current and future spat production: Prospects and constraints*. Report prepared for Ministry for Primary Industries, June 2018, page 12.

¹⁵³ Refer to section 5.4 for further discussion on this issue.

¹⁵⁴ Refer to section 4.6 for further discussion on this issue.

¹⁵⁵ Refer to section 7.2 for further discussion on this issue.

The proposed NES discussion document suggested that special provision could be made for sites of particular importance to aquaculture through, for example, activity classification and/or matters of discretion. The aim of providing special provision would be to increase the certainty for these farms, through either (or a combination of) increased certainty of process (i.e. how the consent application is processed, particularly how and whether effects on outstanding areas are considered) or increased certainty of outcome (i.e. use of a controlled activity status, which would require the decision-maker to grant the consent application).

Further analysis on potential options, including consideration of the Environment Court decision on the Wainui Bay spat catching private plan change request (which was released following conclusion of public consultation on the proposed NES),¹⁵⁶ has concluded that making special provision under the proposed NES for the Wainui Bay and Aotea Harbour spat catching farms in order to increase certainty is not possible in the absence of each council having undertaken a strategic planning exercise to identify outstanding areas.

Given this is the case, detailed analysis has not been undertaken on the submissions opposing providing special provision for sites of particular importance to aquaculture (including those submissions specifically focused on Wainui Bay spat catching farms).

4.8.3.3 *How should the Wainui Bay spat catching farms be provided for under the proposed NES?*

There are three key issues which need to be considered when making a decision on how the proposed NES provides for the Wainui Bay spat catching farms:

- **Outstanding areas:** Whether or not the Wainui Bay spat catching farms are located within an outstanding area is not settled. Evidence provided to the Environment Court in its recent decision on the Wainui Bay spat catching private plan change request¹⁵⁷ was inconclusive on whether the area was outstanding. The Environment Court concluded that the best place for determining whether the area is outstanding (and, if so, whether the spat catching farms have an adverse impact on the values and characteristics that make it outstanding) is through strategic planning carried out by Tasman District Council. Tasman District Council has recently commenced the technical studies to analyse and assess the natural character and landscape of the coastal environment of the Tasman region as part of the review of the Tasman Resource Management Plan which incorporates the regional coastal plan. It is important that the proposed NES enables effects on outstanding values are able to be considered for a replacement consent application, at the very least up until Tasman District Council has notified a proposed plan change identifying outstanding areas.
- **Notification:** Public interest in the Wainui Bay spat catching farms is high, as evidenced by submissions received on both the proposed NES and the recent private plan change, and the position of the Wainui Bay spat catching private plan change request which sought for replacement consent applications to be publicly notified (albeit with a controlled activity status). Based on this it is important that the proposed NES does not preclude notification of future replacement consent applications for these farms.
- **Significance of the Wainui Bay spat catching farms to the wider aquaculture industry:** These farms have a disproportionate positive impact compared to other marine farms given their role in supplying mussel spat to marine farms across the Tasman and Marlborough regions. This is evidenced by both the NZIER report (discussed above) and the recent Environment Court decision, which inserted a policy in the Tasman Resource Management Plan acknowledging this fact.¹⁵⁸ Based on this it is important that the proposed NES enables consideration of the positive economic and social effects of these farms during future replacement consent applications.

With those issues in mind, four options have been analysed to determine how the Wainui Bay spat catching farms are best provided for under the proposed NES. This analysis is contained in Table 9 below.

¹⁵⁶ *Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council* [2018] NZEnvC 046

¹⁵⁷ *Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council* [2018] NZEnvC 046

¹⁵⁸ The Environment Court directed the inclusion of the following new Policy 22.1.3.2: To provide for and map a discrete area where a resource consent may be sought for mussel spat catching and spat holding in recognition of the favourable characteristics of this area for spat catching and its contribution to the aquaculture industry.

Table 9: Analysis of options to provide for the Wainui Bay spat catching farms in the proposed NES

Option	Activity status	Matters of discretion	Notification requirements	Analysis
1. No specific provision	Restricted discretionary	Standard NES matters of discretion would apply. ¹⁵⁹ Matter of discretion regarding outstanding areas ¹⁶⁰ would only apply if Tasman District Council have notified a plan with the Wainui Bay spat catching farms identified as being within an outstanding area	The proposed NES precludes public and limited notification (special circumstances and other RMA notification exceptions may apply ¹⁶¹).	Outstanding areas: There is a risk that Tasman District Council does not notify its proposed plan change identifying outstanding areas before the proposed NES is gazetted which would enable consent holders to apply for replacement consent without considering effects on outstanding areas. Notification: The proposed NES precludes notification (noting that special circumstances and other RMA notification exceptions may apply). Economic significance: The standard matters of discretion under the proposed NES would not enable the positive effects of these spat catching farms to be considered during the replacement consent application process.
2. Transitional provisions to ensure a matter of discretion about outstanding areas applies	Restricted discretionary	Standard NES matters of discretion would apply. Transitional provisions in the proposed NES would apply a matter of discretion regarding effects on outstanding areas to these farms until the point at which Tasman District Council notifies a proposed plan identifying outstanding areas.	The proposed NES precludes public and limited notification (special circumstances and other RMA notification exceptions may apply).	Outstanding areas: Enables the potential effects of the farms on outstanding areas to be considered. Notification: The proposed NES precludes notification (noting that special circumstances and other RMA notification exceptions may apply). Economic significance: The standard matters of discretion under the proposed NES would not enable the positive effects of these spat catching farms to be considered during the replacement consent application process.

¹⁵⁹ Refer to section 4.1.4 of this report.

¹⁶⁰ Effects of the aquaculture activity on the values and characteristics that make the area, feature or landscape outstanding

¹⁶¹ Sections 95A(9), 95B(2)-(4), 95B(10) RMA

<p>3. Bespoke provisions in the proposed NES for Wainui Bay</p>	<p>Restricted discretionary</p>	<p>Standard NES matters of discretion would apply, with additional matter of discretion for Wainui Bay farms focused on the positive economic and social effects of the spat catching farms.</p> <p>Transitional provisions in the proposed NES would apply a matter of discretion regarding effects on outstanding areas to these farms until the point at which Tasman District Council notifies a proposed plan identifying outstanding areas.</p>	<p>NES would not preclude public and limited notification for the Wainui Bay farms.</p> <p>As such, standard RMA notification requirements would apply.</p>	<p>Outstanding areas: Enables the potential effects of the farms on outstanding areas to be considered.</p> <p>Notification: Acknowledges the high level of public interest in the Wainui Bay spat catching farms by enabling Tasman District Council to notify future consent applications should they meet standard RMA notification criteria.</p> <p>Economic significance: The additional matter of discretion would enable the positive effects of these spat catching farms to be considered during the replacement consent application process.</p> <p>Other notes: this option would be inconsistent with both the overall approach taken to public and limited notification in the proposed NES and the approach taken to the remainder of marine farms in the Tasman district.</p>
<p>4. Exempting Wainui Bay spat catching farms from the proposed NES replacement consent, realignment and change of species provisions (i.e. Tasman Resource Management Plan provisions apply)</p>	<p>Discretionary</p>	<p>Any matter can be considered</p>	<p>Tasman Resource Management Plan does not specify notification requirements.</p> <p>As such, standard RMA notification requirements would apply.</p>	<p>Outstanding areas: Discretionary activity status enables effects on outstanding areas to be considered. This approach would enable plan provisions to be developed for the Wainui Bay spat catching farms which provide for the specific issues surrounding these farms, notably regarding outstanding areas,</p> <p>Notification: Acknowledges the high level of public interest in the Wainui Bay spat catching farms by enabling Tasman District Council to notify future consent applications should they meet standard RMA notification criteria.</p> <p>Economic significance: The additional matter of discretion would enable the positive effects of these spat catching farms to be considered during the replacement consent application process.</p>

				<p><u>Notes:</u> This option would see the Wainui Bay spat catching farms exempted from the replacement consent, realignment and change of species provisions in the same way that the Tasman Aquaculture Management Areas and Wilson Bay Marine Farming Zone have been.</p> <p>This option would be most consistent with the Environment Court decision on the recent Wainui Bay private plan change.</p> <p>This is the recommended option.</p>
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4.8.4 Recommendations

Exempt the Wainui Bay spat catching farms¹⁶² from the replacement consent, realignment and change of species provisions of the proposed NES, in order to allow for strategic planning to occur at a regional level which will develop provisions with suitably address:

- any potential effects of these farms on outstanding areas (should the farms be determined to be located within outstanding areas in the future)
- notification of replacement consent applications for these farms
- the positive economic and social effects of these farms on the wider aquaculture industry

4.9 MARINE FARMS IN INAPPROPRIATE AREAS FOR EXISTING AQUACULTURE ACTIVITIES

4.9.1 Overview of subject matter

Policies 7 (Strategic planning) and 8 (Aquaculture) of the NZCPS 2010 require councils to undertake strategic planning when developing regional policy statements and regional coastal plans, including considering where, how and when to provide for activities in the coastal environment, identifying where uses are inappropriate, identifying coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects, and providing for aquaculture activities in appropriate places in the coastal environment.

Future planning is both a tool for managing cumulative effects of marine farming and a way of addressing areas where activities such as aquaculture may not be appropriate on both a singular and cumulative basis.

While Policy 7 does not reference aquaculture specifically, if adverse effects of aquaculture are an issue in a particular region, it is conceivable that future strategic planning under Policy 7(1)(b) could identify areas of the coastal environment where existing aquaculture would be inappropriate. No regional coastal plans currently identify areas where existing aquaculture is inappropriate.

If through its regional coastal planning processes a council in future identifies an area where existing aquaculture is inappropriate,¹⁶³ the proposed NES accommodates these decisions by defining what an “inappropriate area for existing aquaculture activities” is and requiring that any replacement consent application for the marine farm be considered as a discretionary activity with standard RMA notification requirements.

4.9.2 Submission summary

The question¹⁶⁴ posed in the discussion document regarding future planning and inappropriate areas for existing aquaculture activities received 25 submissions (23% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 2 submitters supported the proposed approach as consulted, Aquaculture New Zealand and Auckland Council.
- 6 submitters opposed the proposed approach, including NGO or community groups and a regional council.
- 22 submitters provided general feedback and/or suggested amendments to the proposed provisions, across a variety of submitter types.

¹⁶² Refer to Appendix H for a map showing the location of these farms.

¹⁶³ It is anticipated that this would occur through the inclusion of discretionary, non-complying or prohibited rules and supporting policies in regional coastal plans.

¹⁶⁴ Question 16 – refer to Appendix D

4.9.2.1 Overview of submissions supporting the future planning and inappropriate areas provisions

The main reasons given by those submitters who supported the future planning and inappropriate areas provisions of the proposed NES are summarised below:

- The provisions support proactive and positive planning for aquaculture at a regional level
- Strategic planning gives greater certainty to the aquaculture industry and the wider community
- The provisions provide an appropriate way to grandfather out existing consents if a more appropriate use of marine space or surrounding land was identified in the future

4.9.2.2 Overview of submissions opposing the future planning and inappropriate areas provisions

The main reasons given by those submitters who opposed the future planning and inappropriate areas provisions of the proposed NES are summarised below:

- The approach does not allow councils to identify areas where marine farms are inappropriate
- The proposed NES will perpetuate inappropriate development in locations that are not appropriate for marine farm development but where historically farms have been developed
- There is a gap for dealing with areas identified as inappropriate before the gazettal of the proposed NES
- Concern that councils must only make plan changes that are consistent with the proposed NES, which therefore sets up a situation where all existing marine farms will have to be restricted discretionary activities

4.9.2.3 Overview of submissions suggesting specific amendments to the future planning and inappropriate areas provisions

The specific amendments to the future planning and inappropriate areas of the proposed NES suggested by submitters are summarised below:

- Councils should be able to be more stringent than the proposed NES in relation to inappropriate areas (at least in part for consistency with Policy 7(b) of the NZCPS 2010), so they can, for example, prohibit marine farms in inappropriate areas
- Clarify that a regional council determines an area as inappropriate when the regional coastal plan has legal effect or where it is identified in a proposed plan
- Clarify that where a marine farm in an outstanding area has been determined as inappropriate, clause 2 does not apply to it
- Clarify that full notification applies to those activities classified more stringently than restricted discretionary in the NES
- Add to clause 5 areas 'likely to become inappropriate for existing aquaculture during the term of the consent because of deterioration of water quality caused by activities allowed in a relevant regional or district plan'

4.9.2.4 Overview of submissions providing general feedback on the future planning and inappropriate areas provisions

The main points raised by those submitters who provided general feedback on the future planning and inappropriate areas provisions of the proposed NES are summarised below:

- The proposed NES needs to recognise future strategic spatial planning approaches (such as that being undertaken by Marlborough District Council) that have not yet been notified, otherwise consent holders will apply to replace consents prior to a plan being notified
- The proposed NES should encourage industry to adopt environmentally positive planning initiatives, such as relocation of farms to environmentally better areas
- Prepare a New Zealand Coastal Policy Statement (NZCPS): Aquaculture

- Identify that future planning documents may identify inappropriate species as well as inappropriate areas
- Include criteria for identifying areas unsuitable for marine farms
- Provide a fair but limited time for existing farms in areas identified as inappropriate to 'adjust'

4.9.3 Analysis

4.9.3.1 Submissions supporting the future planning and inappropriate areas provisions

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report.

4.9.3.2 Submissions opposing the future planning and inappropriate areas provisions

Many of the concerns raised by submitters opposing the proposed approach were based on misconceptions about how it would work in practice. The proposed NES as consulted on explicitly accommodates regional councils identifying existing marine farms as inappropriate in regional coastal plans. As such it will not perpetuate development in locations that are inappropriate or require regional councils only to make plan changes that provide for existing marine farms as restricted discretionary activities.

The issue regarding a gap in dealing with areas identified as inappropriate for existing marine farms prior to gazettal of the NES is discussed in more detail with respect to Marlborough in section 4.9.3.3. To date no operative or proposed regional coastal plans identify existing marine farms as inappropriate.

4.9.3.3 Submissions suggesting specific amendments to the future planning and inappropriate areas provisions

More stringent activity classifications in 'inappropriate areas'

If, through the community process of developing a new regional coastal plan, the community in a region has determined that existing marine farms are inappropriate in a particular area, identified that in the policy framework, and consider that as a result the activity classification should be non-complying or prohibited, then the NES should respect this process. This would occur through enabling proposed or operative regional coastal plans to be more stringent than the proposed NES with regard to this particular provision.

Clarifying when the future planning and inappropriate areas provisions are intended to have effect

In order to be consistent with the approach in relation to future planning in the context of outstanding areas, the inappropriate areas for existing aquaculture activities provisions should be clarified to confirm that they apply to both operative and proposed regional coastal plans.

Clarifying relationship between future planning and inappropriate areas provisions and outstanding areas provisions

An existing marine farm could be located within an outstanding natural landscape (for example) where the regional council has determined that the area is inappropriate for existing aquaculture. As consulted, the proposed NES would not be clear on whether an application for replacement consent for that marine farm would be considered under outstanding areas or future planning and inappropriate areas. While it is likely that a council would adopt the more stringent activity classification (i.e. inappropriate areas for existing aquaculture activities, it would be useful to clarify this.

Notification requirements

The proposed NES as consulted on clearly states that the standard RMA notification requirements apply (i.e. the proposed NES does not preclude limited or public notification).

Areas becoming inappropriate due to deterioration of water quality

The issue of areas for existing aquaculture becoming inappropriate due to deterioration of water quality is best addressed at the plan development stage, so no specific provision needs to be made.

4.9.3.4 Submissions providing general feedback on the future planning and inappropriate areas provisions

Future strategic spatial planning processes (including in Marlborough)

Marlborough District Council has embarked on a process to assess the current spatial arrangement of marine farms in the Marlborough Sounds (supported by the Marlborough Aquaculture Review Working Group). This process may confirm that some marine farms are in appropriate locations, but may also result in recommendations that some farms should be realigned or relocated. As currently drafted, the proposed NES could inadvertently frustrate this process. By providing for existing farms in their current locations to replace their consents as restricted discretionary activities with no public notification, an incentive is provided if any alternative spatial allocation adopts a more stringent activity classification, different conditions, or where consent applications are likely to be notified.

However, provided that the proposed NES is gazetted before the Marlborough Environment Plan aquaculture provisions are publicly notified (which is likely to occur at some point in 2019), a combination of the approaches discussed in section 4.9.3.3 above (particularly the allowance for councils to be more stringent in their activity classification for applications in areas identified as inappropriate areas for existing aquaculture activities) should ensure that the NES does not cut across the spatial allocation process being run in Marlborough.

Instead of making reference to gazettal of the proposed NES as consulted on, it is recommended that a date, such as 1 January 2019 is used in relation to future planning. This date would recognise those recent coastal planning processes that have been undertaken consistent with the requirements of Policy 7 of the NZCPS 2010, but not inadvertently provide for those that predated the NZCPS 2010.

Looking further forward, some submitters raised concerns that the proposed NES as consulted on may not be agile enough to recognise future spatial allocation processes, or other strategic planning initiatives. The primary concern being that an applicant could apply for a replacement consent for an existing marine farm which is due to be identified as being located in an inappropriate area ahead of a plan change being notified. In terms of the likelihood of future processes occurring, the Sea Change – Tai Timu Tai Pari process¹⁶⁵ resulted in a spatial allocation plan for the Hauraki Gulf that could affect aquaculture in both the Auckland and Waikato regions (although is principally focused on new aquaculture), but which has not yet been implemented through plan changes or reviews. Other regions have also previously expressed interest in better managing the spatial allocation of existing aquaculture space.

Analysis indicates that there are no amendments that could be made to reduce the risk of this issue. It is an issue which exists whether the NES is in place or not, however it can only be addressed on a consent-by-consent basis by the consent decision-maker.

With regard to encouraging the aquaculture industry to adopt environmentally positive planning initiatives, this issue is best addressed at the plan development stage, rather than in the NES.

Need for further policy direction (i.e. NZCPS: Aquaculture)

As discussed in section 2.1, there has been extensive consideration of the different options to address the policy objective. These different options were assessed in detail in both the discussion document and the 2017 Regulatory Impact Statement. As such, no further analysis has been undertaken in this report.

Inappropriate species

With regard to the concern that future plans may identify inappropriate species as well as inappropriate areas for existing aquaculture activities, anecdotal discussions with councils and observations of current planning practice indicates that this is not currently thought to be the case. If planning practice changes towards this direction in the future then further changes to the NES may be necessary at that point in time.

Criteria for identifying areas unsuitable for marine farms

Reasons why an area may become inappropriate for existing marine farming will vary from region to region, hence it is not recommended that criteria are specified.

¹⁶⁵ <http://www.seachange.org.nz/>
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Providing a limited period of time for existing marine farms located in inappropriate areas to 'adjust'

Provided the applicant can still apply for a replacement consent for a marine farm located in an inappropriate area (i.e. the activity status is not prohibited), it will be up to the decision-maker to determine on a case-by-case basis whether the existing marine farm should be granted a further consent (in theory, a short term consent under section 123A of the RMA could be justified depending on the reason why the area was determined to be inappropriate). As this needs to be considered on a site specific basis it is not recommended that any specific provision is made for this issue.

4.9.4 Recommendations

Incorporate a definition of 'inappropriate area for existing aquaculture activities' that reflects the expectation that the areas are identified by each region either in its regional policy statement or its regional coastal plan.

Provide that where after 1 January 2019 any regional council has through a proposed or operative regional policy statement or a proposed or operative regional coastal plan provided that an area of the coastal marine area is inappropriate for existing aquaculture activities that any existing marine farm within an inappropriate area for existing aquaculture activities is a discretionary activity.

Include a provision that allows councils to include rules in their proposed or operative regional coastal plans that are more stringent for a replacement consent for an existing marine farm within an inappropriate area for existing aquaculture activities as a discretionary activity.

5. Change of species: analysis and recommendations

5.1 ACTIVITY STATUS AND CHANGE OF SPECIES CATEGORIES

5.1.1 Overview of subject matter

The proposed NES as consulted on enables existing marine farms to apply as a restricted discretionary activity to farm new species, in addition to those species already consented,¹⁶⁶ as part of a replacement consent application (termed a change of species application for the purpose of the proposed NES). This is intended to allow flexibility for marine farmers to innovate and enable more efficient use of consented space.

There are four categories proposed for classifying a change in species, reflecting the scope for different potential effects:

- Category 1 is where the change of species will not result in any physical changes to the farming structures. Category 1 applies where there is no change to anchors, surface structures and sub-surface structures. Only species that can be grown on existing structures will be captured by Category 1, as they have the least effects when compared with the current farmed species and structures
- Category 2 is where a change in species requires changes to sub-surface structures, but has the same anchors and surface structures as the existing marine farm. The sub-surface structures are the elements between the seabed and the water surface
- Category 3 captures the addition of one or more non-fed species or paua where a change in the structures (other than just the sub-surface structures) is required. There may be different surface structures, anchoring systems and/or sub-surface structures.
- Category 4 is specific to finfish and includes adding another non-fish species to an existing finfish farm or changing from one finfish species to another finfish species. Finfish farms have their own category due to the lack of information about the effects of changing to another species of finfish, in particular the feed conversion rates and feed content that may be different for different species.

¹⁶⁶ Or in replacement of those species already farmed, which is considered to be a less likely scenario
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Due to a lack of information about the effects of growing sponges and paua, only Categories 3 and 4 of the proposed NES were proposed to apply to the farming of these two species.

There are four change of species scenarios that were proposed not be covered by the proposed NES¹⁶⁷ and would need to be addressed by coastal plan provisions if they were relevant in a particular region:

- A complete change in farmed species to non-fed species or paua where a change in all structures is required
- A complete change in farmed species from finfish to a non-fed species or paua
- A complete change in farmed species from a non-fed species to finfish
- The addition of, or a complete change in, species farmed to crayfish, scampi or crabs

It was proposed that the change of species provisions of the proposed NES would only apply to marine farms granted consent prior to the date the proposed NES is gazetted.

Note: marine farmers who wish to apply to change the species farmed on their existing marine farm during the term of the consent could also make an application under section 127 of the RMA to change consent conditions. Such an application would be considered as a discretionary activity and would not be subject to the proposed NES.

5.1.2 Submission summary

The questions¹⁶⁸ posed in the discussion document regarding the activity status and categories for change of species applications received 48 submissions (45% of total submissions).

A high level summary of the feedback received follows:

- 40 submitters supported the change of species provisions of the proposed NES, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations, interested individuals, NGO and community groups, and Auckland Council.
- 2 submitters opposed the change of species provisions of the proposed NES, one aquaculture industry and Waikato Regional Council.
- 34 submitters supported the restricted discretionary activity status for the change of species provisions, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations and interested individuals. Three of the aquaculture industry submitters also requested a more lenient activity status (i.e. controlled).
- 6 submitters opposed the restricted discretionary activity status for the change of species provisions, primarily NGO and community groups and interested individuals.
- 37 submitters provided feedback on the change of species categories, across all submitter types.
- 27 submitters provided feedback on the exclusions of certain types of species change applications from the proposed NES, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand) and interested individuals.

5.1.2.1 Overview of submissions supporting the change of species provisions of the proposed NES

The main reason given by those submitters who supported the change of species provisions of the proposed NES was because it will enable innovation and will allow regional councils to manage environmental effects.

¹⁶⁷ Refer also to section 5.4 for analysis on the exclusion of spat catching farms from the change of species provisions of the proposed NES

¹⁶⁸ Questions 20-25, 27 – refer to Appendix D

A few submitters raised concerns over the wording in the indicative NES regulations which refers to “a change in farmed species” and requested it to be changed to “a change in consented species” to recognise some marine farmers that have consents for species which they are not currently farming.

5.1.2.2 Overview of submissions opposing the change of species provisions of the proposed NES

The main reason given by those submitters who opposed the change of species provisions of the proposed NES was that potential effects associated with change of species applications justify being dealt with under a new consent application rather than a replacement consent to fully assess potential adverse effects.

5.1.2.3 Overview of submissions supporting the restricted discretionary activity status for the change of species provisions

The main reason given by those submitters who supported a restricted discretionary activity status for the change of species provisions was because it strikes an appropriate balance between certainty for marine farmers and enabling regional councils to manage effects.

Three submitters requested a controlled activity status based on the assumption that the effects associated with change of species were less than minor and could be addressed through consent conditions. Those submitters who preferred a controlled activity status also believed restricted discretionary activity status was acceptable.

5.1.2.4 Overview of submissions opposing the restricted discretionary activity status for the change of species provisions

The main reasons given by those submitters who opposed a restricted discretionary activity status for replacement consents are summarised below:

- Restricted discretionary activity status is not consistent with the NZCPS 2010 or the RMA
- A more stringent activity status should be used (i.e. discretionary activity)
- Concern that the matters of discretion may not be comprehensive enough in the future as the environment changes (e.g. a species can decide to colonise an area)

5.1.2.5 Overview of submissions providing feedback on the change of species categories

The main points raised by those submitters who provided feedback on the change of species categories are summarised below:

- The majority of submitters who provided feedback agreed with the proposed categories, including providing for finfish species as a separate category
- One submitter requested that Categories 1 and 2 be merged as hydrodynamic effects are not an issue
- One submitter recommended an additional category allowing for seabed farming under existing farms (e.g. geoduck)
- Some submitters recommended an additional category for ‘new ideas’ or for ‘research purposes’

5.1.2.6 Overview of submissions providing feedback on the exclusions of certain types of species change applications from the proposed NES

The main points raised by those submitters who provided feedback on the exclusions of certain types of species change applications from the proposed NES are summarised below:

- The majority of submitters do not believe there needs to be any other type of marine farm excluded from the change of species provisions
- One submitter recommended paua be excluded from the scope of the proposed NES as it has unknown ecological impacts, including benthic and enrichment effects and genetic changes to wild paua populations.

5.1.3 Analysis

5.1.3.1 Submissions supporting the change of species provisions of the proposed NES

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document.

The suggested amendment to reflect that the change of species provisions should apply to “a change in consented species” rather than “a change in farmed species” is supported.

5.1.3.2 Submissions opposing the change of species provisions of the proposed NES

It is considered that through the matters of discretion under each change of species category the relevant potential adverse effects will be able to be appropriately managed through a replacement consent application process, rather than requiring a more comprehensive assessment as might be the case under a new consent. These categories and matters of discretion were informed by scientific advice from the Cawthron Institute.¹⁶⁹

5.1.3.3 Submissions supporting the restricted discretionary activity status for the change of species provisions

The points raised in support of the restricted discretionary activity status are largely consistent with the analysis contained in the discussion document, so no further analysis is contained in this report.

Refer to section 4.1.1.3 for analysis on use of a controlled activity status for replacement consent applications. This analysis also applies for the change of species provisions, which in practice are modified replacement consent applications under the proposed NES.

5.1.3.4 Submissions opposing the restricted discretionary activity status for the change of species provisions

There is a basic disagreement between these submitters and analysis undertaken to support the proposed NES on whether a restricted discretionary activity status would enable the effects of any change of species applications to be sustainably managed. The matters of discretion are considered to be sufficient to ensure any potential adverse effects are managed. The development of these matters of discretion were informed by scientific advice from the Cawthron Institute.¹⁷⁰

Use of a restricted discretionary activity status is therefore not inconsistent with the NZCPS 2010 or RMA. A discretionary or non-complying activity, or the maintenance of the status quo of regional variability, will not achieve the policy objective of the proposal.

5.1.3.5 Submissions providing feedback on the change of species categories

Categories 1 and 2 have been kept separate to recognise the slightly different effects associated with keeping the existing structure the same compared to changing the sub-surface structures, particularly with regard to hydrodynamic effects. The addition of hydrodynamic effects was based on scientific advice and no change is recommended.

With regard to seabed farming such as geoduck, Categories 3 and 4 would provide for this so no change is recommended.

An additional category to provide for ‘new ideas’ or ‘research purposes’ was subject to significant discussion and consideration through the development of proposed NES. It did not proceed as it was considered unnecessary to address this issue at a national level. It is considered that components of this could be considered through the existing categories. If the trialling of new species or new technologies created effects beyond the scope of the existing categories then it would be appropriate for them to be considered as a new consent under the rules of the relevant regional coastal plan (noting that some regional coastal plans have rules which enable short term aquaculture research trials).

¹⁶⁹ Forrest B, Hopkins G (2017) *Grouping aquaculture species by their ecological effects*. Prepared for Ministry for Primary Industries. Cawthron Report No. 2984

¹⁷⁰ Forrest B, Hopkins G (2017) *Grouping aquaculture species by their ecological effects*. Prepared for Ministry for Primary Industries. Cawthron Report No. 2984

5.1.3.6 Submissions providing feedback on the exclusions of certain types of species change applications from the proposed NES

Only Categories 3 and 4 apply to the farming of paua because less is known about the effects of this species. Paua need to be fed which means they will have different effects and will be required to undergo more scrutiny, hence the additional matters of discretion required under Categories 3 and 4. The matters of discretion are informed by scientific advice from the Cawthron Institute¹⁷¹ and are considered to be sufficient to manage potential adverse effects of paua farming, including those raised by the submitter.

Through the process of analysing the response on the proposed NES and discussion paper it became clear that the realignment provisions of the proposed NES need to also apply to applications to change species, notably Category 3 (given realignments would not be possible under the restrictions on changes to structures for Categories 1 and 2, and that the realignment provisions of the proposed NES do not apply to marine farming requiring supplementary feeding).

5.1.4 Recommendations

Amend the change of species indicative regulations, where applicable, to refer to “a change in consented species” rather than “a change in farmed species”

Provide for as restricted discretionary activities, changes in species with changes to surface and subsurface structures (Category 3) that involve realignment.

5.2 MATTERS OF DISCRETION

5.2.1 Overview of subject matter

The proposed NES as consulted on specifies the matters that a council can consider when making a decision on a consent application under the restricted discretionary activity change of species provisions.

The matters of discretion have been carefully drafted to ensure the matters are not phrased so widely that the activity becomes a de facto discretionary activity.

For Categories 1 and 2, the proposed NES as consulted on applies the standard matters of discretion for replacement consent applications¹⁷² along with a limited number of additional matters of discretion to account for the potential effects of changing species as envisioned by those categories.

For Categories 3 and 4, the proposed NES as consulted on lists all of the relevant matters of discretion to address potential effects of changing species as envisioned by those categories.

As with replacement consents,¹⁷³ the proposed NES applies an additional matter of discretion regarding adverse effects on the values and characteristics that make an area outstanding for change of species applications for existing marine farms within outstanding areas.

The matters are focused on the key effects of aquaculture that need to continue to be managed, including biophysical, social and cultural effects and are listed in detail in section 5.2.3.

5.2.2 Submission summary – high level themes

The questions¹⁷⁴ posed in the discussion document regarding the matters of discretion for change of species applications received 42 submissions (39% of total submissions), primarily from the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), iwi organisations, NGOs or community groups, and regional councils.

Most submitters agreed with the majority of the matters of discretion proposed, however some recommended changes or additions which are detailed in section 5.2.3. Some submitters were concerned that the matters for Categories 3 and 4, especially, were so broad that it was essentially a de facto discretionary activity.

¹⁷¹ Forrest B, Hopkins G (2017) *Grouping aquaculture species by their ecological effects*. Prepared for Ministry for Primary Industries. Cawthron Report No. 2984

¹⁷² Refer to section 4.1.4 for further detail on these matters of discretion.

¹⁷³ Refer to section 4.3 for further discussion, analysis and recommendations on this issue.

¹⁷⁴ Questions 28-31 – refer to Appendix D

5.2.3 Submission summary, analysis and recommendations

Table 10 summarises the submissions received on specific matters of discretion, as they were consulted, and provides analysis and recommendations. Table 11 summarises the submissions received which provided feedback and suggested matters of discretion beyond the provisions consulted on, along with analysis and recommendations based on those submissions.

Table 10: Submissions received on the matters of discretion for the change of species provisions as consulted

Matters of discretion – as consulted	Submissions	Analysis and recommendations
Category 1 (in additional to standard replacement consent matters of discretion¹⁷⁵)		
a. Management of biosecurity risks arising from the farming of the new species	No submissions received on this matter.	n/a
b. The genetic effects of escapees on wild populations	No submissions received on this matter.	n/a
c. Cultural effects from the translocation of taonga species	No submissions received on this matter.	n/a
Category 2 (in additional to standard replacement consent matters of discretion¹⁷⁶)		
a. Management of biosecurity risks arising from the farming of the new species	No submissions received on this matter.	n/a
b. The genetic effects of escapees on wild populations	No submissions received on this matter.	n/a
c. Cultural effects from the translocation of taonga species	No submissions received on this matter.	n/a
d. Hydrodynamic effects	Hydrodynamic effects are not an issue of concern for change of species applications.	Refer to analysis in section 5.1.3.5 on this issue. <i>No change recommended.</i>
Category 3		
a. The duration and lapsing of the consent and review conditions	No submissions received on this matter.	n/a
b. Location, extent, type, scale, anchoring systems and integrity of marine farm structures, including the layout, positioning (including density), lighting and marking of marine farm	No submissions received on this matter.	n/a

¹⁷⁵ Refer to section 4.1.4 for further detail on these matters of discretion.

¹⁷⁶ Refer to section 4.1.4 for further detail on these matters of discretion.

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>structures within the marine farm site in relation to:</p> <ul style="list-style-type: none"> i. ensuring continued reasonable public access (including recreational access) in the vicinity of the marine farm; and ii. navigational safety, including the provision of navigation warning devices and signs; 		
<p>c. Timing of occupation</p>	<p>Some submitters opposed the reference to timing of occupation as this is determined by weather patterns, changes in seasons, etc</p>	<p>Timing of occupation has been included as a matter of discretion to:</p> <ul style="list-style-type: none"> • enable councils to retain existing timing of occupation conditions on consents • enable councils to set relevant conditions in the future if needed for a new species (if necessary) • enable fallowing and rotation conditions to be imposed for new species (if necessary) <p><i>No change recommended</i></p>
<p>d. <i>[Tangata whenua values such as effects on waahi tapu and taonga] – note that this is a placeholder matter that needs further discussion with iwi authorities as part of the consultation process for the proposed NES: Marine Aquaculture</i></p>	<p>Refer to section 7.1 for summary of submissions on this issue.</p>	<p>Refer to section 7.1 for analysis and recommendations on this issue.</p>
<p>e. Management practices to minimise marine mammal and seabird interactions with the marine farm, including entanglement</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>

Matters of discretion – as consulted	Submissions	Analysis and recommendations
f. Adverse effects of offshore farms on marine mammals	No submissions received on this matter, however note submissions received on equivalent replacement consent matter of discretion.	Refer to section 4.1.4.3 for the analysis undertaken for the equivalent replacement consent matter of discretion. Recommendation: As noted in Section 4.1.4 it is recommended that this matter of discretion is amended to specifically address the entanglement of large whales
g. Management of biosecurity risks	No submissions received on this matter.	n/a
h. The genetic effects of escapees on wild populations	No submissions received on this matter.	n/a
i. Cultural effects from the translocation of taonga species	No submissions received on this matter.	n/a
j. Conditions to manage noise	No submissions received on this matter.	n/a
k. Measures to avoid, remedy or mitigate adverse effects on benthic values and the seabed underneath and within 20m of the marine farm	No submissions received on this matter, however note submissions received on similar replacement consent matters of discretion.	Refer to sections 4.1.4.3 and 4.2.1.2 for the analysis undertaken for the similar replacement consent matters of discretion related to effects on reefs, biogenic habitat and regionally significant benthic species. While this matter of discretion is not exactly the same as those, the principles underpinning the suggested changes equally apply. Recommendation: Make consequential changes to be consistent with the changes set out in Section 4.1.4 and 4.2.1.
l. Measures to avoid, remedy or mitigate adverse effects on water quality in terms of organic enrichment	No submissions received on this matter.	n/a
m. Effects of seabed disturbance	No submissions received on this matter.	n/a
n. Information, monitoring and reporting requirements	No submissions received on this matter.	n/a

Matters of discretion – as consulted	Submissions	Analysis and recommendations
<p>o. Administrative charges, bonds or alternative mechanisms to recover the cost of the repair or removal of abandoned or derelict farms and reinstatement of the environment</p>	<p>No submissions received on this matter.</p>	<p>Note a drafting error resulted in this matter of discretion differing from the equivalent replacement consenting matter of discretion.</p> <p>Recommendation:</p> <p>Amend this matter of discretion so it is the same as the equivalent replacement consenting matter of discretion.</p>
Category 4		
<p>a. The duration and lapsing of the consent and review conditions</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>b. Location, extent, type, scale, anchoring systems and integrity of marine farm structures, including the layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site in relation to:</p> <p>i. ensuring continued reasonable public access (including recreational access) in the vicinity of the marine farm; and</p> <p>ii. navigational safety, including the provision of navigation warning devices and signs</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>c. Timing of occupation</p>	<p>Some submitters opposed the reference to timing of occupation as this is determined by weather patterns, changes in seasons, etc</p>	<p>Timing of occupation has been included as a matter of discretion to:</p> <ul style="list-style-type: none"> • enable councils to retain existing timing of occupation conditions on consents • enable councils to set relevant conditions in the future if needed for a new species (if necessary)

Matters of discretion – as consulted	Submissions	Analysis and recommendations
		<ul style="list-style-type: none"> enable fallowing and rotation conditions to be imposed for new species (if necessary) <p><i>No change recommended</i></p>
<p>d. <i>[Tangata whenua values such as effects on waahi tapu and taonga] – note that this is a placeholder matter that needs further discussion with iwi authorities as part of the consultation process for the proposed NES: Marine Aquaculture</i></p>	<p>Refer to section 7.1 for summary of submissions on this issue.</p>	<p>Refer to section 7.1 for analysis and recommendations on this issue.</p>
<p>e. Management practices to minimise marine mammal and seabird interactions with the marine farm, including entanglement</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>f. Management of biosecurity risks</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>g. The genetic effects of escapees on wild populations</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>h. Cultural effects from the translocation of taonga species</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>i. Conditions to manage noise</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>
<p>j. Measures to avoid, remedy or mitigate adverse effects on benthic values and the seabed</p>	<p>No submissions received on this matter, however note submissions received on similar replacement consent matter of discretion.</p>	<p>Refer to section 4.2.1.2 for the analysis undertaken for the similar replacement consent matter of discretion. While this matter of discretion is not exactly the same as that, the principles underpinning the suggested changes equally apply.</p> <p>Recommendation:</p> <p>Make consequential changes as follows: <i>effects on the benthic environment</i></p>
<p>k. Measures to avoid, remedy or mitigate adverse effects on</p>	<p>No submissions received on this matter.</p>	<p>n/a</p>

Matters of discretion – as consulted	Submissions	Analysis and recommendations
water quality in terms of organic enrichment		
l. Effects of seabed disturbance	No submissions received on this matter.	n/a
m. Use of antibiotics, therapeutants and antifouling	No submissions received on this matter, however note submissions received on the equivalent replacement consent matter of discretion.	Refer to section 4.2.1.2 for the analysis undertaken for the equivalent replacement consent matters of discretion. Recommendation: Make consequential changes to the matters of discretion as per changes recommended in 4.2.1.2.
n. Fallowing and rotation	Submissions received on this matter addressed the same issues as the equivalent replacement consent matter of discretion.	Refer to section 4.2.1.2 for the analysis undertaken for the equivalent replacement consent matters of discretion. Recommendation: Delete.
o. Underwater lighting	Submissions received on this matter addressed the same issues as the equivalent replacement consent matter of discretion.	Refer to section 4.2.1.2 for the analysis undertaken for the equivalent replacement consent matter of discretion. Make consequential changes to the matters of discretion as per changes recommended in 4.2.1.2
p. Any other lighting of structures	Submissions received on this matter addressed the same issues as the equivalent replacement consent matter of discretion.	Refer to section 4.2.1.2 for the analysis undertaken for the equivalent replacement consent matter of discretion. Make consequential changes to the matters of discretion as per changes recommended in 4.2.1.2
q. Discharges of odour	No submissions received on this matter, however note submissions received on the equivalent replacement consent matter of discretion.	Refer to section 4.2.1.2 for the analysis undertaken for the equivalent replacement consent matter of discretion. Recommendation: Make consequential changes to the matters of discretion as per changes recommended in 4.2.1.2
r. Information, monitoring and reporting requirements	No submissions received on this matter.	n/a

Matters of discretion – as consulted	Submissions	Analysis and recommendations
s. Administrative charges, bonds or alternative mechanisms to recover the cost of the repair or removal of abandoned or derelict farms and reinstatement of the environment	No submissions received on this matter.	Note a drafting error resulted in this matter of discretion differing from the equivalent replacement consenting matter of discretion. Recommendation: Amend this matter of discretion so it reads the same as the equivalent replacement consenting matter of discretion.

Table 11: Submissions received which raise additional issues about matters of discretion for the change of species provisions beyond those consulted

Additional issues raised by submitters	Submissions	Analysis and recommendations
Visual appearance of surface structures	Two submitters suggested an additional matter of discretion to address visual effects for the two change of species categories which may result in changes to surface structures (i.e. Categories 3 and 4).	With regard to Category 3, while it is not anticipated that the visual appearance of surface structures are likely to change dramatically, there could conceivably be changes which require assessment and management through consent conditions. The matter of discretion should only be triggered where a change to surface structures is proposed. There was a suggestion that the matter of discretion only focus on the material increase in visual impacts (i.e. compared to the existing consented effects). However, given assessments at replacement consenting (which is, in effect, what a change of species application under the NES is) are made on the basis of the existing farm not being in place, such an approach is not feasible. ¹⁷⁷ Recommendation: Add new matter of discretion as follows: <u>management of the visual appearance of surface structures in relation to their location, density, materials used, colour and reflectivity</u>

¹⁷⁷ If the applicant applied for a variation to consent conditions under s127 then conceivably the assessment could be restricted to material increase in visual impacts

Additional issues raised by submitters	Submissions	Analysis and recommendations
		<p>With regard to Category 4, logically the matter of discretion for fed aquaculture replacement consents¹⁷⁸ should also apply for change of species Category 4 consents. However, for Category 4 a broader matter of discretion is also required to allow for consideration of the effects of changed/new surface structures, not just the management of existing surface structures.</p> <p>Recommendation: Add new matters of discretion as follows: <i>if a change to the surface structures is proposed, the effects of the visual appearance of the surface structures in relation to location, density, materials used, colour, and reflectivity</i> <i>if no change to the surface structures is proposed, management of the visual appearance of the surface structures in relation to location, density, materials used, colour, and reflectivity</i></p>
Hydrodynamic effects	No submissions received on this matter, although note analysis.	<p>Hydrodynamic effects is a matter of discretion for Category 2, and should be added to both Categories 3 and 4 as changes could require different underwater structures which would have different hydrodynamic effects.</p> <p>Recommendation: Add <i>Hydrodynamic effects</i></p>
Shark management	No submissions received on this matter, however note submissions received requesting a matter of discretion addressing shark management for fed aquaculture replacement consents.	<p>Refer to section 4.2.1.2 for the analysis undertaken about a shark management matter of discretion for fed aquaculture replacement consents.</p> <p>Recommendation: Add new matter of discretion as follows: <i>Management practices to minimise shark interactions with the marine farm</i></p>

¹⁷⁸ Refer to section 4.2.1.2 for further analysis on this matter of discretion.

Additional issues raised by submitters	Submissions	Analysis and recommendations
Monitoring requirements	One submitter requested an additional matter of discretion regarding monitoring requirements	Monitoring requirements can be addressed through the existing matters of discretion. <i>No change recommended.</i>
Landscape and natural character	Some submitters requested an additional matter of discretion on effects on landscape and natural character (i.e. areas that are not outstanding)	Refer to section 4.3 for further analysis on this issue.
Adaptive management and cumulative effects	Some submitters requested an additional matter of discretion on adaptive management and cumulative effects	Refer to section 7.3 for further analysis and recommendations on this issue.
Fisheries resources	Some submitters requested an additional matter of discretion on effects on fisheries resources	Refer to section 4.1.4.3 for further analysis on this issue.
Biosecurity and interactions with wild stocks	A submitter requested an additional matter of discretion regarding biosecurity and interactions with wild stocks	Biosecurity risks and the genetic effects of escapees on wild populations are already addressed through the existing matters of discretion
Positive effects	Some submitters requested an additional matter of discretion addressing positive effects	Refer to section 4.1.4.3 for further analysis on this issue.

5.3 NOTIFICATION

5.3.1 Overview of subject matter

Given the limited changes to structures envisaged by Categories 1 and 2, the proposed NES consulted on would preclude public and limited notification for change of species consent applications for these categories.

As there is less certainty as to the effects and a larger list of matters of discretion for Categories 3 and 4, applications for Categories 3 and 4 would not be precluded from public or limited notification so councils will follow the normal RMA notification requirements in determining whether or not to notify an application.

The RMA contains provisions that require councils to notify applications even where an NES precludes public or limited notification, as follows:

- Under section 95B council's must provide limited notification of consent applications to affected protected customary rights groups, affected customary marine title groups (for accommodated activities, which includes existing aquaculture) and holders of statutory acknowledgements that have been identified as an affected party
- Under sections 95A(9) and 95B(10) council's must provide limited or public notification of consent applications if special circumstances apply.

Also of relevance is section 62 of the Marine and Coastal Area (Takutai Moana) Act 2011 which requires that applicants must consult with groups which have applied for customary marine title prior to lodging consent applications.

5.3.2 Submission summary

The question¹⁷⁹ posed in the discussion document regarding the notification requirements for change of species consent applications received 40 submissions (37% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 22 submitters supported the notification requirements for change of species applications in the proposed NES, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand) and one iwi organisation.
- 14 submitters opposed the notification requirements for change of species applications in the proposed NES, across all submitter types.
- 5 submitters provided feedback on the notification requirements for change of species applications in the proposed NES

5.3.2.1 Overview of submissions supporting the notification requirements for change of species applications

The main reasons given by those submitters who supported the notification requirements for the change of species provisions of the proposed NES are summarised below:

- Category 1 and Category 2 applications should not be notified given the scale of potential changes
- Category 3 and Category 4 applications should be subject to the standard RMA notification requirements due to uncertainty of effects

5.3.2.2 Overview of submissions opposing the notification requirements for change of species applications

The main reasons given by those submitters who opposed the notification requirements for the change of species provisions of the proposed NES are summarised below:

¹⁷⁹ Question 32 – refer to Appendix D
June 2020

- All change of species consent applications should be publicly notified
- All fed aquaculture change of species consent applications should be publicly notified
- Notification of change of species consent applications should be decided on a consent-by-consent basis using standard RMA notification requirements
- Public notification for Category 4 should be precluded (with limited notification provided for in exceptional cases)

5.3.2.3 *Overview of submissions providing feedback on the notification requirements for change of species applications*

The main points raised by submitters who provided general feedback on the notification requirements for the change of species provisions of the proposed NES are:

- Change of species consent applications should be publicly notified if they involve introduced species, new species to a region, or species with known biosecurity risks
- Notification should only occur on a special circumstances basis

Note: 4 of these submitters indicated no preference with regard to supporting or opposing the proposed approach; 1 of these submitters also supported the proposed approach.

5.3.3 Analysis

5.3.3.1 *Submissions supporting the notification requirements for change of species applications*

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report

5.3.3.2 *Submissions opposing the notification requirements for change of species applications*

The points raised in opposition to the proposed notification requirements for change of species applications are largely similar to those raised for replacement consents. Refer to section 4.1.3.3 for further analysis on this issue.

With regard to precluding notification for Category 4 change of species applications, the proposed approach is considered to be warranted given the greater uncertainty around potential effects of such changes.

5.3.3.3 *Submissions providing feedback on the notification requirements for change of species applications*

With regard to introduced species, the requirements under the Hazardous Substances and New Organisms Act 1996 (restrictions on new organisms) and Biosecurity Act 1993 (import health standards) will apply. Approval must be sought from the Environmental Protection Authority and the Ministry for Primary Industries to import or release a new organism. These processes involve public consultation.¹⁸⁰

For other species (i.e. new species to a region or those with known biosecurity risks), the expert advice provided in response to the additional matters of discretion should satisfactorily enable decision-makers to consider the relevant effects of the proposal. Provided there is adequate expert input (which the regional council can request, if necessary, under section 92 of the RMA) notification is not necessary.

With regard to notification on special circumstances, this will be determined on a consent-by-consent basis by councils as required under sections 95A(9) and 95B(10) of the RMA.

¹⁸⁰ The Fisheries Act 1996 also restricts where farmers can acquire stock from. Under section 192A of the Act, any fish farmer may only acquire or be in possession of fish, aquatic life, or seaweed (fish) that is:

- a) purchased or acquired from another fish farmer or a licensed fish receiver; or
- b) lawfully bred or cultivated by the fish farmer; or
- c) harvestable spat that settled on fish farm structures

Exemptions to this may be granted but will require assessment by Fisheries New Zealand.

5.3.4 Recommendations

No changes are recommended in response to submissions.

5.4 SPAT CATCHING EXCLUSION

5.4.1 Overview of subject matter

The change of species provisions of the proposed NES as consulted on do not apply to farms established solely for the purpose of catching spat (i.e. juvenile shellfish). The provisions also do not enable the addition of spat farming to an existing marine farm. The reason for this is that spat catching farms tend to have considerably different effects from a production marine farm, and some spat catching farms could be located in areas which would otherwise be inappropriate for production marine farms.

5.4.2 Submission summary

The question¹⁸¹ posed in the discussion document regarding excluding spat catching from the change of species provisions received 44 submissions (41% of total submissions).

There were divergent views among submitters on how the proposed NES should best address the issue:

- 12 submitters supported exclusion of spat catching from the change of species provisions of the proposed NES, primarily interested individuals, NGOs and community groups, one iwi organisation and one regional council.
- 32 submitters opposed exclusion of spat catching from the change of species provisions of the proposed NES, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand) along with all other submitter types.

5.4.2.1 Overview of submissions supporting the exclusion of spat catching from the change of species provisions

The main reasons given by those submitters who supported the exclusion of spat catching from the change of species provisions of the proposed NES are summarised below:

- Effects of spat catching farms are different to production marine farms
- Spat catching farms should not be able to change species without a new resource consent application
- Some spat catching farms were only granted in a particular location because they were spat catching farms (i.e. consent for a production farm would not have been granted in the same location)
- The Wainui Bay spat catching farms in the Tasman District should be excluded from the change of species provisions
- In Waikato applications have been made for spat catching farms due to the operative regional coastal plan prohibiting marine farming – if spat catching farms could apply to change species under the proposed NES this may result in unplanned and unanticipated expansion of aquaculture in the region

5.4.2.2 Overview of submissions opposing the exclusion of spat catching from the change of species provisions

The main reasons given by those submitters who opposed the exclusion of spat catching from the change of species provisions of the proposed NES are summarised below:

¹⁸¹ Question 26 – refer to Appendix D
June 2020

- Disagree that spat catching farms have considerably different effects from a production marine farm
- The primary issue is occupation of space – changing from spat catching to production farming (and vice versa) has minimal additional RMA effects
- Potential effects of any changes could be adequately addressed through the matters of discretion in Categories 3 and 4
- There is no common definition of spat catching across regional coastal plans

5.4.3 Analysis

5.4.3.1 Submissions supporting the exclusion of spat catching from the change of species provisions

The points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document, so no further analysis has been undertaken in this report

5.4.3.2 Submissions opposing the exclusion of spat catching from the change of species provisions

The proposed NES only excludes spat catching from the change of species provisions where it is the sole activity on the farm.

It is considered that a number of consents have been granted on the basis that the consented farms are only to be used for spat catching. Including spat catching farms in the change of species provisions would potentially enable them to become production farms. This is not considered appropriate to provide for under a restricted discretionary activity status through the proposed NES. It would be better to address on a case-by-case basis using rules provided under the relevant regional coastal plan.

5.4.4 Recommendations

No changes are recommended in response to submissions.

6 Biosecurity management plans: analysis and recommendations

6.1 OVERVIEW OF SUBJECT MATTER

The RMA and Policy 12 (Harmful aquaculture organisms) of the NZCPS 2010 require regional councils to play a role in aquaculture biosecurity by managing the adverse effects caused by the release or otherwise spread of harmful aquatic organisms through regional policy statements, regional coastal plans and the resource consent process. With regard to aquaculture, this requires councils to consider the potential biosecurity effects on and from marine farms when assessing resource consent applications.

The proposed NES as consulted on seeks to achieve consistent and effective on-farm biosecurity management practices nationally. It would require that resource consent can only be granted for a marine farm (new or existing) where a biosecurity management plan has been lodged as part of the consent application and assessed by the regional council¹⁸² as meeting criteria to be outlined in an externally referenced document.¹⁸³ A biosecurity management plan which meets this criteria would be expected to show the measures which would effectively address the biosecurity risks associated with that marine farm.

Each biosecurity management plan would need to be tailored to address the specific biosecurity risks of each farm, however it is anticipated that 'global' biosecurity management plans could be prepared for multiple sites where there are commonalities between farms (e.g. a 'global' biosecurity management plan could be prepared for all mussel farms within a particular bay).

¹⁸² This assessment could be cost recovered under section 36 of the RMA.

¹⁸³ As allowed for by Schedule 1AA of the RMA.

If a replacement consent for an existing marine farm does not expire until after 31 January 2025, and the existing resource consents do not require the preparation and implementation of a biosecurity management plan, the proposed NES would require regional councils to review the consent conditions to ensure that they require a biosecurity management plan (consistent with the requirements to be outlined in an externally referenced document) to be prepared and implemented.

The date of 31 January 2025 was proposed in recognition that approximately two-thirds of resource consents for existing marine farms will have expired by this date and as such would have the biosecurity management plan requirement imposed through the replacement consent process. In part this is to reduce the financial burden on regional councils, which cannot cost recover for consent condition reviews which are imposed by a national environmental standard.

The externally referenced document would specify the matters to be included in a biosecurity management plan. This document would be developed and finalised in advance of the proposed NES being gazetted. It would be informed by current best practice, including MPI's Aquaculture Biosecurity Handbook¹⁸⁴ and associated technical report.¹⁸⁵ Potential issues the biosecurity management plan could cover included:

- Stock movements and containment
- Stock feed and feeding
- Waste management
- Water supply and monitoring
- Equipment, vehicles and vessels
- People and property management
- Staff training and education
- Record keeping
- Contingency plans and measures
- Monitoring and Reporting
- Auditing

The externally referenced document would also provide criteria to guide applicants when preparing biosecurity management plans, and to guide regional councils when assessing biosecurity management plans to determine if the measures proposed will be effective in avoiding or mitigating the biosecurity risks for a given marine farm. The externally referenced document would also provide guidance on the extent to which biosecurity risks that cannot be avoided should be mitigated, to ensure that such risks are minimised to the extent practicable.

Marine farmers would be required by consent conditions to monitor and record the implementation and maintenance of the measures set out in their biosecurity management plans, and submit regular reports to the regional council. Regional councils would undertake periodic audits to ensure that biosecurity management plans are being implemented and kept up to date.¹⁸⁶

The proposed NES would form part of the wider marine biosecurity management system, which includes the use of tools under the Biosecurity Act 1993 by regional councils and Biosecurity New Zealand.

¹⁸⁴ <https://www.mpi.govt.nz/dmsdocument/13293-aquaculture-biosecurity-handbook-assisting-new-zealands-commercial-and-non-commercial-aquaculture-to-minimise-on-farm-biosecurity-risk>

¹⁸⁵ Georgiades, E; Fraser, R; Jones, B (2016) *Options to Strengthen On-farm Biosecurity Management for Commercial and Non-commercial Aquaculture*. Technical Paper No.: 2016/47

¹⁸⁶ Regional councils may cost recover this work under section 36 of the RMA, and may also choose to set a fixed charge where appropriate.

6.2 SUBMISSION SUMMARY

The questions¹⁸⁷ posed in the discussion document regarding the biosecurity management plan requirements of the proposed NES received a high level of feedback (60 submitters mentioned this issue, 56% of total submissions).

A high level summary of the feedback received follows:

- 47 submitters supported the biosecurity management plan requirements of the proposed NES, across all submitter types.
- 6 submitters opposed the biosecurity management plan requirements of the proposed NES, including one aquaculture industry, one interested individual, two NGO or community groups, Marlborough District Council, and Local Government New Zealand.
- 13 submitters supported the 31 January 2025 deadline for biosecurity management plans to be in place, across all submitter types.
- 22 submitters opposed the 31 January 2025 deadline for biosecurity management plans to be in place, across all submitter types (with the exception of iwi authorities).
- 16 submitters provided feedback on the capacity and capability of regional councils to administer the biosecurity management plans of the proposed NES, across all submitter types (with the exception of iwi authorities), and including all regional council submitters.
- 11 submitters highlighted the need for pathways management plans under the Biosecurity Act 1993, including all regional council submitters.
- 11 submitters discussed the potential for integration with the aquaculture industry's A+ New Zealand Sustainable Aquaculture framework, primarily the aquaculture industry and regional councils.
- 9 submitters provided feedback on the potential for 'global' biosecurity management plans, including aquaculture industry and regional council submitters.

6.2.1 Overview of submissions supporting the biosecurity management plan requirements of the proposed NES

The main points raised by those submitters who supported the biosecurity management plan requirements of the proposed NES are summarised below:

- A nationally consistent approach to biosecurity is needed
- It is critical that the framework is both cost effective and efficient
- While biosecurity management plans should be required, an exception should be provided to this requirement where there is an 'agreed alternative method of providing for marine biosecurity', for example through an operative regional pest management plan, a pathway management plan, an industry wide management plan, product stewardship requirements or any 'other instrument'
- A number of submitters commented that biosecurity provisions need to be put in place for other non-aquaculture coastal users, both to recognise that aquaculture is not the only biosecurity risk in the coastal marine area, and to make sure that biosecurity measures are effective as a result of being comprehensive
- Concerns were raised about whether marine farmers would adequately give effect to their biosecurity management plans

¹⁸⁷ Questions 33-40 – refer to Appendix D
June 2020

6.2.2 Overview of submissions opposing the biosecurity management plan requirements of the proposed NES

The main points raised by those submitters who opposed the biosecurity management plan requirements of the proposed NES are summarised below:

- The cost and time demands of preparing biosecurity management plans would be too great on marine farmers
- Provisions already exist for marine farm biosecurity and these could be strengthened under existing regimes, rather than being included in the proposed NES
- The focus on biosecurity matters within the proposed NES is very narrow in scope and, by concentrating on marine farms, does not acknowledge all aspects of the area in question (including protection of the natural marine environment, the sustainable use of resources and all associated aspects of concern to the community)
- Mechanisms available under the Biosecurity Act 1993 (such as regional pest management plans and regional pathway management plans) are more appropriate to manage biosecurity threats at a regional level, as they allow for a broader view of threats, their impacts and appropriate programmes to address those threats
- Threats to aquaculture appear to place the emphasis on biosecurity management plans being developed associated with risks to the farming operation itself (for example, organisms that can affect stock health). The primary role of regional councils is the protection of the natural marine environment and sustainable use of natural resources, and placing the assessment and auditing responsibility on regional councils of stock-protection focused biosecurity management plans does not seem logical.
- Incomplete buy-in to the requirements of biosecurity management plans will continue under the proposed NES, as no auditing system can ensure 100% compliance and would have to be implemented remotely, relying heavily on consent holder self-reporting of implementation
- Biosecurity management has to be implemented at a national level for marine aquaculture, rather than being left up to each regional council to interpret requirements, approve plans, implement a biosecurity inspection, auditing and surveillance scheme, and to carry out regular overall reviews of the suitability of any regime
- The proposed NES lacks clear guidance around independent and accountable auditing and monitoring requirements
- Concern that biosecurity management plans will not achieve a nationally consistent approach to biosecurity management, as they are devolved instruments that are likely to be developed, implemented and managed in a variety of ways around the country. There will be unnecessary variation in key elements of the plans, such as equipment and vessel cleaning and the health and movement of stock, that would create duplication of effort for industry, increase costs for regional councils and give rise to a range of inconsistent biosecurity practices on marine farms that would expose the industry to higher risk.
- Where a marine biosecurity incursion occurs, immediate response may be required. The Biosecurity Act 1993 has more direct powers of surveillance and enforcement which provide for entry, immediate directions to be given for an activity to cease, requirements to manage effects such as removing pests or risk goods such as vessels and lines, and the ability to act on default if the owner does not comply within the time limits specified
- It is not clear how the RMA and the Biosecurity Act 1993 are intended to interact in practice to achieve the required level of risk management

6.2.3 Overview of submissions supporting the 31 January 2025 deadline

The main points raised by those submitters who supported the 31 January 2025 deadline for biosecurity management plans to be in place are summarised below:

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- Ensures national consistency within reasonable timeframes
- It will take some time for the new biosecurity management plan requirements to work
- There are efficiency gains of reviewing biosecurity management plans at the same time as applications for replacement consents
- Regional councils should engage with marine farmers well before the 31 January 2025 deadline to get those farms to prepare biosecurity management plans as soon as practically possible

6.2.4 Overview of submissions opposing the 31 January 2025 deadline

The main points raised by those submitters who opposed the 31 January 2025 deadline for biosecurity management plans to be in place are summarised below:

- 2025 is not soon enough to ensure recent aquaculture biosecurity outbreaks (e.g. the flat oyster parasite *Bonamia ostreae* on flat oyster farms in Stewart Island) are avoided in the future
- 2025 may be too late for some farms as marine pests are spreading rapidly through the country and threaten the marine farming industry
- Suggestions that biosecurity management plan requirements should come in force either immediately on gazettal of the proposed NES, or by 2020, with costs falling on the aquaculture industry
- A later date (e.g. 2026 or 2027) should be used to allow for replacement consents caught up in backlogs or appeals

6.2.5 Overview of submissions providing feedback on regional council capacity and capability

The main points raised by those submitters who provided feedback on the capacity and capability of regional councils to administer the biosecurity management plan requirements of the proposed NES are summarised below:

- Assessing and subsequent auditing of biosecurity management plans, which is essential to their success, would be a very large undertaking and a new level of service for regional councils. The associated costs would not be able to be fully recovered, and the s128 RMA review of consents process anticipated by the proposed NES would create a further cost to regional councils
- Concerns about the ability of council to administer the biosecurity management plan requirements of the proposed NES, in part for competency and resourcing reasons
- Specialist expertise will be needed to assess and audit biosecurity management plans

6.2.6 Overview of submissions highlighting the need for pathway management plans

The main points raised by those submitters who provided feedback on the need for pathway management plans are summarised below:

- Pathway management plans under the Biosecurity Act 1993 should either be a component of the approach or should be used instead of the biosecurity management plans requirements under the proposed NES
- Pathways management plans would encompass all users of the marine environment and would be able to address inter-regional vector movements
- The most comprehensive approach would be to have both on-farm biosecurity management plans, and regional or national pathway management plans

6.2.7 Overview of submissions discussing potential integration with the A+ New Zealand Sustainable Aquaculture framework

The main points raised by those submitters who provided feedback on the potential integration with the A+ New Zealand Sustainable Aquaculture framework are summarised below:

- Biosecurity management should be supported through Aquaculture New Zealand or similar national organisations that can assist in plan preparation and auditing
- Membership of the A+ programme should be compulsory under the proposed NES
- A requirement to be a member of the A+ programme would result in both internal self-reporting and external independent auditing
- Membership of the A+ programme should be sufficient, with no need for further requirements under the proposed NES

6.2.8 Overview of submissions on 'global' biosecurity management plans

The main points raised by those submitters who provided feedback on the potential for 'global' biosecurity management plans are summarised below:

- Due to environmental differences within bays, 'global' biosecurity management plans may not always be possible, and the forecast reduction in council workload in terms of assessment and auditing may therefore not eventuate
- Where there are multiple farms in a bay ideally a 'whole of bay' biosecurity aquaculture approach is desirable, if marine farmers are able to work collaboratively and to the same timeframes
- There may be efficiencies that can be generated by developing bay-wide biosecurity management plans

6.3 ANALYSIS

In response to submissions on whether using the NES-MA to introduce biosecurity management plan requirements was appropriate, further detailed analysis has been undertaken on the RMA and Biosecurity Act 1993 tools,¹⁸⁸ along with additional analysis of options under the Fisheries Act 1996.

The draft section 32 evaluation report that informed the June 2019 Cabinet decision on the proposed NES¹⁸⁹ noted that the benefits, costs, efficiency and effectiveness of the proposed approach was finely balanced and that the proposed NES may cease to be the most appropriate approach as further work is undertaken to develop the externally referenced technical document.

Full development of the externally referenced technical document occurred between June 2019 and May 2020. This included targeted engagement between April and May 2020 with key stakeholders, including regional councils, the aquaculture industry and Te Ohu Kaimoana. Feedback was constructive, but in light of the specific biosecurity standards being proposed through the technical document, highlighted some important issues with the approach, including:

- a) concerns regarding the scope of biosecurity matters that can be regulated through the NES-MA, as the NES-MA can only regulate biosecurity matters as they relate to environmental impacts on the receiving environment;
- b) the need for consistency in approach to managing biosecurity for land-based aquaculture activities, which are not within the scope of the NES-MA; and
- c) the capacity of regional councils to implement and enforce the proposed biosecurity requirements of the NES-MA.

¹⁸⁸ Stantec (2018) *Proposed National Environmental Standards for Marine Aquaculture – Addressing Marine Farm Biosecurity*. Prepared for Ministry for Primary Industries, May 2018.

¹⁸⁹ ENV-19-MIN-0022

In addition, the Government Aquaculture Strategy, which was released in 2019, has a key objective to strengthen biosecurity management. The Strategy recognises that it is important that the sector is protecting itself from or effectively managing biosecurity risks through its own practices, and that it is protected from the actions of others that can create risk to aquaculture activities.

Work to implement the Strategy clearly shows that marine and land-based aquaculture activities, and associated biosecurity risks and pathways, are increasingly interconnected. Without consistent requirements for biosecurity management across marine and land-based aquaculture there is a heightened risk of the spread and exacerbation of pests and disease. This is supported by the recently released Koi Tū report which states that for aquaculture that “more focus needs to be given to biosecurity across the marine and freshwater systems”.¹⁹⁰

Additional analysis is to be undertaken by agencies in the second half of 2020 focused on the best approach to ensure a comprehensive biosecurity regime across all aquaculture. This analysis will result in advice to Ministers in December 2020. This advice will analyse whether the technical biosecurity standards developed to date are appropriate, and consider how a future regime should be implemented, be that through an update to the NES-MA, or through other tools under the Biosecurity Act 1993, the Fisheries Act 1996, or other mechanisms (including legislative amendments).

Submissions highlighting the need for pathway management plans under the Biosecurity Act 1993 are acknowledged. As noted in the analysis undertaken by Stantec,¹⁹¹ marine aquaculture is only one source of biosecurity risk in the marine environment, and other activities (e.g. recreational and commercial boating) also pose risks to the management of marine biosecurity overall. Further consideration on the need for pathway management plans across multiple uses of and activities in the marine environment is beyond the scope of this report.

A number of submissions discussed the potential integration of the proposed NES and the A+ New Zealand Sustainable Aquaculture framework. It is not possible for the proposed NES to require membership of the A+ New Zealand Sustainable Aquaculture framework. Even if it was, the A+ programme only covers the three main species produced in New Zealand (salmon, green-lipped mussels, Pacific oysters) so is not comprehensive.

6.4 RECOMMENDATIONS

Given the issues raised by submissions and the analysis above it is recommended that the provisions related to the need for biosecurity management plans are removed from the proposed NES at this time. Additional analysis is to be undertaken in the second half of 2020 focused on the best approach to ensure a comprehensive biosecurity regime across all aquaculture.

Note that removing the requirement for biosecurity management plans from the proposed NES does not mean that regional councils can no longer consider biosecurity risks for those applications that they receive. The proposed NES would still retain a matter of discretion to enable them to do this. The difference will be that this will not be done in a consistent manner across the country, i.e. some regional councils would continue to set conditions around biosecurity, including requiring biosecurity plans and others would not.

7 Cross-cutting issues: analysis and recommendations

7.1 TANGATA WHENUA VALUES

7.1.1 Overview of subject matter

Part 2 of the RMA sets out a number of matters related directly to tangata whenua values, including:

- Recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and the protection of protected customary rights (section 6(e) and (g))

¹⁹⁰ Bardsley, Coates, Goldson, Gluckman, and Kaiser (June 2020) *The future of food & the primary sector: The journey to sustainability* [Koi Tū: The Centre for Informed Futures]

¹⁹¹ Stantec (2018) *Proposed National Environmental Standards for Marine Aquaculture – Addressing Marine Farm Biosecurity*. Prepared for Ministry for Primary Industries, May 2018.

- Having particular regard to kaitiakitanga (section 7(a))
- Taking into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (section 8)

Objective 3 and Policy 2 (The Treaty of Waitangi, tangata whenua and Maori) of the NZCPS 2010 provide further national policy direction on this issue.

The proposed NES discussion document recognised that tangata whenua values may be relevant when considering applications for replacement consent, realignment and change of species applications, with the extent of those effects varying depending on many factors, including location and species.

The need to consider tangata whenua values when considering consent applications for existing marine farms arises, in part, due to the lack of consideration under pre-RMA authorisations for marine farming and potentially inadequate engagement processes (in planning as well as consenting) since the RMA was enacted. Many of the marine farms which have consents expiring in 2024/25 were first approved under legislation which had no requirement to consider effects on tangata whenua values.

The proposed NES provisions in the proposed NES discussion document included a 'placeholder' for a matter of discretion on tangata whenua values, with a view to developing the exact wording for this matter of discretion through engagement with iwi during the consultation process on the proposed NES.

7.1.2 Submission summary

The discussion document did not pose specific questions on how the proposed NES addresses tangata whenua values, however 18 submitters (17% of total submissions) did discuss the issue in their submissions, including 13 iwi organisations, three regional councils and two aquaculture industry submitters.

A number of hui were held with iwi both during the formal consultation phase for the proposed NES and subsequently as the provisions were further developed. There was general support for including consideration of tangata whenua values through matters of discretion. A high level summary of the feedback received through submissions and hui is as follows:

- Tangata whenua values to be considered should be wider than cultural values, including social, cultural and economic concerns
- Consideration should relate to tangata whenua values about the particular site
- Values considered should be from iwi / hapu with mana whenua over the particular site
- Iwi authorities of a region should appoint a person to represent the views of tangata whenua through liaison with regional councils
- Regional councils should work proactively to allow iwi authorities to consider the effects of the full list of marine farming sites due for replacement together in a strategic manner, rather than on a consent-by-consent basis
- Limited capacity and capability for some iwi to engage in consent application processes
- Holders of Statutory Acknowledgements and groups making claims under the Marine and Coastal Areas (Takutai Moana) Act 2011 should be notified

Two submitters suggested specific wording for the matter of discretion:

- Te Rūnanga o Ngāi Tahu: *Consideration of tangata whenua (social, economic, cultural, environmental) values as expressed by local iwi and hapu within the region (in recognition of the Treaty of Waitangi partnership between iwi and the Crown)*
- Aquaculture New Zealand: *Any significant cultural values that are identified in an operative coastal plan and which relate specifically to the site*

7.1.3 Analysis

7.1.3.1 *How tangata whenua values are currently considered in regional planning documents*

Regional councils currently take different approaches to recognising and providing for tangata whenua values in their regional planning documents. Northland (proposed plan), Auckland, Bay of Plenty (proposed plan), Canterbury, and Southland have identified some sites and areas of significance to tangata whenua (or at least have provided for the identification of such sites and areas). These sites and areas are generally contained in schedules to the regional plan. Bay of Plenty and Canterbury have provisions to identify further sites of significance. Auckland notes that further sites identified will be included in future plan changes.

The Proposed Marlborough Environment Plan does not contain identified sites but this approach is subject to further consideration through the current hearings process.

Feedback from iwi emphasised that current approaches to identifying sites and areas of significance to tangata whenua in regional planning documents are not adequate or comprehensive. The implications of this is that sites and areas identified in regional planning documents cannot be used as a trigger for a matter of discretion focused on effects on these areas.

7.1.3.2 *How tangata whenua values are currently considered at replacement consenting*

The proposed Northland Regional Plan has a rule for replacement consents that includes a matter of discretion on 'effects on sites and areas of significance to tangata whenua' where the marine farm is located within a site or area of significance to tangata whenua identified in the plan. No equivalent matter of control is provided for replacement consent applications outside of sites and areas of significance to tangata whenua. Recent replacement consents in Northland have been processed as non-notified controlled activities under the operative regional coastal plan with no written approvals required.

The Auckland Unitary Plan has the following matter of discretion for replacement consents: 'Effects on Mana Whenua values and ecological values and water quality', and specifies assessment criteria for the matter of discretion that requires a cultural impact assessment to be prepared and measures to address any effects identified.

In Marlborough, Chapter 4 of the Proposed Marlborough Environment Plan sets out the expectation that consent applicants will consult early with tangata whenua and a requirement that applicants include a cultural impact assessment report in the consent application where iwi advise that this is necessary. A review of recent decisions in Marlborough indicates that while iwi are often notified of replacement consent applications submissions are not often received and consideration of effects on tangata whenua values by the decision-maker is usually brief.

A review of a recent Environment Canterbury decisions on marine farming applications shows that the council considers the impact on tangata whenua values in accordance with the policies under the Regional Coastal Environment Plan. Environment Canterbury has a list of sensitive sites that are not publicly identified which it also explicitly considers. In the cases reviewed each of the applicants consulted with iwi and runanga and, following a hearing, the Commissioner concurred that there was no adverse effects on tangata whenua values.

Section 95B of the RMA requires that limited notification must be given to affected protected customary rights groups, affected customary marine title groups (for accommodated activities, which includes existing aquaculture) and holders of Statutory Acknowledgements that have been identified as an affected party. The key groups with a potential interest in an area that are not covered by section 95B are those that have applied for a Marine and Coastal Area (Takutai Moana) Act 2011 recognition order, any iwi who have not had claims settled yet so do not have Statutory Acknowledgements, and any settled iwi who did not focus on negotiating Statutory Acknowledgements in their settlement, but nonetheless have cultural associations with parts of the coast.

7.1.3.3 *How the proposed NES should address tangata whenua values*

The development of an approach to considering tangata whenua values needs to factor in the issues discussed above, including that current regional coastal plans do not adequately identify sites and areas of significance to tangata whenua (and therefore cannot be used as a trigger for a specific matter of discretion) and that the notification preclusions of the proposed NES and the RMA mean

that there may be some iwi who have cultural associations with parts of the coast which may not have a formal opportunity to engage in consent applications.

It is acknowledged that the identification of sites and areas of significance to tangata whenua has not occurred in a comprehensive manner. Feedback from submissions and hui called for a strategic process to identify tangata whenua values in relation to the existing marine farms. It is possible that such a process could be run external to the current process, either by a central government agency (with the results of the process potentially leading to an amendment to the NES in the future) or by a regional council (through the plan development process).

In the absence of a strategic process having occurred, all iwi with mana whenua over a particular area need to have an opportunity to input into relevant marine farm consent applications in that area.

In order to facilitate this, it is proposed that a requirement for pre-application engagement with tangata whenua is included for all restricted discretionary activity applications under the NES.

As not all applicants are aware of the iwi and hapu, customary marine title groups and protected customary rights groups who have interests in the relevant area, engagement with the regional council needs to occur to ensure the right groups are informed and consulted. In addition the process needs to allow sufficient time to ensure that all parties are able to respond. This will mean that the applicant is able to prepare a report on consultation and proposals to address matters raised during consultation. Where consultation has been undertaken prior to lodgement and a report provided then the matter of discretion requiring consideration of the effects on sites and areas of significance to tangata whenua identified through consultation applies (noting that tangata whenua values are broad and many of these values could reasonably be considered under most matters of discretion in the proposed NES).

It is understood that many marine farmers already undertake a pre-application engagement process with tangata whenua, in line with good resource management practice.

Where a consent applicant chooses to not comply with this entry requirement a broader matter of discretion (effects on tangata whenua values) would apply and the proposed NES would enable regional councils to notify the application on a limited basis, which would ensure that any potentially affected iwi, beyond those covered by section 95B of the RMA, could be notified.

While this process provides a timeframe for the consultation process, which could reduce some of the pressure experienced by those approached it does not alleviate issues around capacity and capability with regard to iwi engagement in consent application processes, it is considered that such issues are broader issues than just the proposed NES. Any future strategic process would be beneficial in that regard.

7.1.4 Recommendations

It is recommended that the following is included:

- a requirement for pre-application engagement with tangata whenua for all restricted discretionary activity applications
- a detailed process and timing for pre-application engagement to ensure that:
 - adequate time is provided for the relevant regional council to provide details to the applicant of the iwi and hapu, customary marine title groups and protected customary rights groups who have interests in the relevant areas; and
 - adequate time is provided for the iwi, hapu, customary marine title groups, and protected customary rights groups to receive appropriate information so that they can respond
 - there is a report provided by the applicant that addresses one of the matters of discretion specified
- that where the consultation has not occurred and no report is not provided, regional councils are able to limited notify the application and apply a broader matter of discretion

7.2 EXEMPTION OF WAIKATO AND TASMAN AQUACULTURE ZONES FROM REPLACEMENT CONSENT AND CHANGE OF SPECIES PROVISIONS

7.2.1 Overview of subject matter

Waikato Regional Council (Wilson Bay Marine Farming Zone) and Tasman District Council (Tasman Aquaculture Management Areas) have areas specifically zoned for aquaculture within their regional coastal plans.¹⁹² This is a novel approach to aquaculture management in current planning practice.

Both of these areas have been zoned following extensive public consultation processes, and in the case of the Tasman zones long running Court proceedings. Both areas are also subject to adaptive management and co-ordinated monitoring of effects. Some of the Tasman zones have only begun to be used for permanent marine farming relatively recently.

Because these areas are specifically zoned for aquaculture and have an overall planning and consenting structure that aims to manage cumulative effects, it is not seen as appropriate or necessary to alter the rules through the development of the NES provisions. As such, these zones are exempted from the replacement consent and change of species provisions of the proposed NES as consulted on and the biosecurity management plan provisions of the would still apply to these zones.

7.2.2 Submission summary

The question¹⁹³ posed in the discussion document regarding the exemption of the Waikato and Tasman aquaculture zones from the replacement consent and change of species provisions received a number of submissions (43 submitters mentioned this issue, 40% of total submissions), with submitters positions as follows:

- 30 submitters supported the proposed approach, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), interested individuals, iwi organisations and Tasman District Council.
- 5 submitters opposed the proposed approach, primarily interested individuals, one aquaculture industry submitter and one NGO or community group submitter.
- 11 submitters provided general feedback on the proposed approach, across all submitter types and including Waikato Regional Council.

7.2.2.1 Overview of submissions supporting the exemption of the Waikato and Tasman aquaculture zones

The main reasons given by those submitters who supported the exemption of the Waikato and Tasman aquaculture zones from the replacement consent and change of species provisions of the proposed NES are summarised below:

- The areas were specifically zoned for aquaculture and have a framework in place to manage cumulative effects (including adaptive management)
- The zones (particularly Wilson Bay Marine Farming Zone) showed the value of a controlled activity rule

Some of these submitters raised questions around how the exemptions would work in practice or sought clarification on some matters, including:

- The impact of future planning on these zones (i.e. what would happen if a more stringent regime was introduced by a regional coastal plan in the future?)
- That the NES needs to establish a principle that controlled activity status is appropriate in Wilson Bay Marine Farming Zone into the future (and that this principle could also guide the establishment of new areas zoned in the future) – potentially even to the point of specifying the zone as controlled in the NES (rather than exempting it)

¹⁹² Refer to Appendix H for maps identifying these areas.

¹⁹³ Question 14 – refer to Appendix D

- That the reference to 'Waikato Wilson Bay' is too loose and unclear, emphasising the need for the NES to be absolutely clear about which farms or zones are being referred to
- The maps produced for public consultation do not incorporate all of the Tasman aquaculture management areas
- There are 18 marine farming blocks within the Wilson Bay Marine Farming Zone that were initially authorised under the Fisheries Act and do not have a controlled activity status (and as such should be subject to the NES, rather than exempted from it)

Some submitters also suggested additional sites which should be exempted, as follows:

- Big Glory Bay, Stewart Island, Southland
- Coromandel Marine Farming Zone, Waikato
- Regions that have gone through a spatial planning process to give effect to Policy 8 (Aquaculture) of the NZCPS 2010 (exempted over time by way of a schedule to the NES)

7.2.2.2 *Overview of submissions opposing the exemption of the Waikato and Tasman aquaculture zones*

The submitters who opposed the exemption of the Waikato and Tasman aquaculture zones from the replacement consent and change of species provisions raised the the following points:

- Research on effects should continue
- The Aquaculture Management Areas in Tasman and Golden Bays still need to be 'tested', particularly with regard to effects on outstanding areas
- All replacement consents should have their environmental, social and economic performance evaluated

7.2.2.3 *Overview of submissions providing general feedback on the exemption of the Waikato and Tasman aquaculture zones*

The general feedback on the exemption of the Waikato and Tasman aquaculture zones from the replacement consent and change of species provisions of the proposed NES as consulted on largely covered questions and points which were also raised by submitters in support of the proposed approach.¹⁹⁴

One submitter contended that allowing exemptions sends a message that regional councils can opt out of the proposed NES, and was concerned by what that means in terms of serious biosecurity and environmental risks.

7.2.3 Analysis

7.2.3.1 *Submissions supporting the exemption of the Waikato and Tasman aquaculture zones*

The general points raised in support of the proposed approach are largely consistent with the analysis contained in the discussion document.

With regard to submissions on how future planning would impact these zones (particularly if a more stringent planning framework were to be introduced in the future), this is a fundamental question about the mechanics of exempting these zones from the proposed NES. There are at least three options to achieve exemption:

- a) Exempt the particular zones (i.e. the proposed approach) so the current (and any future) plan provisions apply. This is the most straightforward approach, however runs the risk of future planning becoming more stringent, as the submitter notes. The likelihood of that risk would appear to be low given the comprehensive nature of the initial planning processes to set up these zones.

¹⁹⁴ Refer to section 7.2.2.1.
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- b) Option (a) plus – where the NES provides a fall back to the standard NES replacement consent provisions if, in the future, there is a more stringent regime introduced through a plan change. This would be near undraftable and, notwithstanding this, the Tasman Aquaculture Management Areas, at least, could be considered as already having a more stringent regime in place.
- c) Replicate the current planning framework for these zones in the proposed NES. This achieves the same policy intent as option (a) with the added certainty that the provisions will not change in the future. However, it would likely be cumbersome to draft and would not allow for future planning to occur.

It is not considered appropriate that the proposed NES go as far as directing what the future status of these zones should be. While options (b) and (c) above provide greater certainty and direction as to what the future status of these zones should be, option (a) is still preferred as it leaves decisions on the future status of these zones to councils and communities (i.e. when coastal plans are reviewed, likely within 5 years for both regions). It is considered unlikely that future plan changes will introduce markedly more stringent regimes than are currently in place in these zones.

The requests for clarification on exactly which zones and farms are covered by the exemptions is noted. The intention in each region is as follows:

- All Aquaculture Management Areas in Tasman Bay and Golden Bay are exempted¹⁹⁵
- All marine farms in the Wilson Bay Marine Farming Zone are exempted, with the exception of the 18 marine farming blocks that were initially authorised under the Fisheries Act and do not currently have a controlled activity status under the Waikato Regional Coastal Plan.

With regard to the additional sites which submitters have suggested should also be exempted from the proposed NES, no changes are recommended due to the following reasons:

- Big Glory Bay has not been established as an aquaculture zone in the same manner that the Waikato and Tasman zones have been. It also has a discretionary activity status so would be disadvantaged if it was exempted from the proposed NES.
- The Coromandel Marine Farming Zone was established through legislation in 2011. The process followed to establish the zone was not analogous with the processes followed to establish the other Waikato and Tasman zones. In addition, the Coromandel Marine Farming Zone has a discretionary activity status so would be disadvantaged if it was exempted from the proposed NES.
- Regions that have gone through a spatial planning process can be adequately addressed by the proposed NES through the replacement consent, realignment, adaptive management and leniency provisions.

7.2.3.2 Submissions opposing the exemption of the Waikato and Tasman aquaculture zones

Those submitters who opposed the exemption of the Waikato and Tasman aquaculture zones from the replacement consent and change of species provisions of the proposed NES appear to have misunderstood what is actually proposed. The provisions of the coastal plans in Waikato and Tasman will still enable relevant effects to be assessed.

7.2.3.3 Submissions providing general feedback on the exemption of the Waikato and Tasman aquaculture zones

With regard to the implications of the exemption on serious environmental risks, it should be noted that that any serious environmental risks will have been assessed in the comprehensive planning exercises that accompanied the development of these zones (and should any future risks arise these could be addressed through future plan changes).

¹⁹⁵ Note this does not include the Wainui Bay spat catching farms, which are discussed in in section 4.8.

7.2.4 Recommendations

Minor and technical changes to clarify exactly which zones and farms are covered by the exemptions.

7.3 CUMULATIVE EFFECTS AND ADAPTIVE MANAGEMENT

7.3.1 Cumulative effects

7.3.1.1 Overview of issue

The term 'cumulative effect' appears in section 3 of the RMA, where it forms part of the meaning of 'effect', which includes 'any cumulative effect which arises over time or in combination with other effects'. Beyond this, while there have been a series of court cases¹⁹⁶ and papers¹⁹⁷ that have addressed cumulative effects, the term remains subject to discussion and is not yet clearly defined.

Cumulative effects are discussed in Policy 7 (Strategic planning) of the NZCPS 2010 as a matter which regional councils should consider and include provision for when developing regional policy statements and regional coastal plans.

While the phrase cumulative effects does not appear in the proposed NES, as cumulative effects are a subset of the wider definition of 'effect' under the RMA, they can be considered under any matter of discretion that deals with effects, however expressed.

The cumulative effects of shellfish farms on water quality (i.e. nutrient depletion) was considered during the development of the proposed NES as consulted on however analysis indicated that it is inefficient and inequitable to consider this issue on a consent-by-consent basis.

The discussion document noted that cumulative effects are wider than can be considered on a consent by consent basis and that these effects need to be dealt with at the plan development stage, through specific provisions for aquaculture and/or through policies on bay-wide management.

7.3.1.2 Submission summary

The discussion document did not pose specific questions on cumulative effects, however 16 submitters (15% of total submissions), across all submitter types, did discuss the issue of cumulative effects in their submissions. A high level summary of the feedback received follows:

- 14 submitters requested greater consideration of cumulative effects within the proposed NES, primarily interested individuals, NGO and community groups, two regional councils and an iwi organisation.
- 2 submitters opposed the proposed NES specifically addressing cumulative effects, one aquaculture industry and one other submitter.

Overview of submissions requesting the proposed NES specifically address cumulative effects

The main reasons given by those submitters who requested the proposed NES specifically address cumulative effects are summarised below:

- Original consents for most existing farms were granted before cumulative effects were well understood
- A strategic spatial analysis of the overall effects of marine farming has not been done
- The proposed NES will severely restrict Marlborough District Council from properly assessing cumulative effects of marine farming
- Need to manage marine farming at a bay-wide level

¹⁹⁶ For example: *Dye v Auckland Regional Council* [2002] 1 NZLR 337; *Clifford Bay Marine Farms Limited v Marlborough District Council C131/2003* [2003] NZEnvC 348; *Queenstown-Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424; *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81; *Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council* [2016] NZEnvC 151

¹⁹⁷ For example: Milne, P (2008) *When is enough, enough? Dealing with cumulative effects under the Resource Management Act*

- What is a sustainable level of aquaculture?
- Granting replacement consents before plans are notified will mean cumulative effects cannot be properly addressed
- Include a matter of discretion in the proposed NES about cumulative effects

Overview of submissions opposing the proposed NES specifically addressing cumulative effects

The main reasons given by those submitters who opposed the proposed NES specifically addressing cumulative effects are summarised below:

- Attempting to address any potential cumulative effects at the consent application stage is likely to be inequitable, inefficient and ineffective. The first marine farm to require a replacement consent in an area would bear the cost of proving lack of cumulative effects
- If it is determined that a portion of every farm needs to be removed to address cumulative effects, then it would take 20 years to remove the relevant portion from all farms as they go through the consenting process. This underlines why the consenting process is an inefficient way to respond to problems of this nature
- The plan development stage is the most equitable and effective method for applying management of phytoplankton depletion and cumulative effects given that the adverse effect is not attributable to one farm, but is a combined effect from many farms

7.3.1.3 Analysis

Potential cumulative effects of marine farming

The following cumulative effects of marine farming have been identified in literature, case law and submissions:

- nutrient depletion and possible effects higher up the food chain as a result
- changes in abundances and composition of organisms in the wider ecosystem through alteration of a larger proportion of the benthos where there are high densities of marine farms
- changes to habitats and/or migration routes of marine mammals or seabirds and entanglement and effects on prey for marine mammals
- effects on nearshore currents and waves where numerous farms are situated along the coast, which could then affect processes such as larval transport and nutrient exchange along the shoreline
- increased risk of invasion and establishment of marine pests with increasing numbers of marine farms
- eutrophication
- overall cumulative effects on the coastal environment of significant numbers of marine farms
- effects on landscape and natural character of multiple marine farms within a bay or confined area
- effects on tangata whenua values

A particular difficulty with the literature and case law on cumulative effects is that the discussion provided almost universally addresses the effects of a new marine farm.

In considering the cumulative effects of an existing activity, the approach that is adopted is to establish the environment if the activity was not there, and then to consider the cumulative effects of adding the activity to the existing environment. In the case of a consent application for a single marine farm therefore, any other existing marine farms form part of the 'environment' and then only the effects of the marine farm under application are considered in terms of whether they are cumulative. Where the consents for all the marine farms in an area expire at the same time (e.g. Big Glory Bay in

Southland) the cumulative effects of all of the farms will be able to be considered as part of the replacement consent process. Where there are multiple expiry dates however (e.g. areas of the Marlborough Sounds, various harbours in Northland) a meaningful consideration of the effects of all the marine farms in an area is not possible through the consent process.

Four examples of approaches to managing cumulative effects of aquaculture are available, although all of these relate to managing cumulative effects of new aquaculture activities only. The four examples are:

- Coromandel Marine Farming Zone in Waikato, which is managing cumulative effects on water quality
- Wilson Bay Marine Farming Zone in Waikato, which is managing cumulative effects on benthic values and nutrient depletion
- Tasman Aquaculture Management Areas, which are managing cumulative effects on species and ecology
- New Zealand King Salmon Board of Inquiry sites in Marlborough, which are managing a broad range of cumulative effects

Common to all of the approaches to monitoring and managing cumulative effects are detailed frameworks in the plan provisions, and the setting of limits through the plans, either on areas that can be affected by the first stage of activities or on levels of discharge that can occur. These limits have generally been derived on the basis of scientific work undertaken during the development of plan provisions.

The 'unit' for considering cumulative effects

Analysis shows that, to date, cumulative effects have been considered over varying geographic scales. The most common unit for consideration of most cumulative effects is the relevant bay (e.g. effects on significant habitat for indigenous fauna, and, usually, landscape and natural character effects).

However, both landscape and natural character, and significant habitat for King Shags have also been considered at a wider scale than the bay, particularly in Marlborough.

Water quality effects (eutrophication) from fed aquaculture are generally considered at two scales – the effects on particular bays or enclosed waters within a general area (not necessarily the bay where the farm is located) and the overall effect at a much wider scale (Pelorus Sound as a whole, Tory Channel/Queen Charlotte Sound as a combined whole, and the Firth of Thames for example).

How second generation coastal plans are addressing cumulative effects

Analysis of the four second generation plans that have been notified since the NZCPS 2010 was gazetted¹⁹⁸ shows that policies or methods setting out a detailed approach to managing cumulative effects in the coastal marine area are currently relatively uncommon. This is likely to be in part because regions are not experiencing or perhaps identifying issues with cumulative effects, particularly from aquaculture (although it is difficult to tell from a review of existing planning documents), and in part because it is a wicked problem.

Possible options to address cumulative effects in the proposed NES¹⁹⁹

Should the proposed NES include cumulative effects as a specific matter of discretion?

As discussed earlier, the effects that have occurred as a result of multiple farms in a bay over the past 10-20 years form part of the environment against which a replacement consent for a single farm is considered, but cannot be considered in themselves to be an effect.

However, those effects of existing marine farms may continue to be cumulative and, aside from water quality for shellfish farms, would be able to be addressed using the matters of discretion.

¹⁹⁸ Northland, Auckland, Bay of Plenty, Marlborough

¹⁹⁹ Analysis of options related to adaptive management (refer to section 7.3.2) and marine farming in inappropriate areas (refer to section 4.9) are also relevant to the management of cumulative effects.

As discussed above, it is not efficient or equitable to consider cumulative effects of shellfish farms on water quality on a consent-by-consent basis.

Therefore, no change is recommended.

Should the proposed NES require common expiry dates?

In theory assessment of cumulative effects of existing marine farms would be possible if all consents within the relevant geographical 'unit' had common expiry dates and were processed and assessed together as a whole.

However, using marine farming in bays in Northland and Marlborough as examples, analysis indicates that consents for marine farming tend not to have common expiry dates, instead having a range of between 15-20 years.

The question of whether these marine farms should have common expiry dates (and over what geographical 'unit') is best addressed at a regional planning level, rather than at a national level. At this stage there is no indication that any council wishes to pursue such an approach. Some councils have indicated that for small councils where there are many marine farms common expiry dates could create a processing burden.

Therefore, no change is recommended.

Should environmental limits be set under the proposed NES?

Some submitters either raised questions about, or referred to, the role of environmental limits in managing adverse effects, including suggesting that they should be included as part of the proposed NES.

For effective management of cumulative effects the setting of thresholds, standards or limits is critical. However, to date there is insufficient data to comprehensively assess state so environmental limits have not been set within the proposed NES.

Review of existing coastal plans (both first and second generation plans) indicates that, with the exception of identification of significant areas (within which adverse effects are to be avoided), there has been no development of thresholds or limits to manage cumulative effects for any type of activity in the coastal marine area.

Therefore, no change is recommended.

7.3.1.4 Recommendations

No changes are recommended in response to submissions, although note recommended changes with regard to adaptive management and marine farming in inappropriate areas.²⁰⁰

7.3.2 Adaptive management

7.3.2.1 Overview of issue

The Environment Court²⁰¹ has identified the following features as being necessary for adaptive management:

- Stages of development are set out;
- The existing environment is established by robust baseline monitoring;
- There are clear and strong monitoring, reporting and checking mechanisms so that steps can be taken before significant adverse effects eventuate;
- These mechanisms must be supported by enforceable resource consent conditions which require certain criteria to be met before the next stage can proceed; and
- There is a real ability to remove all or some of the development that has occurred at that time if the monitoring results warrant it.

²⁰⁰ Refer to sections 7.3.2 and 4.9 respectively.

²⁰¹ *Crest Energy Kaipara Limited v Northland Regional Council* [2009] NZEnvC 374

The Supreme Court²⁰² further refined these features by making reference to the need for thresholds to trigger remedial action before the effects become overly damaging and to the fact that for an approach to be effective it is necessary that effects that may arise can be remedied before they become irreversible.

The proposed NES as consulted on does not explicitly address adaptive management, with the exception of discussing the existing adaptive management regimes in Waikato and Tasman as part of the rationale for exempting specific zones in these regions from the replacement consents and change of species provisions of the proposed NES.²⁰³ For the management of effects on benthic values and water quality from fed aquaculture, existing matters of discretion under the proposed NES would allow adaptive management conditions to be set or retained for existing farms that are seeking replacement consents.

7.3.2.2 Submission summary

The discussion document did not pose specific questions on adaptive management, however 6 submitters (6% of total submissions)²⁰⁴ did discuss the issue of adaptive management in their submissions. These submissions are summarised below:

- The need to provide for adaptive management outside of just the Tasman and Waikato zones
- Concern that the proposed NES would restrict the ability for councils to impose conditions to require adaptive management for existing marine farms, and that existing farms with consent conditions requiring adaptive management would be able to be replaced without these conditions
- Questions about the types of adaptive management approaches that were currently being imposed on consents

7.3.2.3 Analysis

Current adaptive management approaches for aquaculture

Adaptive management is generally used in two ways for marine farming: as a tool for managing cumulative effects and in relation to some site specific effects.

Both the adaptive management approaches enshrined in the Tasman and Waikato regional coastal plans and the approach imposed by consent condition on the New Zealand King Salmon sites granted by the Board of Inquiry have been developed for new marine farms rather than existing farms.

The Tasman and New Zealand King Salmon approaches have not yet been fully implemented with neither having reached a complete first stage of development to date.

In Waikato, the Wilson Bay Marine Farming Zone is further along with implementing its adaptive management approach, although only one of the two areas to which it applies is approaching full development. For that area, the seabed monitoring has served its purpose (of confirming the effects estimated when developing the zone) and has been removed as a consent condition. In terms of the water quality component of the adaptive management approach, difficulties are being experienced with separating any water quality effects from marine farming from natural variation, and therefore in establishing whether the trigger levels for water quality effects that were set in 2006 are appropriate and meaningful to implement. Technical work is continuing in relation to water quality to try to address this. As such, it is unclear currently whether the adaptive management approach originally proposed will be able to be implemented successfully.

Two further marine farm consents have adaptive management conditions, both in Marlborough: Clifford Bay Marine Farms Ltd in Clifford Bay (where adaptive management is responding to potential cumulative effects on Hector's dolphins), and Wakatu Incorporation for a site to the west of D'Urville Island (where adaptive management appears to be addressing a more site specific issue). In both cases, the adaptive management approach is more about governing the staging of development than about ongoing adaptive management of the farms following full development.

The challenges for adaptive management for existing marine farms lies in:

²⁰² *Sustain Our Sounds Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 40

²⁰³ Refer to section 7.2 for further discussion on this issue.

²⁰⁴ Two regional councils, two NGO or community groups, one aquaculture industry and one interested individual

- Being clear about the purpose for which adaptive management is to be used, noting that most of the current approaches are concerned with staging development rather than ongoing management
- Establishing what the baseline environmental conditions are in an environment where significant development has already occurred
- Establishing appropriate trigger thresholds (particularly in a planning environment where councils are not currently generally establishing thresholds or limits for the management of effects in the coastal marine area)
- Establishing effective measures to reduce effects, and 'winding back' existing marine farms if thresholds that have been established are found to be exceeded (particularly in terms of managing cumulative exceedances of thresholds where consents do not have common expiry dates)

Adaptive management as an ongoing management tool is understood to be resource hungry and expensive. It needs reliable, continually validated modelling, comprehensive monitoring, reporting, expert analysis of cause and effect, and detailed enforceable trigger and response conditions.

As with the discussion of cumulative effects,²⁰⁵ if the point of an adaptive management regime is to address cumulative effects of multiple marine farms, or the effects of multiple activities, the trigger thresholds need to be set through plans, rather than on a consent-by-consent basis.

How the proposed NES could provide for adaptive management

As outlined above, adaptive management has been adopted for a variety of purposes in existing aquaculture consents, including management of effects on the habitat of marine mammals and effects at an ecosystem level as a result of nutrient addition or depletion. The matters of discretion contained in the proposed NES are not currently broad enough to allow adaptive management conditions to be set in relation to these matters (with the exception of nutrient addition or depletion for fed aquaculture).

Marlborough District Council's submission makes the point that while a matter of discretion provides for monitoring and reporting, the other matters of discretion mean that the scope of that monitoring and reporting is restricted. Inclusion of a matter of discretion for adaptive management that is too coarsely worded (for example, requirements for adaptive management) will presumably run into the same problem (i.e. that adaptive management conditions only in relation to those matters specified in other matters of discretion would be able to be developed) and not allow current conditions to be retained. Until the matters identified in section above, that are fundamental to the establishment of an adaptive management regime, are resolved in relation to existing marine farms, inclusion of a matter of discretion relating to adaptive management runs the risk of being confusing and ineffective, and is not recommended.

As demonstrated by the work currently being undertaken by Marlborough District Council for the development of the aquaculture provisions of the Proposed Marlborough Environment Plan, there is a possibility that councils will in the future, develop adaptive management regimes within regional coastal plans that apply to existing marine farming consents. This situation could be provided for by providing a definition of the adaptive management approach in the NES that better recognises the aim of adaptive management and including a matter of discretion that identifies that where a council has an adaptive management approach codified by plan provisions, council is provided with the discretion to include conditions on any replacement consent for an existing marine farm requiring that marine farm to operate in accordance with the established adaptive management regime (provided that the scope issue identified above can be resolved).

7.3.2.4 Recommendations

Add new matter of discretion that, where a proposed or operative plan contains an adaptive management approach, enables conditions to be imposed on the resource consent that give effect to that approach.

²⁰⁵ Refer to section 7.3.1 for further discussion on this issue.
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7.4 UNDUE ADVERSE EFFECTS ON FISHING TEST

7.4.1 Overview of issue

The Fisheries Act 1996 requires an ‘aquaculture decision’ on whether a proposed aquaculture activity will have an undue adverse effect on recreational, customary or commercial fishing because it restricts access to or displaces fishing. The process for assessing those effects is known as the ‘UAE test’. The UAE test is done by an official in Fisheries New Zealand under delegated authority from the Director-General of the Ministry for Primary Industries.

A proposed marine farm cannot proceed if it would have undue adverse effects on recreational or customary fishing, or commercial fishing for non-quota management system (QMS) stocks. And, unless an aquaculture agreement or compensation declaration is reached, a proposed marine farm cannot proceed if it would have undue adverse effects on commercial fishing for QMS stocks.

UAE tests are only required if a resource consent application is for new space (i.e. space not currently occupied by an authorised marine farm – this would include new space occupied by marine farms using the realignment provisions of the proposed NES). An additional UAE test for existing marine farms may be required if the previous aquaculture decision resulted in ‘tagged’ consent conditions,²⁰⁶ however this has not yet occurred in practice.

7.4.2 Submission summary

One interested individual submitter requested that a new clause be added to the proposed NES to state that the UAE test is not required for a replacement consent for an existing marine farm.

7.4.3 Analysis

As discussed in section 7.4.1, the submitter is not entirely accurate as there may be situations in the future where a UAE test for replacement consents may be required (if conditions that have been ‘tagged’ by a previous aquaculture decision). In addition, the proposed NES cannot be used to override a statutory requirement.

7.4.4 Recommendations

No changes are recommended in response to submissions.

7.5 NEED FOR A FULL RULE FRAMEWORK

7.5.1 Overview of issue

The proposed NES as consulted on prescribes a restricted discretionary activity status for replacement consent, realignment and change of species applications which meet certain entry requirements. It is also proposed a discretionary activity status where in an area identified in regional policy statements or regional coastal plans as inappropriate for existing aquaculture activities. Where an application does not meet one or more of these entry requirements it is not covered by the proposed NES, instead would be either addressed under the relevant regional coastal plan rules or, if there was no relevant regional coastal plan rule, as a discretionary activity under section 87B of the RMA.

An alternative to this approach would have been to create a full rule framework within the proposed NES, to cater for scenarios whereby applications do not meet the entry requirements as a discretionary activity.

7.5.2 Submission summary

The question²⁰⁷ posed in the discussion document about the need for a full rule framework received 30 submissions (28% of total submissions), with submitters positions as follows:

²⁰⁶ In making a determination, the Ministry for Primary Industries may ‘tag’ any conditions in the coastal permit which are material to the aquaculture decision and relate to the character, intensity or scale of the aquaculture activity (section 186H(3) Fisheries Act). The purpose of tagging the conditions is to ensure that the activity cannot be altered in a way that may change the impact on fishing without undergoing a further UAE test.

²⁰⁷ Question 3 – refer to Appendix D

- 23 submitters opposed the inclusion of a full rule framework in the proposed NES, primarily the aquaculture industry (including 15 submissions based on the standard template developed by Aquaculture New Zealand), interested individuals, NGO and community groups, and Bay of Plenty Regional Council.
- 7 submitters explicitly sought the inclusion of a full rule framework in the proposed NES, one aquaculture industry, three interested individuals, two iwi organisations and the Resource Management Law Association.

7.5.2.1 Overview of submissions opposing the inclusion of a full rule framework in the proposed NES

The main reasons given by those submitters who opposed the inclusion of a full rule framework in the proposed NES are summarised below:

- Farms that cannot meet the entry requirements for the restricted discretionary activity status under the proposed NES are generally special cases and it is appropriate for communities to make decisions about the rules for these cases through their planning processes
- A full rule framework is not required as the existing regional coastal plans will apply if the activity is not considered by the proposed NES
- The proposed NES would require considerable re-working to incorporate marine farms that cannot meet the entry requirements for the restricted discretionary activity status under the proposed NES
- The proposed NES should not dictate the activity status of marine farms that are in areas determined through a public planning process to be inappropriate for aquaculture
- All replacement consents should have a discretionary activity status

7.5.2.2 Overview of submissions seeking the inclusion of a full rule framework in the proposed NES

The main reasons given by those submitters who sought the inclusion of a full rule framework in the proposed NES are summarised below:

- Would provide greater clarity and certainty, including for the aquaculture industry and iwi
- Avoids unintended or adverse consequences (in terms of certainty and impacts on the environment)

7.5.3 Analysis

7.5.3.1 Submissions opposing the inclusion of a full rule framework in the proposed NES

The general points raised by the majority of submitters opposing the inclusion of a full rule framework in the proposed NES are largely consistent with the analysis contained in the discussion document.

Refer to section 4.9 for further analysis on the submission noting that the proposed NES should not dictate the activity status of marine farms in areas determined through a public planning process to be inappropriate for aquaculture.

Refer to section 4.1.1 for further analysis on activity status for replacement consents.

7.5.3.2 Submissions seeking the inclusion of a full rule framework in the proposed NES

While acknowledging the iwi interest in having greater certainty, adopting a full rule framework could diminish iwi input into local decision-making since it would further limit the role of regional coastal plans.

By not setting a full rule framework in the proposed NES, regional coastal plans will still be able to address the replacement consent, realignment and change of species scenarios that the proposed NES has not anticipated. An example being the realignment provisions of the proposed Northland Regional Plan which do not fall within the proposed NES realignment entry requirements as they allow for realignment into areas prohibited for new aquaculture.

With regard to unintended or adverse consequences, the provisions of the proposed NES have been carefully developed so as to avoid these. It is considered that attempts to develop a full rule framework would be more likely to result in unintended or adverse consequences.

7.5.4 Recommendations

No changes are recommended in response to submissions.

8 Part 2 matters

The Minister for the Environment must be satisfied that the proposed NES is consistent with the purpose of the RMA, as set out in section 5 of that Act. In addition, in accordance with section 51 of the RMA the Minister must also consider Part 2 of the Act. Under Part 2, the Minister in exercising his functions and powers is required to recognise and provide for specified matters of national importance,²⁰⁸ have particular regard to specified matters,²⁰⁹ and take into account the principles of the Treaty of Waitangi.²¹⁰ Section 51(1) requires the matters in Part 2 of the RMA to be considered when developing this report.

Purpose of the RMA (section 5):

- The proposed NES would promote sustainable management of natural and physical resources, by recognising the physical resource of existing marine farms, the wider industry that those farms support, and providing for their use and development while also providing for replacement consents for marine farms to be refused in order to protect identified natural resources.
- At current levels of production, the effects of aquaculture activities on the environment are largely known, manageable, and in most cases, reversible. As such the proposed NES provides for the needs of future generations.
- The life-supporting capacity of coastal waters and ecosystems is safeguarded by providing a nationally consistent framework that allows regional councils to set appropriate consent conditions to reflect best environmental practice for aquaculture activities.
- The proposed matters of discretion would ensure the adverse effects of aquaculture activities on the environment are avoided, remedied or mitigated. In some cases there would be improved environmental outcomes compared to the current planning framework, including through enabling the realignment of existing marine farms to remedy adverse effects on significant habitats.
- More certainty and efficient processes for replacement consenting, including species changes, will enable people and regional communities to continue to provide for their social and economic wellbeing, while ensuring the impact of aquaculture activities on the environment continue to be appropriately managed.

Principles of the RMA (sections 6 – 8):

- The proposed NES is consistent with section 6(a) and (b) as it operates on the basis that outstanding areas are identified in proposed or operative planning documents, and reduces uncertainty and ambiguity by clearly identifying when an existing marine farm requires an assessment with regard to its effects on outstanding areas.
- In relation to section 6(c), the matters of discretion in the NES-MA recognise and provide for benthic values, including the management of any potential adverse effects on biogenic and reef habitats.
- The matters of discretion also ensure that public access to the coastal marine area is maintained (section 6(d)); require consideration of effects on tangata whenua values (section 6(e)); and recognises historic heritage (where a farm is proposed to be realigned) (section 6(f)); and the protection of protected customary rights (section 6(g)).

²⁰⁸ Section 6 RMA

²⁰⁹ Section 7 RMA

²¹⁰ Section 8 RMA

- The proposed NES is consistent with the principles of the Treaty of Waitangi. It encourages early consultation with tangata whenua and enables tangata whenua to input into consent decision-making by identifying potential effects of existing marine farms on values, sites and areas of significance to them.

In managing the adverse environmental effects of aquaculture activities, the proposed NES strikes an appropriate balance between setting national direction and maintaining regional council decision-making to reflect local circumstances and community aspirations. An effect of the proposed NES will be to drive strategic planning by regional councils to determine where aquaculture should and should not be located.

The proposed NES enables regional coastal plans to set more lenient provisions to provide greater certainty where communities, through regional planning processes, have identified marine farming as an appropriate activity in its location. It would also enable regional coastal plans to set more stringent provisions to enable greater scrutiny in situations where regional planning processes have identified existing marine farms as in an inappropriate location. Further it allows councils to set consent conditions that are appropriate to meet the specified matters of discretion having regard to local circumstances.

9 New Zealand Coastal Policy Statement

The NZCPS 2010 is a national policy statement under the RMA. The purpose of an NZCPS is to state objectives and policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand. While the NZCPS 2010 applies across New Zealand, it is important to note that sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 are also an NZCPS with regard to the coastal environment of the Hauraki Gulf, and are as such considered in this analysis.

The RMA is silent on the relationship between a national environmental standard and an NZCPS (or other national policy statement). The High Court has stated that primacy is given to national environmental standards and the requirement for local authority recognition of those standards, and that national policy statements sit alongside national environmental standards in the hierarchy of control.²¹¹

In practice regional councils must, when developing regional coastal plans, give effect to an NZCPS²¹² and may not include rules in plans that conflict with an NES.²¹³ Accordingly, an NES and an NZCPS should be developed to be consistent with each other so as to avoid creating conflicting obligations for regional councils.

With this in mind, the provisions of the proposed NES (including recommended amendments in response to submissions and further analysis) have been assessed against the objective and policies set out in both the NZCPS 2010 and the Hauraki Gulf Marine Park Act 2000. Detailed analysis is set out in Appendix I. Overall, it is considered that the provisions of the proposed NES are consistent with the objectives and policies of both of these documents.

10 Matters out of scope of the NES

A number of submissions raised matters which are and continue to be out of scope of the proposed NES, including:

- Coastal occupation charges for marine farms
- Bonds
- New space (beyond new space created through realignment)
- Land-based aquaculture
- Establishment of an expert monitoring body
- Requiring production related information to be provided to regional councils

²¹¹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller Coal Limited* [2012] NZHC 2156, at [23].

²¹² Section 67 RMA

²¹³ Section 44A RMA

- Animal welfare issues

Submissions which provided feedback on the costs and benefits of the proposed NES have been analysed and relevant information incorporated into the section 32 evaluation report.

11 Conclusion

The policy objective of the proposed NES is to:

Develop a more consistent and efficient regional planning framework for the management of existing marine aquaculture activities and on-farm biosecurity management, while supporting sustainable aquaculture within environmental limits

The proposed NES has been under development since 2015, led by Fisheries New Zealand with support from the Ministry for the Environment and Department of Conservation. These agencies were supported by an Aquaculture Reference Group, which provided advice and input on the options available to achieve the policy objective.

In 2017 the Government approved consultation with the public and iwi on the subject matter of the proposed NES which sought to set nationally consistent rules and requirements for regional councils to:

- a) provide a simpler and more certain replacement consent, realignment and change of species application process for existing marine farms, while ensuring farms meet best environmental practice; and
- b) implement consistent biosecurity management requirements on all marine farms

Formal consultation occurred from 4 June 2017 to 8 August 2017. A total of 107 submissions were received on the proposal. During consultation, Fisheries New Zealand held 18 public meetings and hui on the proposed NES, and this feedback has been considered alongside the formal submissions.

A range of issues were raised in submissions, with the main themes able to be categorised as feedback on the following broad topics:

- Replacement consents (including realignment provisions)
- Change of species provisions
- Biosecurity management plan provisions
- Cross-cutting issues (e.g. tangata whenua values, cumulative effects)

Following consultation, Fisheries New Zealand has continued to work with MfE, DOC, the Aquaculture Reference Group, tangata whenua and key stakeholders to respond to the issues raised through consultation. Targeted engagement also occurred on the draft regulations (an exposure draft process) with key stakeholders in April 2020. This work has informed the analysis of submissions.

This report has outlined a range of recommended amendments to respond to issues raised in submissions and ensure the proposed NES achieves its policy objective. It is important to note that the report recommends that the biosecurity management plan provisions of the proposed NES are not progressed, with a view to a more comprehensive approach to aquaculture biosecurity, across marine and land-based aquaculture, being developed through the national aquaculture registration system under the Fisheries Act 1996. The report also analyses the consistency of the proposed NES with the purpose and principles of the RMA and the NZCPS 2010.

It is considered that the recommended amendments to the proposed NES will ensure a more consistent and efficient regional planning framework for the management of existing marine aquaculture activities, while supporting sustainable aquaculture within environmental limits. This is confirmed in the economic cost benefit analysis and section 32 report which accompany this report.

It is recognised that the proposed NES will need to be supported by a comprehensive implementation plan (including guidance, workshop and funding) and a robust monitoring and evaluation framework to ensure it achieves its objective.

Both an implementation guidance plan and monitoring and evaluation plan are currently being developed. The monitoring and evaluation plan will monitor the effectiveness of NES implementation

by regional councils and the aquaculture industry along with the effectiveness of the NES in achieving its objective.

Results from this monitoring will allow improvements to be made as required both in terms of the support provided to help implement the proposed NES and the provisions of the proposed NES. An initial review of the proposed NES is proposed for three years after it comes into force, with subsequent review after six years.

Appendix A: History of marine aquaculture consenting in New Zealand

The table on the following pages provides an overview of the history of marine aquaculture consenting in New Zealand since 1971.

Date	Principal legislation	Type of permit	Issued by	Notes
1971 – 1991	Marine Farming Act 1971	Leases or licence	Ministry of Fisheries or another controlling authority ²¹⁴ (subject to the prior consent of the Minister)	<p>Public notification required.</p> <p>Various parties were directly notified (including adjoining landowners, territorial authority, harbour board).</p> <p>Leases and licences had a maximum term of 14 years (and could contain a right of renewal for one or more terms)</p> <p>Controlling authority has to carry out an ecological impact assessment (post 1974).</p> <p>Marine farming secondary to the rights of navigation, commercial fishing, recreation, science, mining, adjoining land use, and the public interest. These were the key areas an application was assessed against (but only if there was an objection on one of these issues).</p> <p><i>Marine Farming Act leases and licences became deemed RMA coastal permits on 1 January 2005, with an expiry date of 31 December 2024.</i>²¹⁵</p>
1991 – 2004	Resource Management Act 1991	Coastal permit	Regional council	<p>New marine farming space allocated on a first-in, first-served basis.</p> <p>Standard RMA assessment requirements – new marine farms were almost inevitably publicly notified.</p>
	Fisheries Act 1983	Marine farming / spat catching permit	Ministry of Fisheries	<p>Assessed impact on fisheries resources (Fisheries Resource Impact Assessment). The purpose of the Fisheries Resource Impact Assessment was to provide information for an assessment of the effects of the proposed aquaculture activity on the sustainability of fisheries resources.</p> <p><i>Marine farming permits became deemed RMA coastal permits on 1 January 2005, with expiry dates the same as the original permits.</i></p>
2005 – 2011	Resource Management Act 1991	Coastal permit	Regional council	<p>2004 aquaculture legislative reforms created a single process for aquaculture planning and consenting through the RMA.</p>

²¹⁴ That is, the Minister unless the area was vested in a harbour board or local authority under the Harbours Act 1950.

²¹⁵ Note in some cases the expiry date was 1 January 2025.

Date	Principal legislation	Type of permit	Issued by	Notes
				New marine farms could only be established within Aquaculture Management Areas (AMAs). These AMAs could be initiated either by a regional councils or private applicants.
2005 – now	Fisheries Act 1996	Aquaculture decision	Fisheries New Zealand ²¹⁶	Assessed undue adverse effects of new marine aquaculture on commercial, customary and recreational fishing.
2011 – now	Resource Management Act 1991	Coastal permit	Regional council	<p>2011 aquaculture legislative reforms removed the requirement for AMAs, enabling consent applications for new marine farms to follow the same process as other activities in the common marine and coastal area.</p> <p>Coastal permits for aquaculture have minimum consent term of 20 years (unless shorter term requested by applicant or required to manage effects)</p> <p>Decision-maker required to have regard to the value of the investment of the existing consent holder when considering replacement consents.</p> <p>New powers under Part 7A of the RMA to manage demand for coastal space.</p>

²¹⁶ And predecessor organisations

Appendix B: List of submitters on the proposed NES

The following people/organisations provided a formal submission on the proposed NES during the consultation period, which closed on 8 August 2017:

Akaroa Salmon (NZ) Ltd	Michael, Keith
Ambush Marine	Mountier, Susan Jessie and Cathy
Anatimo Trust	New Zealand Conservation Authority
Aotea Marine Farms	New Zealand Law Society
Aquaculture New Zealand	New Zealand Marine Sciences Society
Auckland Council	New Zealand Native Fisheries Ltd
Auckland Regional Public Health Service	Ngati Makino Iwi Authority
Banks Peninsula Growers Group	Ngati Pikiaro Environmental Society
Bay of Plenty Regional Council	NZ Rock Lobster Industry Council and the Paua Industry Council
Biomarine Ltd	Oldham, Kevin
Black Shag Oysters	Orr, Keith
Bluff Oyster Management Company Ltd	Otago Regional Council
Brightlands Bay Aquaculture Ltd	Pare Hauraki Kaimoana
Britton, Robin	Parua Bay Oysters
Campbell, Helen	Port Gore Group
Clark, Dana	Real Journeys Ltd
Coromandel Marine Farmers Association	Red Sky Trust
Coromandel Mussel Kitchen	Resource Management Law Association
Cosslett, Richard	Royal Forest and Bird Protection Society (Nelson-Tasman Branch)
Cranwell, Rod and Daphne	Royal Forest and Bird Protection Society of New Zealand Inc.
East Bay Conservation Society	Royal New Zealand Society for the Prevention of Cruelty to Animals Inc.
Eastern Seafarms Ltd and Whakatohea Mussels (Opotoki) Ltd	Sanford Ltd and North Island Mussel Ltd
Environment and Conservation Organisations of NZ Inc	Schofield Seafarms
Environment Southland	Smith, Rhys
Environment Defence Society	Southland Conservation Board
Forest and Bird Golden Bay Branch	Southland Regional Development Strategy
Friends of Golden Bay	Surendran, Nathan
Friends of Nelson Haven and Tasman Bay Inc	Taniwha Oysters Ltd
Gold Ridge Marine Farm Ltd	Tasman District Council
Griffiths, Liz	Te Arawa River Trust
Gulf Mussel Farms	Te Atiawa Manawhenua Ki Te Tau Ihu Trust
Hammond, Tyson	Te Ohu Kaimoana
Hellstrom, John and Judy	Te Roroa Commercial Development Company
Hoos, Katherina	Te Runanga o Ngai Tahu

Huia Aquaculture Ltd	Te Runanga o Ngati Kuia
Jade River Oysters	Te Runanga o Ngati Ruanui Trust
J B Walker Family Trust	Te Runanga o Ngati Whatua
James, Kate	Te Runanga o Toa Rangitira
James, Peter	Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)
James Beard Environmental Trust	The New Zealand King Salmon Co. Ltd
Johnston, Robina L Rickard	Tikapa Moana Enterprises Ltd
Kaiaua Citizens and Ratepayers Association	Tilling, Moira and Andrew
Kenepuru & Central Sounds Residents Association	Transpower New Zealand Ltd
Keown, Paul Ashley	Tui Spiritual and Educational Trust and Tui Community
Kiwi Buoys	Vaughan, Alan
Local Government New Zealand	Vaughan, Jo-Anne
Marine Farming Association	Verrill, Janet
Marlborough Aquaculture Ltd	Waikato Regional Council
Marlborough District Council	Wallace, Heather
Marlborough Environment Centre	Whakatu Resources Ltd and Kono NZ LP
Mather, Gordon	West Coast Regional Council
Maungaharuru Tangitu Trust	Westpac Mussels Distributors Ltd
McKie, John	Willowbrook
Mead, Donald	

Appendix C: Activity classes under the RMA

The RMA classifies activities into six primary categories which determine whether a resource consent is required for an activity to be carried out, and if so, how the decision-maker should assess a consent application and whether a resource consent must, may or may not be granted.

Permitted activity

Under section 87A(1) of the RMA, if an activity is provided for as a permitted activity, a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

Under section 68A of the RMA, a regional coastal plan cannot include a rule which authorises an aquaculture activity as a permitted activity.

Controlled activity

Under section 87A(2) of the RMA, if an activity is provided for as a controlled activity, a resource consent is required for the activity and:

- a) the decision-maker must grant a resource consent except in certain circumstances, including if the activity is likely to have adverse effects that are more than minor on the exercise of a protected customary right and no exception applies²¹⁷
- b) the decision-maker's power to impose conditions on the resource consent is restricted to the matters over which control is reserved
- c) the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

Restricted discretionary activity

Under section 87A(3) of the RMA, if an activity is provided for as a restricted discretionary activity, a resource consent is required for the activity and:

- a) the decision-maker's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted; and
- b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

Discretionary activity

Under section 87A(4) of the RMA, if an activity is provided for as a discretionary activity, a resource consent is required for the activity and:

- a) the decision-maker may decline the consent or grant the consent with or without conditions; and
- b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

Under section 87B, a consent application must be treated as a discretionary activity if a resource consent is required for the activity but there is no relevant rule in a plan or proposed plan or if a rule in a proposed plan describes the activity as a prohibited activity and the rule has not yet become operative.

Under section 127, an application to change or cancel conditions of an existing resource consent is treated as a discretionary activity.

Non-complying activity

Under section 87A(5) of the RMA, if an activity is provided for as a non-complying activity, a resource consent is required for the activity and the decision-maker may:

²¹⁷ See section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011.
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- a) decline the consent; or
- b) grant the consent, with or without conditions, but only if the decision-maker is satisfied that the requirements of section 104D are met²¹⁸ and the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

Prohibited activity

Under section 87A(6) of the RMA, if an activity is described as a prohibited activity, then:

- a) no application for a resource consent may be made for the activity; and
- b) the decision-maker must not grant a consent for it.

Under section 87B, a consent application must be treated as a discretionary activity if a rule in a proposed plan describes the activity as a prohibited activity and the rule has not yet become operative.

²¹⁸ That is, that either the adverse effects of the activity on the environment will be minor, or that the activity will not be contrary to the objectives of the plan or proposed plan

Appendix D: List of questions posed in the proposed NES discussion document

The discussion document asked a range of general and specific questions of submitters, as follows:

Question 1: Do you think an NES for marine aquaculture, including guidance material, is required? Alternatively do you think the status quo (where regional councils decide the activity status for replacement consents for existing marine farms and consents for change of species which can vary from controlled to non-complying) should be maintained?

Question 2: Do you think restricted discretionary is an appropriate status for replacement consents for existing marine farms? How would other activity statuses address the issues identified in section 3 of the discussion document?

Question 3: Does the NES need to provide a full rule framework, including discretionary activity rules for those marine farms that cannot meet the requirements to be a restricted discretionary activity?

Question 4: Do provisions covering replacement consents for existing marine farms where supplementary feeding occurs require additional terms to define what qualifies to be a restricted discretionary activity?

Question 5: Do you have any feedback on the analysis of effects contained in Appendix G [of the NES discussion document]?

Question 6: Should applications for replacement consents for existing marine farms where supplementary feeding occurs be treated differently under the proposed NES or not addressed at all?

Question 7: Do the provisions covering replacement consents for existing marine farms where supplementary feeding occurs require additional matters of discretion?

Question 8: Should the extent of an acceptable overlap of existing marine farms with outstanding areas due to margins of error in mapping be defined?

Question 9: Outstanding natural features, outstanding natural landscapes and areas of outstanding natural character have been identified as requiring a specific matter of discretion because of the direction provided by the NZCPS 2010. Are there other areas/values that should also be identified, such as those listed in Policy 11 of the NZCPS 2010?

Question 10: If so, what are these areas/values and what are the potential effects of concern caused by existing marine farms on those areas/values?

Question 11: Should the activity status be different for replacement consents for existing marine farms in outstanding natural features, outstanding natural landscapes and areas of outstanding natural character? If so, what should it be?

Question 12: Are there certain types of aquaculture for which replacement consent applications should be publicly notified?

Question 13: Are there advantages or disadvantages to allowing councils to take a more lenient approach that you would like us to be aware of?

Question 14: Do you agree that the areas zoned specifically for aquaculture in Tasman and Waikato should be exempted from the provisions of the proposed NES relating to replacement consents for existing marine farms?

Question 15: Do you agree that there are sites that should be recognised in the proposed NES because of their particular importance to aquaculture? If so, what sort of provisions do you think would be appropriate?

Question 16: Are there other ways in which the proposed NES could usefully recognise council's future planning processes?

Question 17: What are your thoughts on the size restriction that is proposed to apply to realignments covered by the proposed NES?

Question 18: Is there further guidance that should be provided in the proposed NES in relation to realigning existing marine farms?

Question 19: Are there other specific matters that councils should be able to consider for applications to realign existing marine farms? Are the matters that have been identified all relevant?

Question 20: Should the proposed NES address change in farmed species?

Question 21: Should the proposed NES limit the species it relates to?

Question 22: Are the categories based on change in structure an appropriate approach? If not, can you suggest any other approach that might be suitable?

Question 23: Are there any other categories [that should be considered for the change of species provisions]?

Question 24: Should herbivorous finfish be treated differently from carnivorous finfish?

Question 25: Is restricted discretionary an appropriate status for most changes in species?

Question 26: Should spat catching farms be excluded [from the change of species provisions]?

Question 27: Are there any other forms of farming or species that should be excluded [from the change of species provisions]?

Question 28: Do you have any feedback on the scope of matters of discretion?

Question 29: Should change of species involving finfish require additional matters of discretion?

Question 30: Outstanding natural features, outstanding natural landscapes and areas of outstanding natural character have been identified as requiring a specific matter of discretion because of the direction provided by the NZCPS 2010. Are there other areas/values that should also be identified?

Question 31: Should the activity status be different for changing species on existing marine farms in outstanding natural features, outstanding natural landscapes and areas of outstanding natural character? If so, what should it be?

Question 32: Are there certain species or types of species where consent applications should be publicly notified?

Question 33: Do you think it is necessary for all marine farms to prepare, implement and keep up to date Biosecurity Management Plans (BioMP)? What concerns would you have if it were required? What (if any) exceptions should be made and why?

Question 34: Is the deadline of 31 January 2025 appropriate, and why?

Question 35: Is a nationally consistent approach to BioMPs necessary to achieve an appropriate level of marine farm biosecurity nationally or should regional differences be accommodated?

Question 36: Do you think the BioMP template in MPI's Aquaculture Biosecurity Handbook covers all the matters that are needed? What if any changes would you make and why? What level of detail do you think is needed for BioMPs to be effective?

Question 37: Is requiring a BioMP using an NES under the RMA the best approach to nationally requiring a Biosecurity Management Plan for aquaculture?

Question 38: How would regional councils certify, audit and enforce BioMPs? Could external professionals be used to provide the required skills and expertise?

Question 39: Is it appropriate for existing coastal permits to be reviewed and required to prepare BioMPs in order to comprehensively address biosecurity risks to industry and New Zealand's wider marine environment? If not, why not?

Question 40: Is marine farm monitoring and reporting as well as external auditing and enforcement of BioMP implementation and effectiveness justified? If not why not?

Question 41: Have the range of costs and benefits arising from the proposed national environmental standard, and who might bear the costs or receive the benefits, been accurately reflected? Are there any costs and benefits that have been overlooked?

Question 42: Are the estimates of costs and benefits accurate? Do you have information on costs and benefits that could assist the second stage of our assessment (of the impacts of the final proposal)? Do you have any information on costs and benefits that have not been quantified at this stage?

Appendix E: Specific criteria and triggers for what constitutes a reef and biogenic habitat for the purpose of the proposed NES

The table on the following page provides specific criteria / triggers to be included in the proposed NES to provide clearer guidance about minimum quality and scale for reefs and biogenic habitats.

Note: these criteria and triggers were fine-tuned as a result of exposure draft feedback, including the addition of a separate definition for 'regionally significant benthic species', recognising that these are not all captured by the 'biogenic habitat' definition, criteria and triggers.

Value	Criteria (Descriptors/triggers)	Explanation ²¹⁹
		<p><u>General notes and interpretation:</u></p> <p>a) These triggers are for determining when additional survey work and assessment are required for a restricted discretionary consent. They do not necessarily infer significance nor whether a farm’s consent should be changed.</p> <p>b) Quality and significance should be left to the consent process and judged at a regional or local level. Guidance documentation would be helpful in this regard.</p> <p>c) Detection of reef or biogenic habitat must be by best practice methodology for rapid assessment surveys including, where appropriate:</p> <ul style="list-style-type: none"> • Sonar; • Drop camera photography; • Remote videography; and • SCUBA diving. <p>d) The “footprint” of a marine farm:</p> <ul style="list-style-type: none"> • <i>Includes</i> the total area directly under and between all marine farming production structures (e.g. longlines, cages, and racks); • <i>Excludes</i> any anchoring zone where warps and anchors are positioned.
Reef habitat	1. Any reef detected within the area of interest.	<p>a) Area of interest <i>includes</i> the footprint of a marine farm plus:</p> <ul style="list-style-type: none"> • 50 metres around the footprint (all farms except fish farms); or • An area around the footprint of fish farms defined by best practice methodology (e.g. deposition modelling). <p>b) Reef includes all types of hard substrate such as bedrock, boulders and cobbles, and the marine species living on or over the reef.</p>
Biogenic habitat	1. One specimen detected within the area of interest of any of the following marine species: <ul style="list-style-type: none"> • Benthic species: 	<p>a) Area of interest <i>excludes</i> the footprint, but <i>includes</i>:</p> <ul style="list-style-type: none"> • 50 metres around the footprint (all farms except fish farms); or

²¹⁹ Note: key parts of this explanation should be used in the guidance documents.

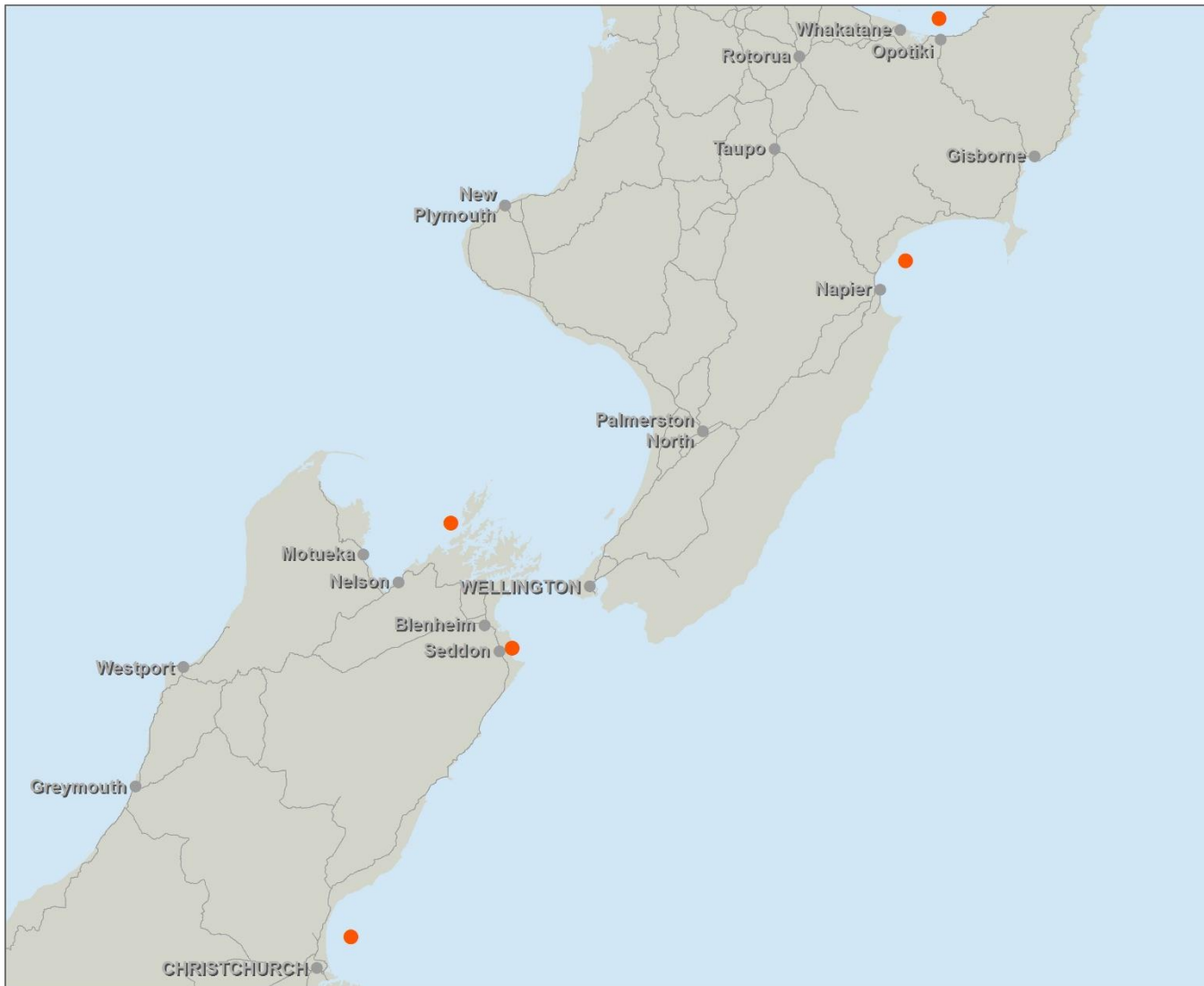
Value	Criteria (Descriptors/triggers)	Explanation ²¹⁹
	<ul style="list-style-type: none"> ○ protected under the Wildlife Act 1953; ○ classified as threatened under the New Zealand Threat Classification System; ○ identified by a regional council as regionally important. <ul style="list-style-type: none"> • Rhodoliths. <ol style="list-style-type: none"> 2. Areas of shell hash identified by a regional council as regionally important. 3. Any biogenic species or colony that is: <ul style="list-style-type: none"> • Large/massive in growth form, and • Prominently raised above the surrounding seabed, and • ≥0.5 m across. 4. Any discrete bed of biogenic habitat ≥25 m² within the area of interest (subject to the trigger levels in criterion 6). 5. Separate patches of biogenic habitat totalling ≥ 25 m² within the area of interest (subject to the trigger levels in criterion 6). 6. For the purposes of interpreting criteria 4 and 5, biogenic habitat occurs when one or more of the following trigger levels are estimated to be met: <ul style="list-style-type: none"> • Mean cover ≥10% for the following “bed-forming” features (singly or in combination): <ul style="list-style-type: none"> ○ Colony forming animals. ○ Macroalgae and seagrass. ○ Natural shell hash. • Mean density ≥1 individual/m² of large biogenic habitat-forming species (e.g. horse mussels, hydroid trees; but excluding individual tube worms). 	<ul style="list-style-type: none"> • An area around the footprint of fish farms defined by best practice methodology (e.g. deposition modelling). <ol style="list-style-type: none"> b) % cover and density figures represent an amalgam of metrics from Department of Conservation 1995. Note some are less cautious (i.e. 10% rather than 5%), but a single metric is simpler and 10% is probably acceptable given the NES is about renewals rather than new sites. c) One or more triggers may apply (e.g. % cover and/or density for tubeworms and sponges). d) Biogenic habitat ≥25 m² (Criteria 4 and 6): the mean trigger level for biogenic habitat applies for the 25 m² of seabed in the visually densest part of the bed. This approach is intended to ensure the densest part of the bed is used to calculate the mean. e) Separate patches of biogenic habitat totalling ≥ 25 m² (Criteria 5 and 6): the mean trigger level for biogenic habitat is the pooled average from the visually densest 5 m² from each of the visually densest patches (up to 5 patches). This approach is intended to ensure the densest part of each of the densest patches is used to calculate the mean. f) Shell hash: <ul style="list-style-type: none"> • <i>Includes</i> aggregations of predominantly whole dead shells (e.g. dog cockles); • <i>Excludes</i> shell from a marine farm. g) Examples of benthic species identified by a regional council as regionally important include uncommon or rare species within a region or bioregion; e.g. giant lampshells and burrowing anemones in the Marlborough Sounds h) Examples of biogenic species or colonies with a large/massive growth form include large sponges (e.g. <i>Ancorina</i> sp.) and tube worm mounds (e.g. <i>Galeolaria hystrix</i>). Colonies may be single or mixed-species. i) Colony forming animals include bryozoans, sponges, tube worms j) Benthic marine species currently protected under the Wildlife Act (Schedule 7A) are listed below, but because this list may change in the future it would be preferable for the NES to refer to them with a legal reference rather than specifically.

Value	Criteria (Descriptors/triggers)	Explanation ²¹⁹
		<p style="text-align: center;">Schedule 7A Marine species declared to be animals</p> <p style="text-align: center;"><small>Schedule 7A: replaced, on 8 July 2010, by clause 3 of the Wildlife Order 2010 (SR 2010/159).</small></p> <p style="text-align: center;">CNIDARIA</p> <p>Anthozoa (corals and sea anemones)—</p> <p style="padding-left: 20px;">Black corals—</p> <p style="padding-left: 40px;">all species in the order Antipatharia</p> <p style="padding-left: 20px;">Gorgonian corals—</p> <p style="padding-left: 40px;">all species in the order Gorgonacea</p> <p style="padding-left: 20px;">Stony corals—</p> <p style="padding-left: 40px;">all species in the order Scleractinia</p> <p>Hydrozoa (hydra-like animals)—</p> <p style="padding-left: 20px;">Hydrocorals—</p> <p style="padding-left: 40px;">all species in the family Stylasteridae</p>

Appendix F: Map showing existing offshore farms

The following map shows the location of the existing farms which are represented by part (a) of the offshore marine farm definition in the proposed NES, that is:

- a) For existing marine farms initially granted consent prior to the date of gazettal of the NES, the five current offshore farms (located in Bay of Plenty (off the coast of Opotiki), Hawke's Bay, Marlborough (a site off D'Urville Island and a site in Clifford Bay), and Canterbury (Pegasus Bay))
- b) [Refer to Appendix G for these maps]

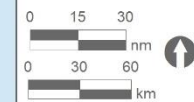


Offshore Marine Farms



Legend

- Offshore marine farm consented area locations



1:3,340,000

Coordinate System: NZTM

Date: 11/05/2017

Produced by: Spatial Analysis Solutions

Ref: r170105

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Ministry for Primary Industries
Manatū Ahu Matua



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Appendix G: Maps showing part (b) of the proposed 'offshore marine farm' definition

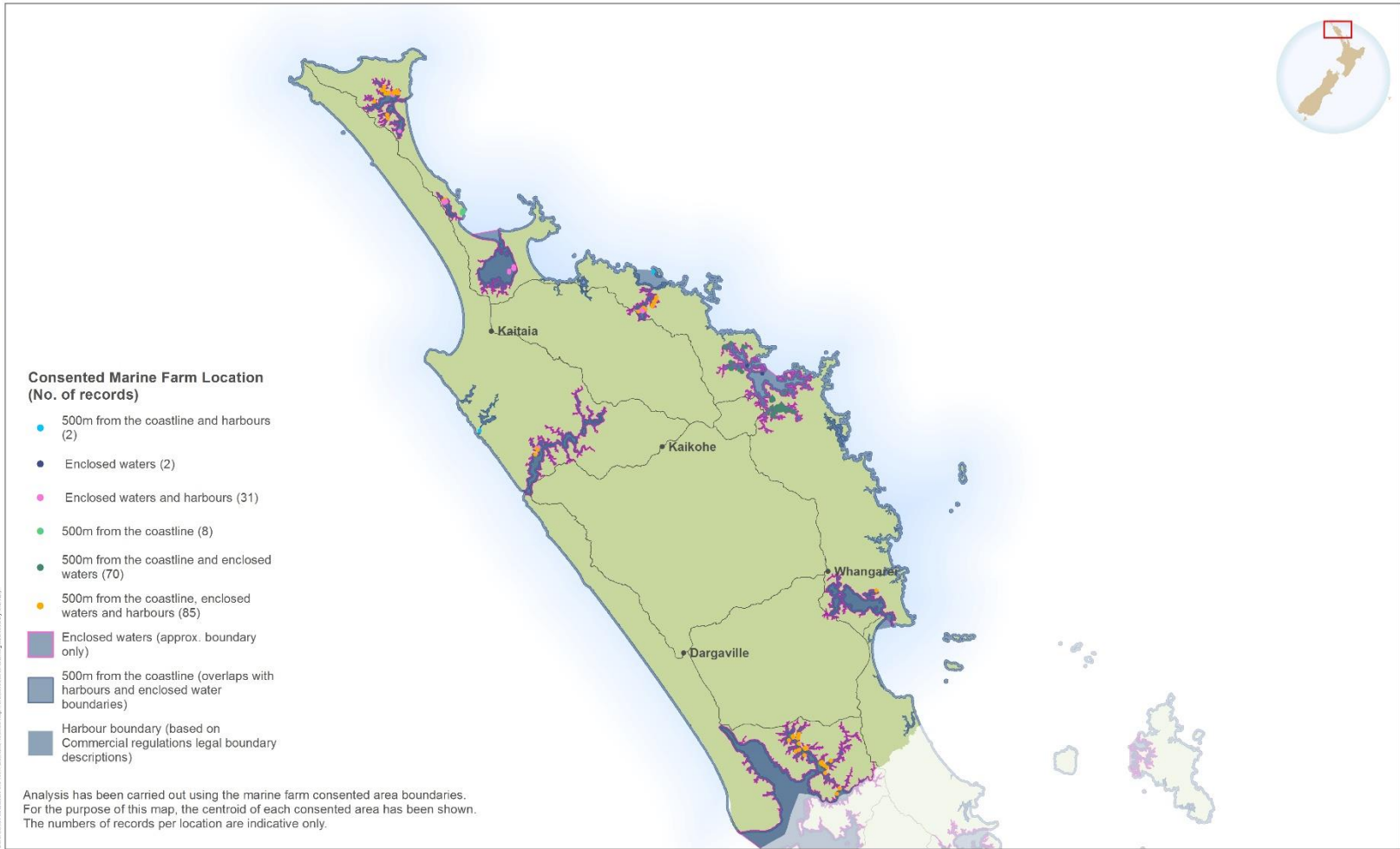
The following maps show the visually represent part (b) of the offshore marine farm definition in the proposed NES, that is:

- a) [Refer to Appendix F for this map]
- b) For marine farms initially granted consent after the date of gazettal of the NES, marine farms that are not located:
 - a. within harbours [based on the legal boundary descriptions contained in Fisheries (Auckland Kermadecs Commercial Fishing) Regulations 1986, Fisheries (Central Area Commercial Fishing) Regulations 1986, Fisheries (Challenger Area Commercial Fishing) Regulations 1986, Fisheries (South-East Area Commercial Fishing) Regulations 1986, and Fisheries (Southland and Sub Antarctic Areas Commercial Fishing) Regulations 1986]
 - b. within the enclosed water limits [as defined in Maritime NZ's Maritime Rule 20, accessed here: <https://www.maritimenz.govt.nz/rules/part-20/>]
 - c. within Golden Bay (line between Farewell Spit lighthouse and Separation Point)
 - d. within Tasman Bay (line between Guilbert Point and Pepin Island)
 - e. within the Firth of Thames (line between Cave Point and Waimango Point)
 - f. within 500 metres of the coast (including islands) outside of the enclosed water limits

Notes:

- These maps only cover regions (or parts of regions) where aquaculture is currently present. The definition in the proposed NES applies to all regions in New Zealand.
- This definition was refined during the Parliamentary Counsel Office drafting phase, primarily to avoid referencing regulations and rules external to the RMA.

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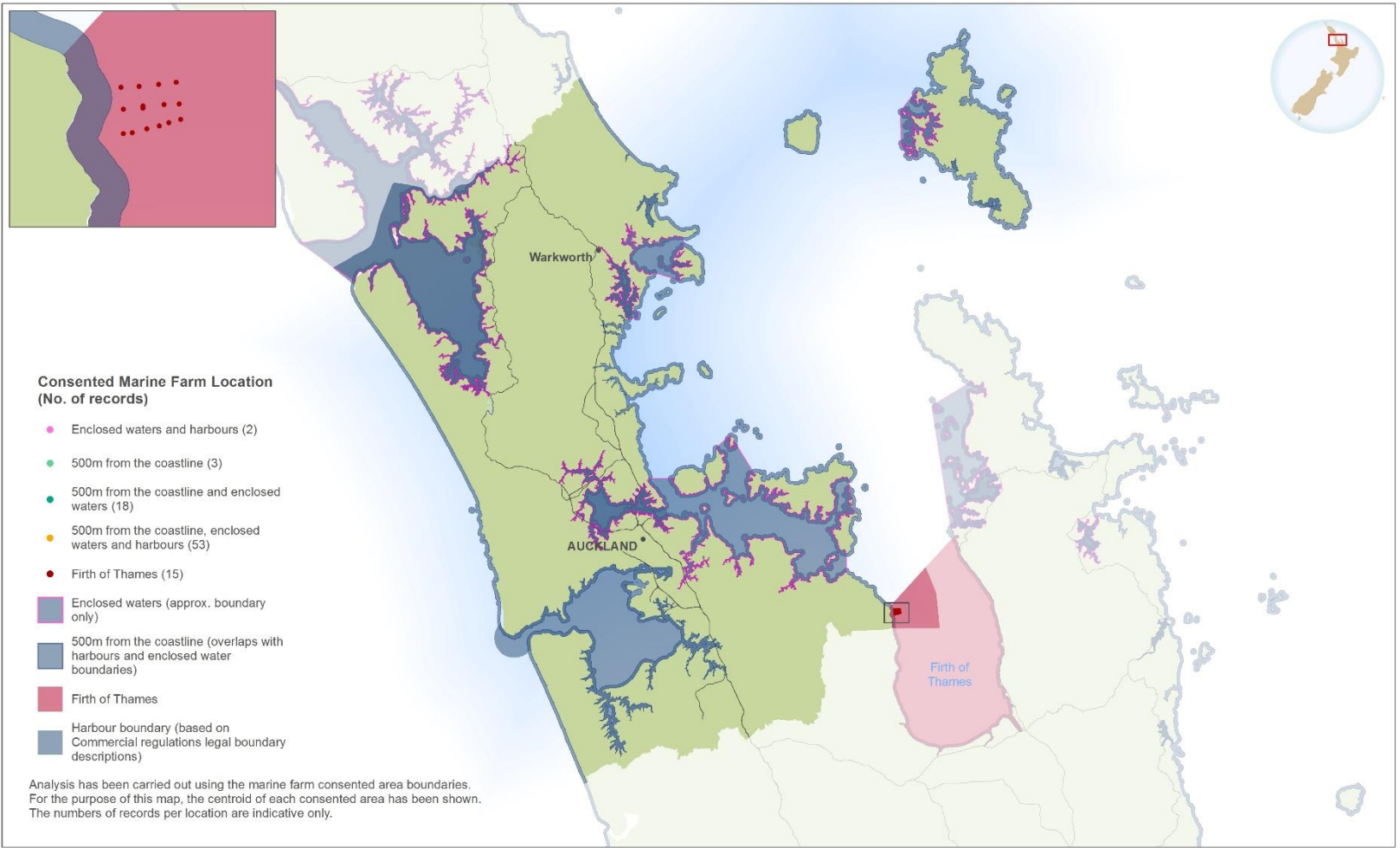
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1:1,000,000
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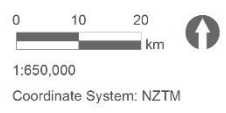
Northland Region Current Consented Marine Farms

Date: 18/06/2018
Produced by: Spatial Intelligence
Reference: r170285

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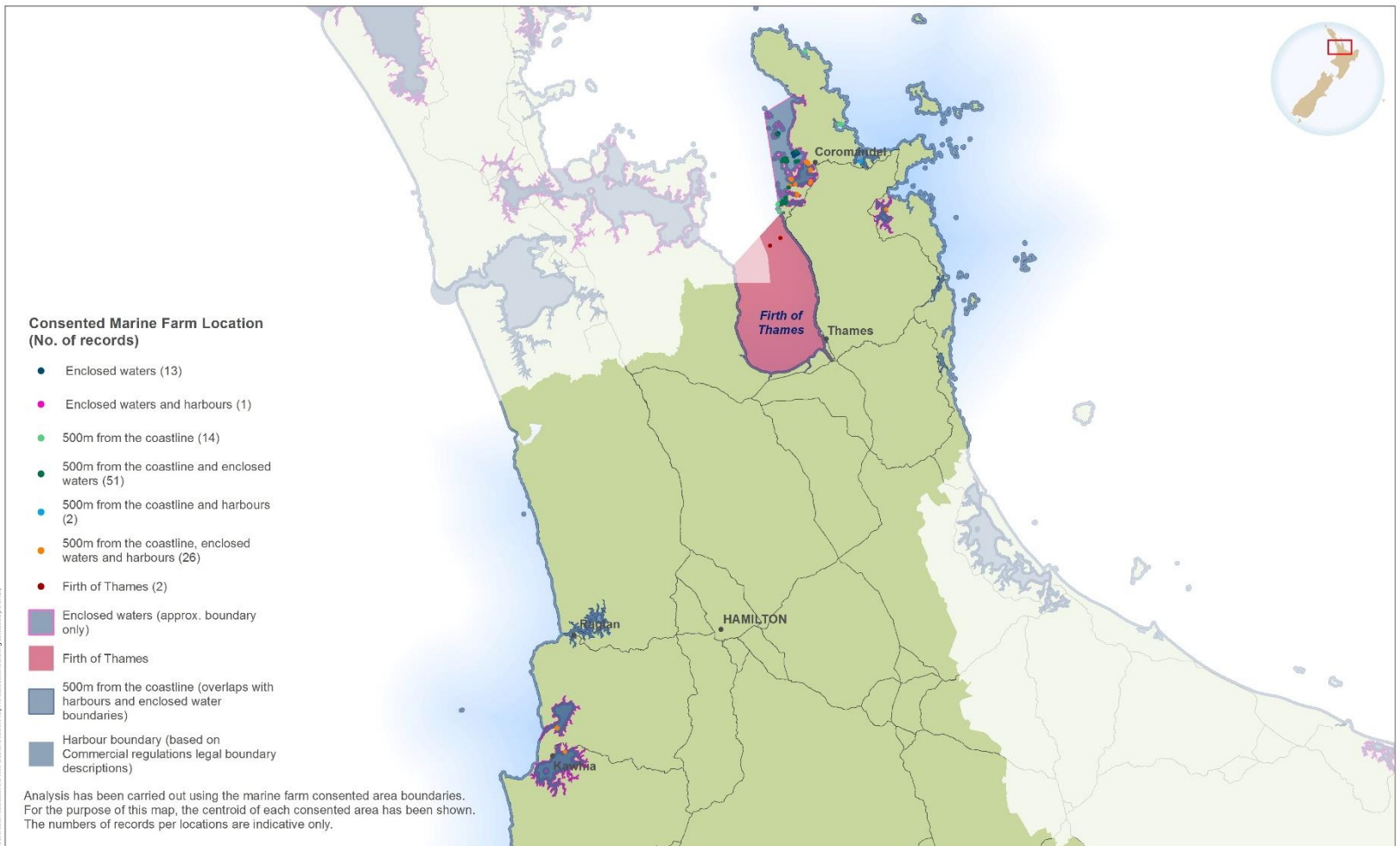


Auckland Region Current Consented Marine Farms



Date: 20/06/2018
Produced by: Spatial Intelligence
Reference: r170285

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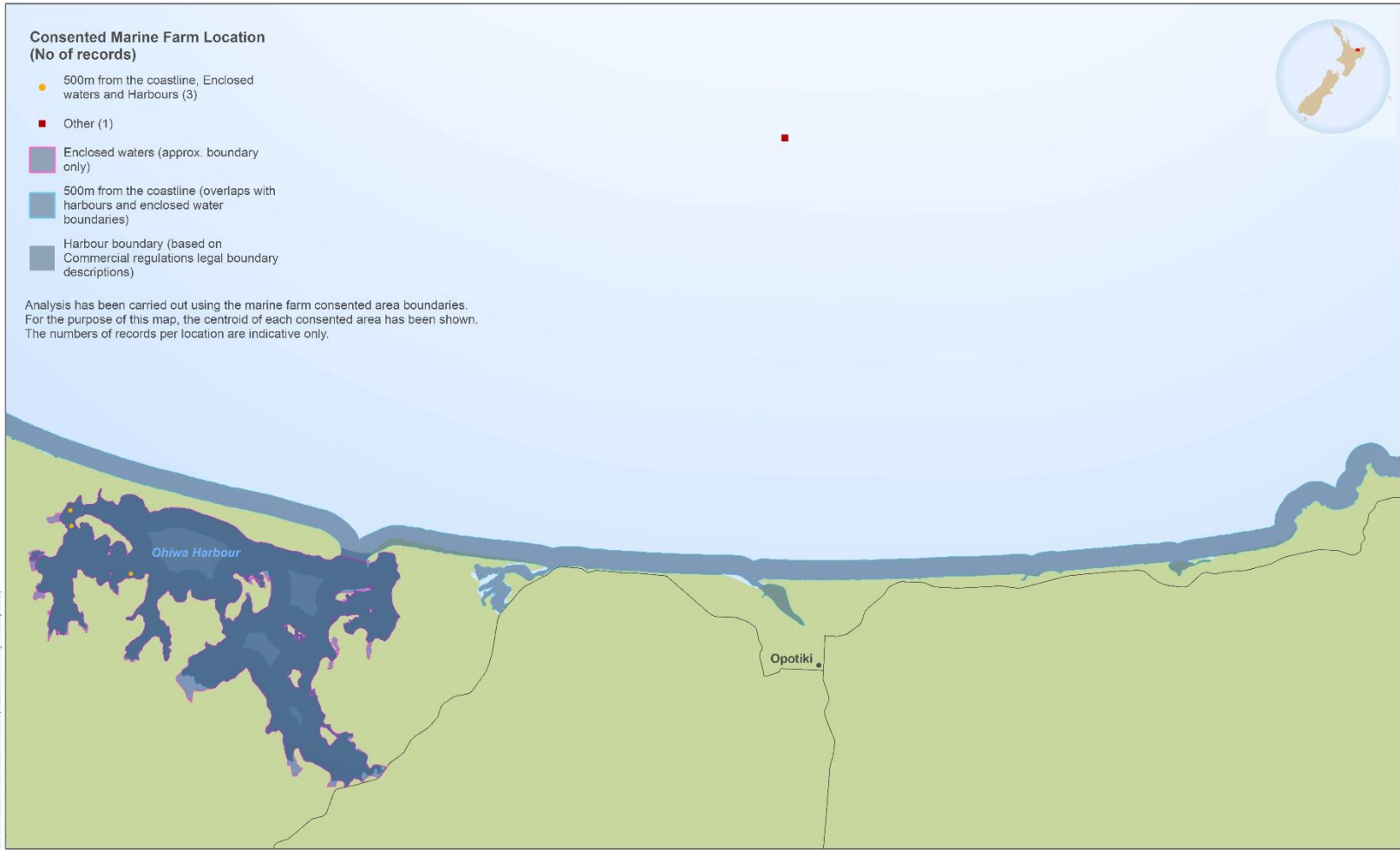


Waikato Region Current Consented Marine Farms

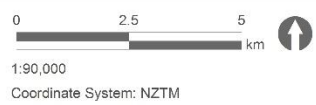


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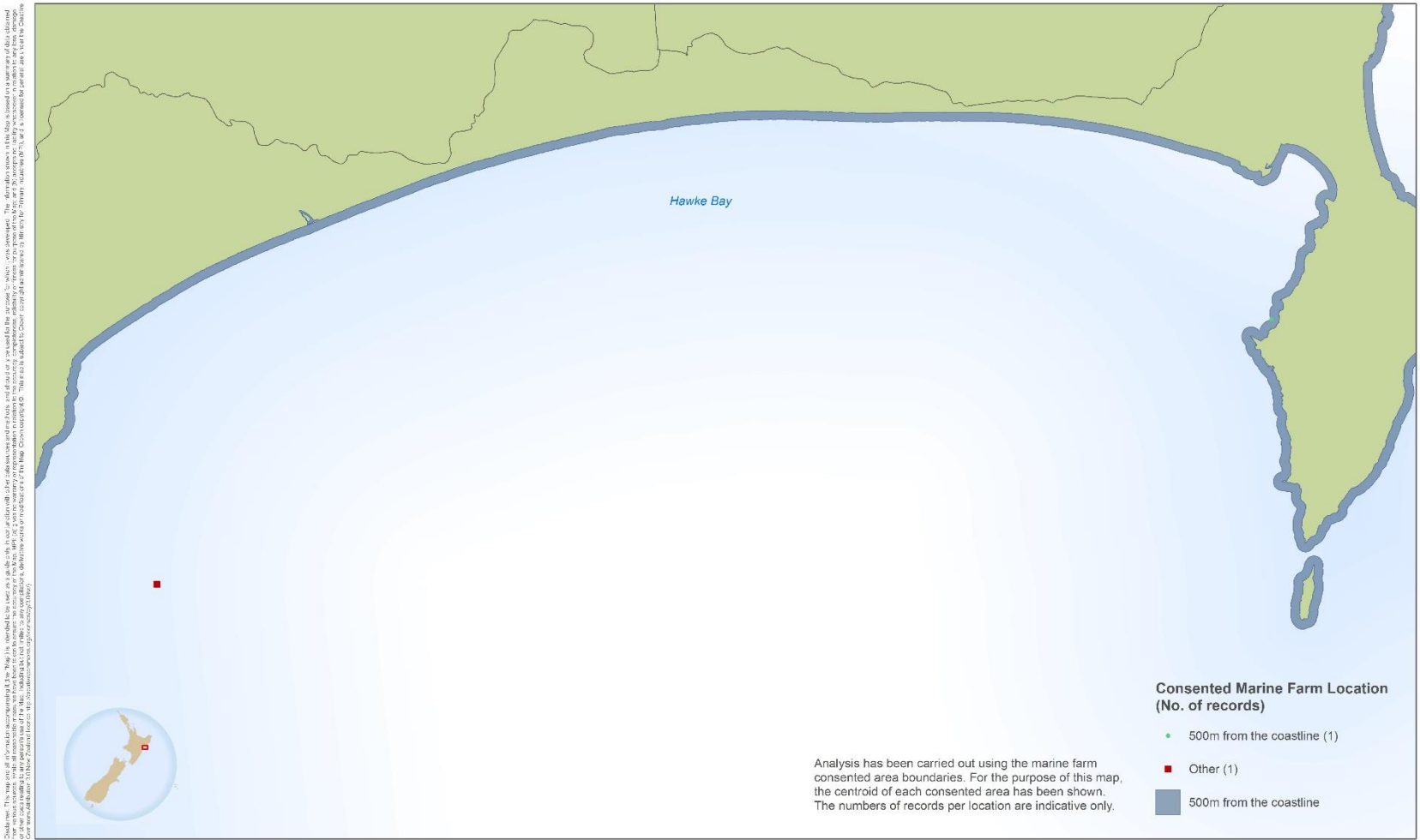
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Ohiwa Harbour
Bay of Plenty Region Current Consented Marine Farms

Date: 24/05/2018
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Tiri a Tangaroa

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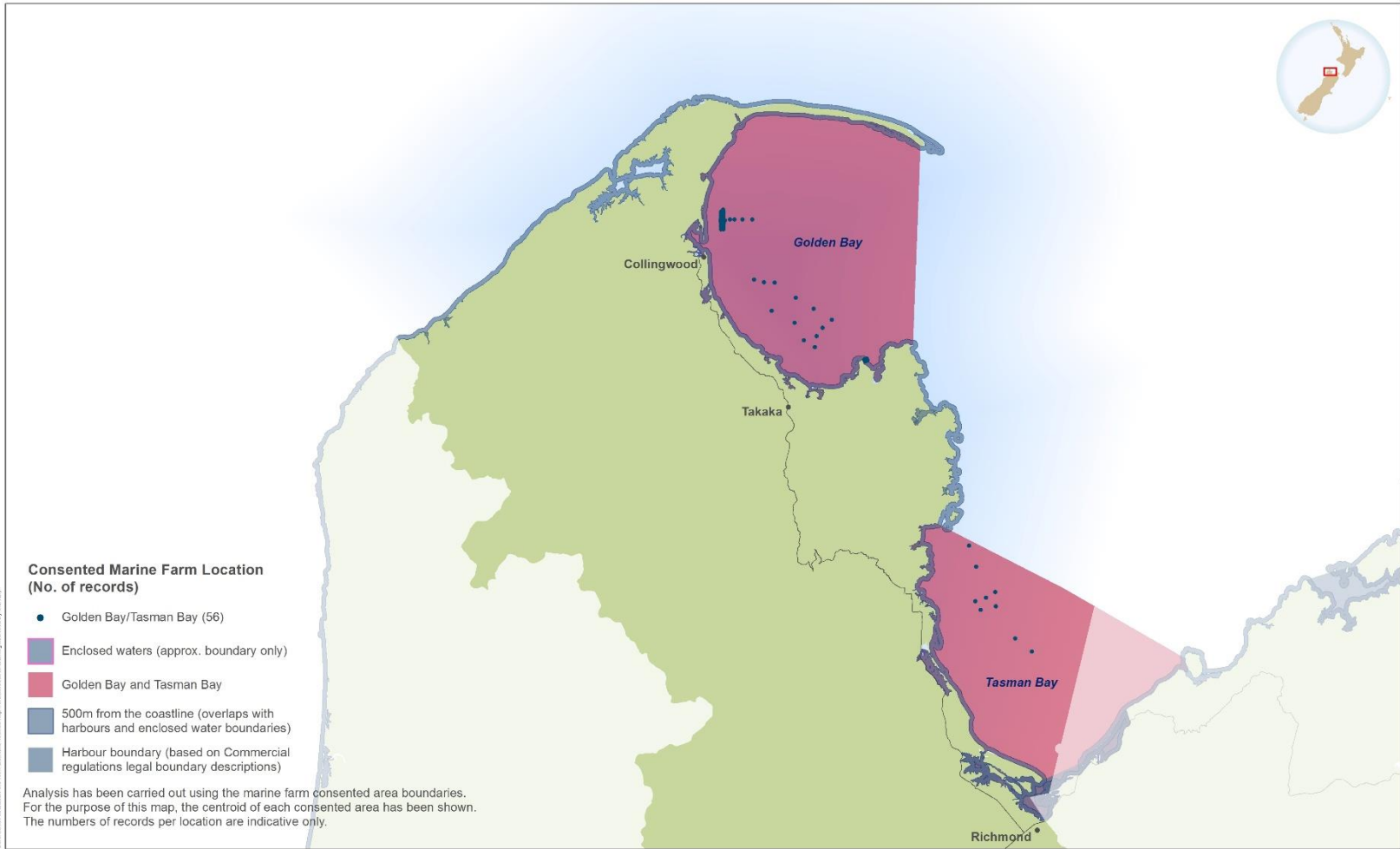
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Coordinate System: NZTM

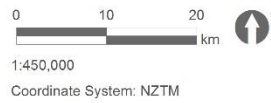
Hawke's Bay Region Current Consented Marine Farms

Date: 24/05/2018
Produced by: Spatial Intelligence
Reference: r170285

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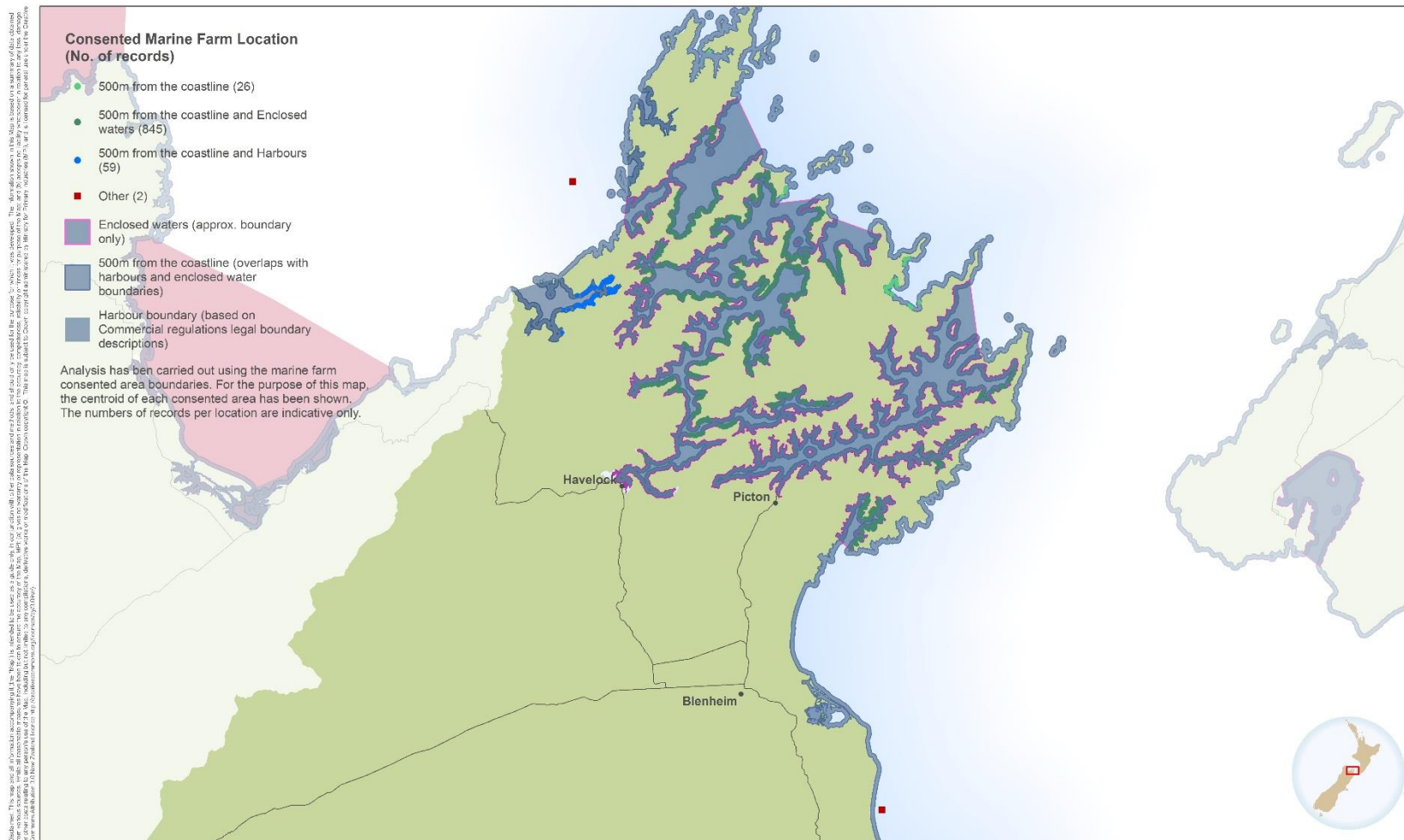
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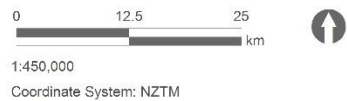
Tasman Region Current Consented Marine Farms



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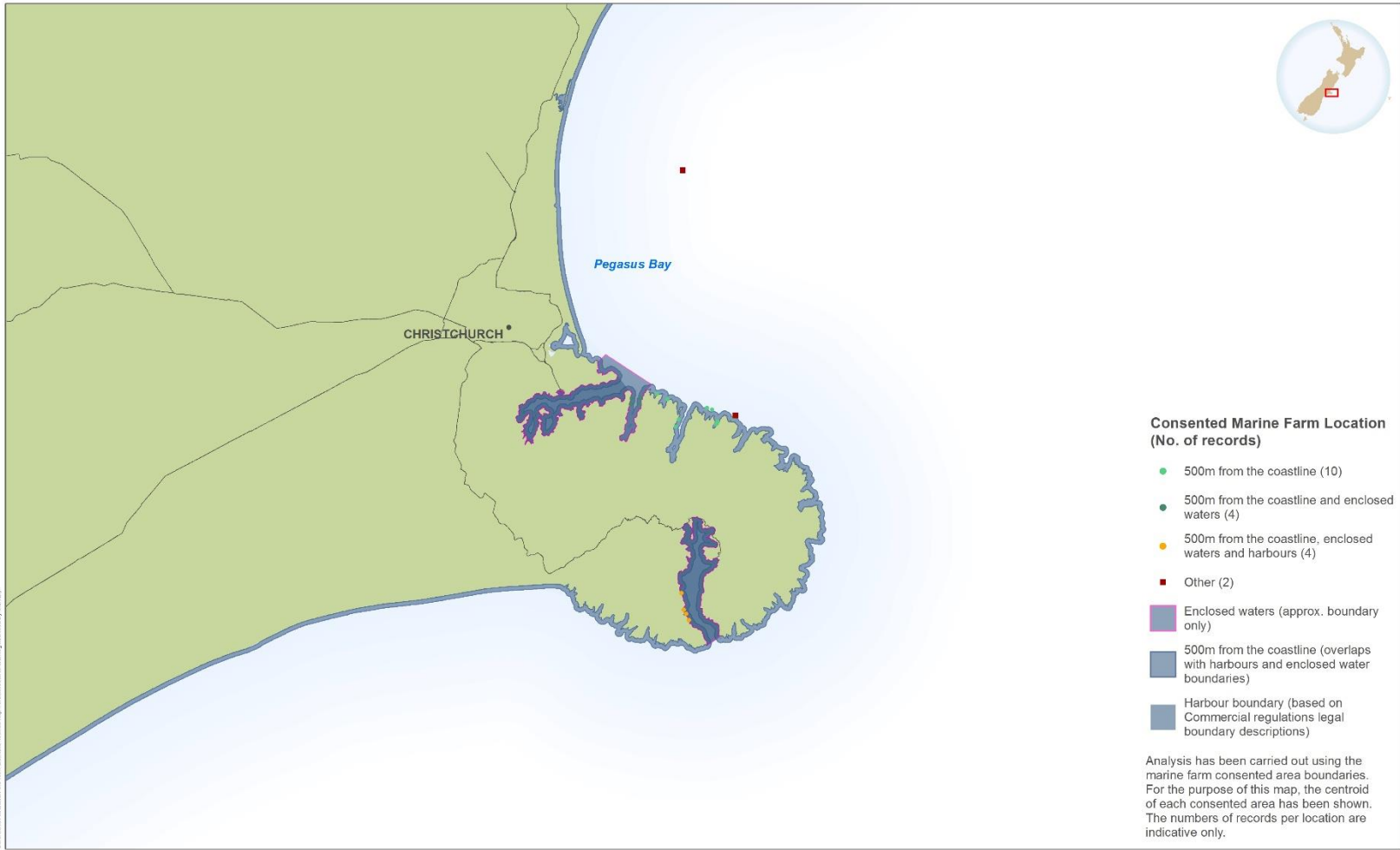


Marlborough Region Current Consented Marine Farms

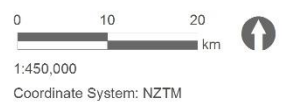


Date: 24/05/2018
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Reference: r170285

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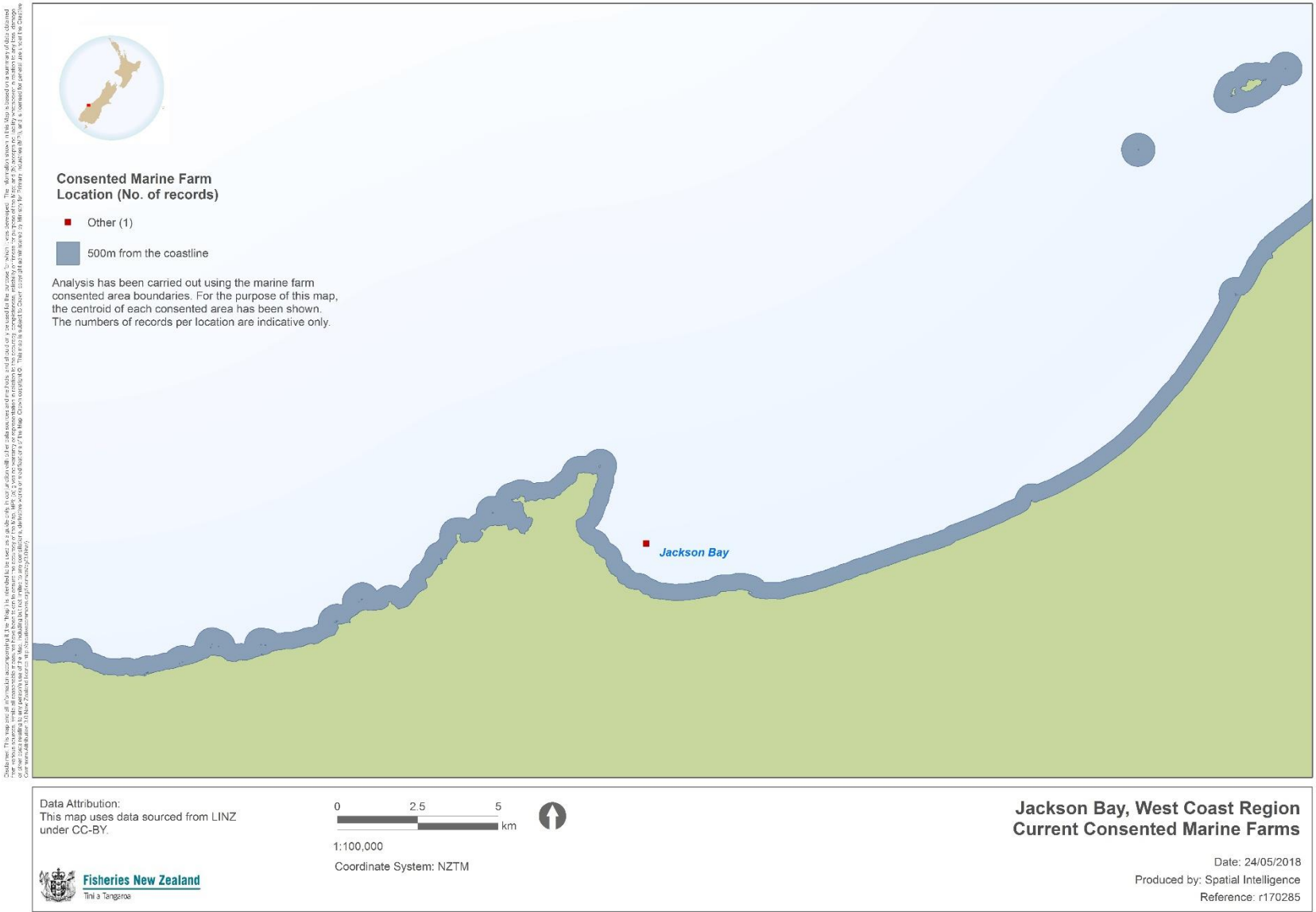
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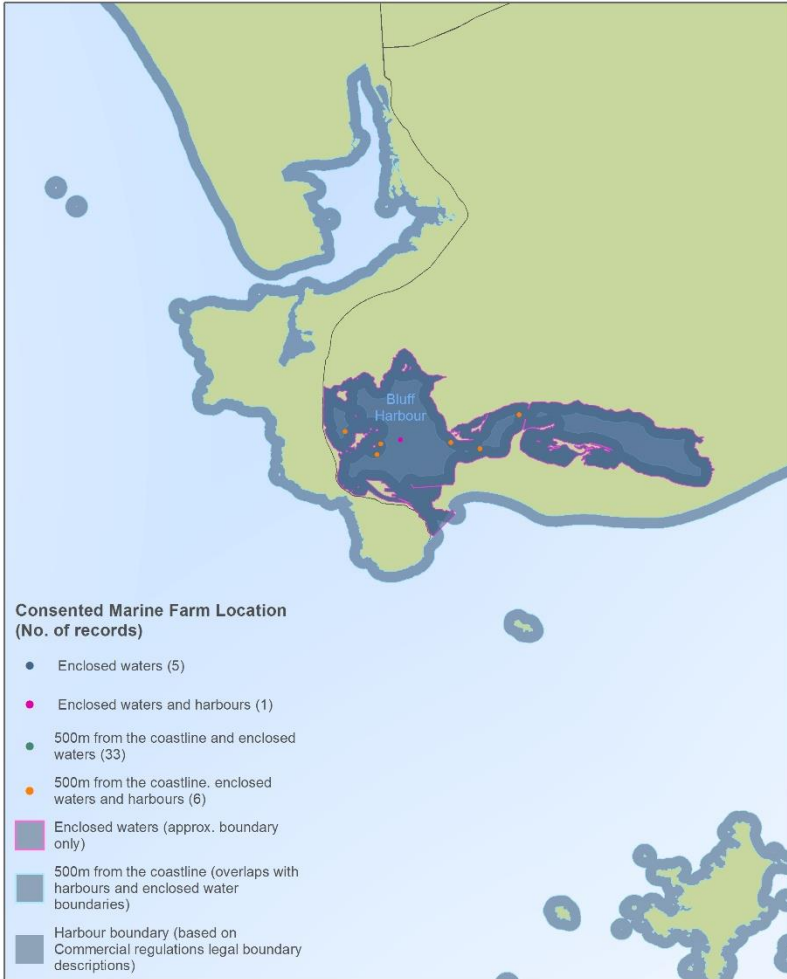
Canterbury Region Current Consented Marine Farms



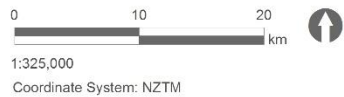
Date: 18/06/2018
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**Stewart Island and Bluff Harbour Southland Region
Current Consented Marine Farms**

Date: 18/06/2018
Produced by: Spatial Intelligence
Reference: r170285

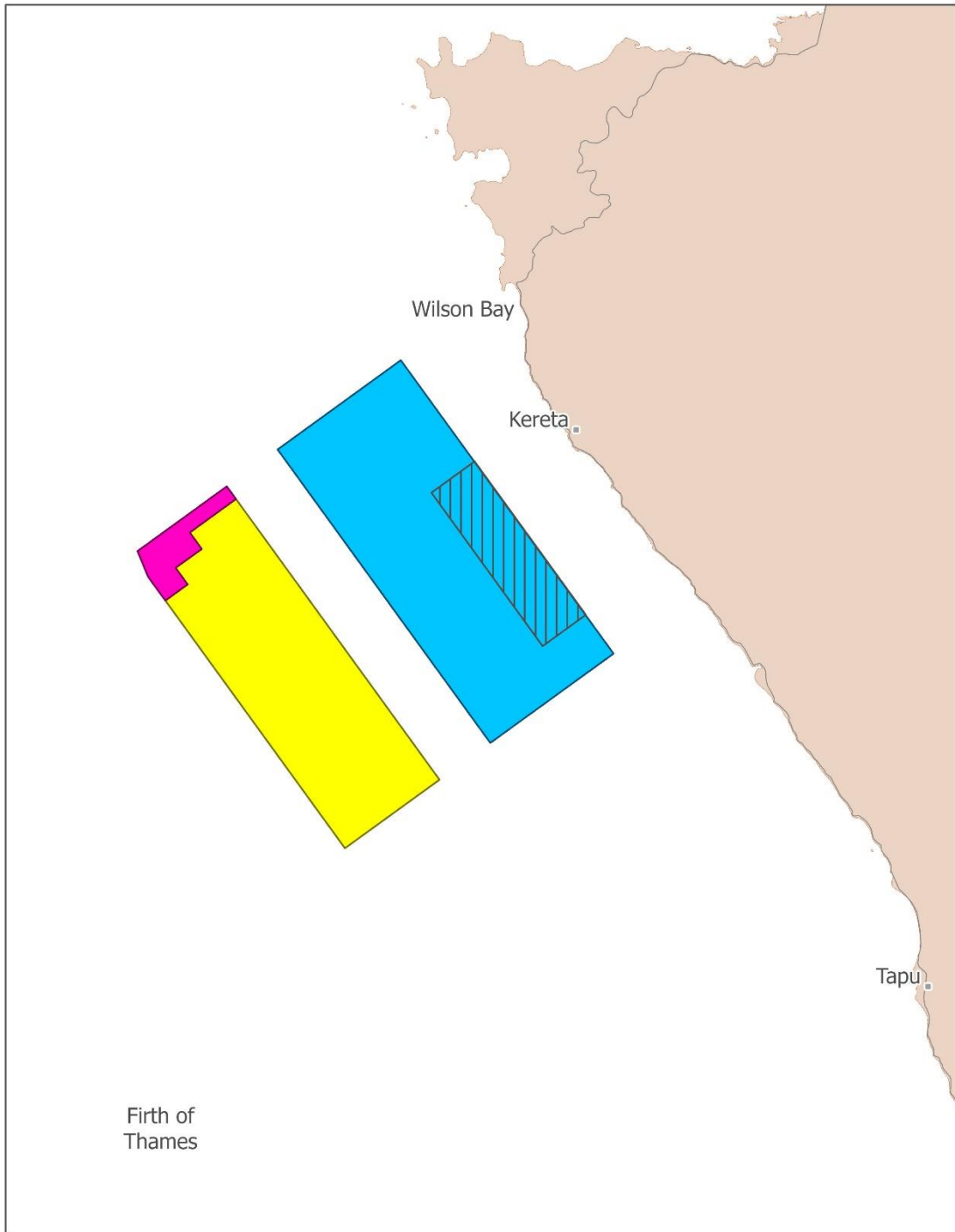




Appendix H: Maps showing Wilson Bay Marine Farming Zone, Tasman Aquaculture Management Areas, and Wainui Bay spat catching farms

The following map shows the location of the following marine farms / marine farming zones which are proposed to be exempted from the replacement consent, realignment and change of species provisions of the proposed NES:

- Wilson Bay Marine Farming Zone (Waikato region)
- Tasman Aquaculture Management Areas (Tasman district)
- Wainui Bay spat catching farms (Tasman district)

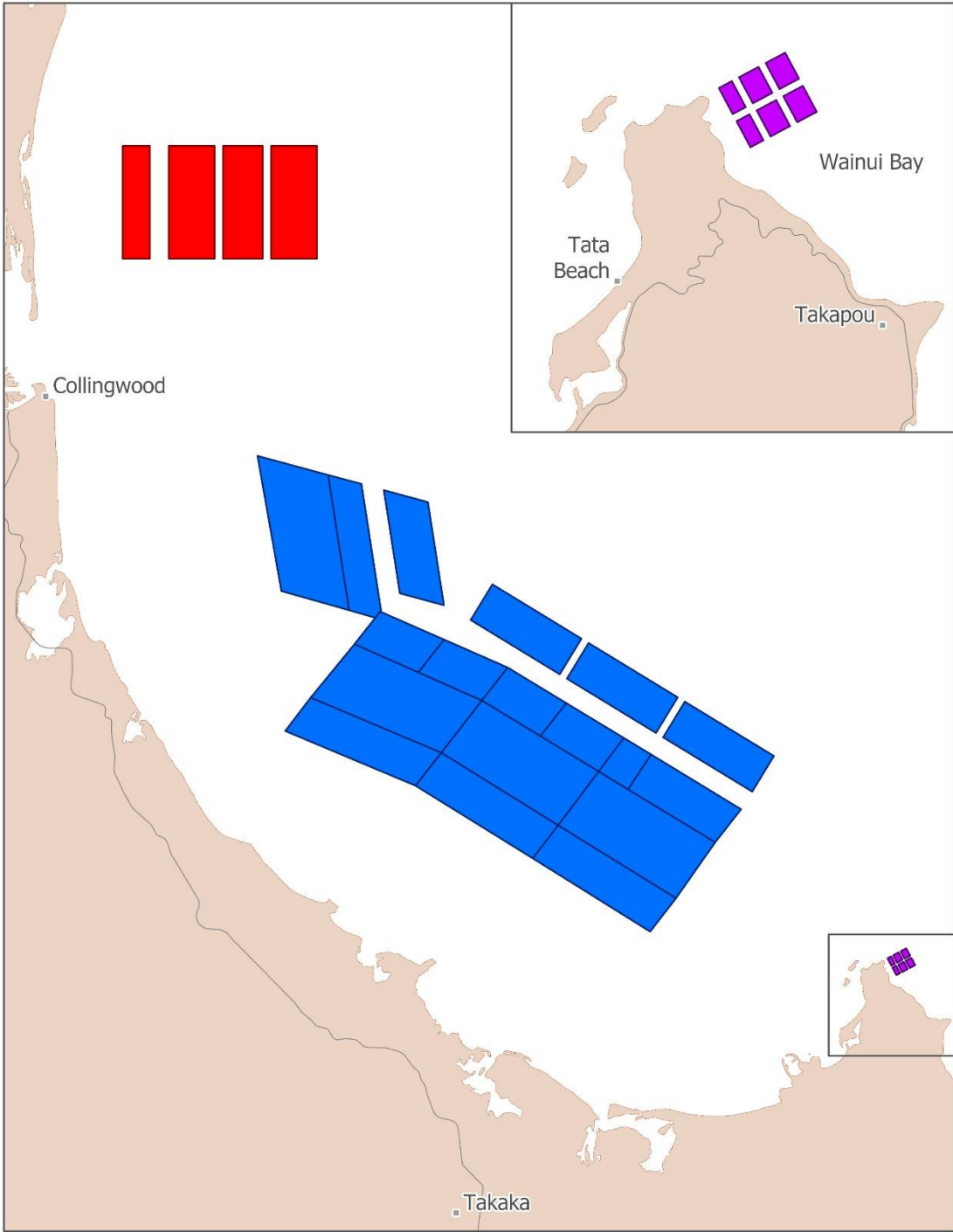
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<p>Waikato Region</p> <p>Wilson Bay Marine Farming Zone</p> <p>Date: 8/07/2020 Produced by: Spatial Intelligence Reference: r200006 Coordinate System: NZTM</p>	<ul style="list-style-type: none"> Wilson Bay A Wilson Bay B Wilson Bay C Part of Wilson Bay Marine Farming Zone subject to these regulations 		<p>0 0.5 1 nm</p> <p>0 1 2 km</p> <p>1:80,000</p>	
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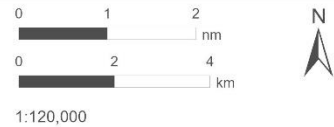


Tasman District

AMA 1, 2 and Wainui Bay

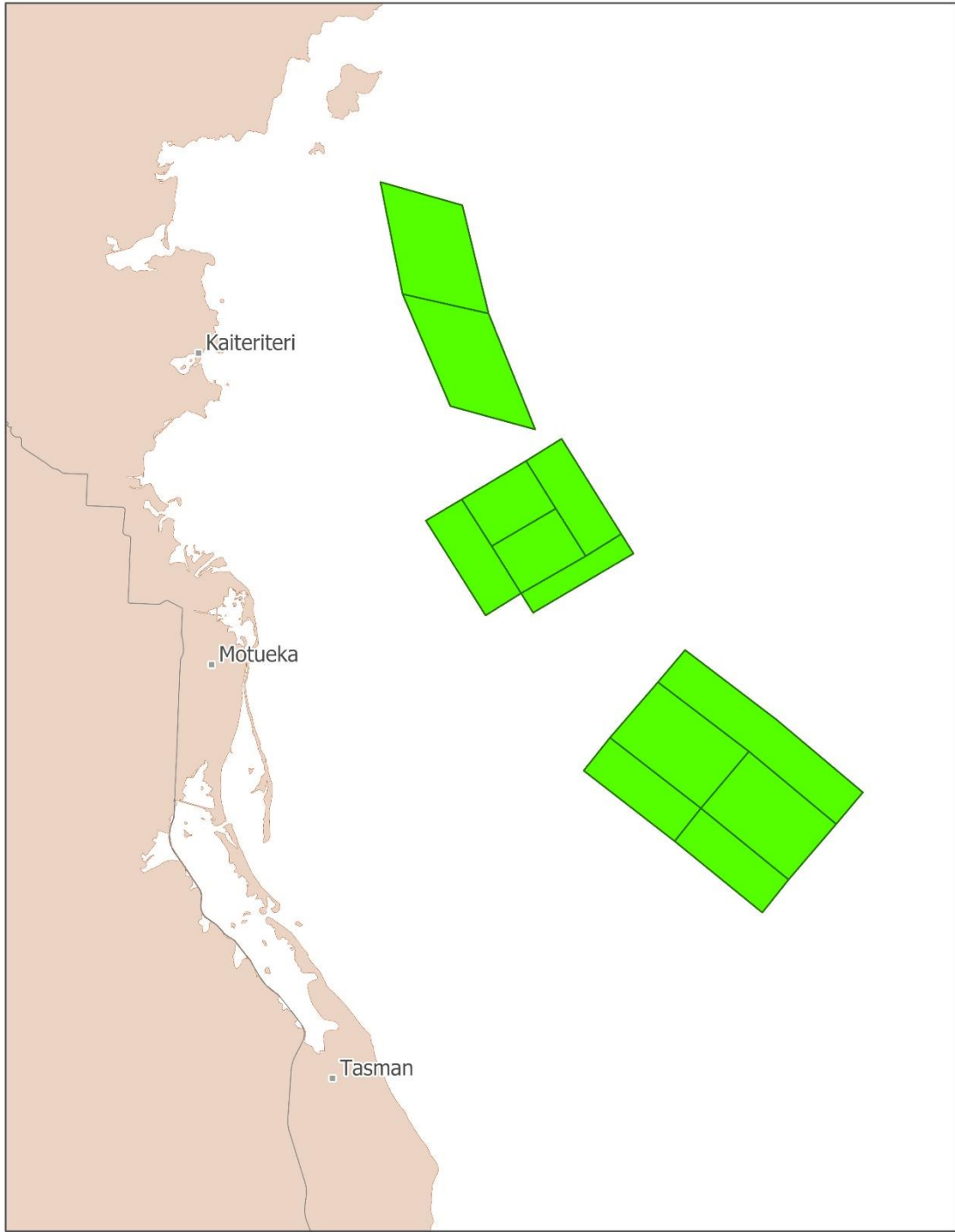
- AMA 1
- AMA 2
- Wainui Bay

Date: 26/03/2020
 Produced by: Spatial Intelligence
 Reference: r200006
 Coordinate System: NZTM



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Tasman District ■ AMA 3

AMA 3

Date: 26/03/2020
 Produced by: Spatial Intelligence
 Reference: r200006
 Coordinate System: NZTM



0 1 2 nm
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Appendix I – Analysis of provisions of proposed NES against objectives and policies of NZCPS 2010 and Hauraki Gulf Marine Park Act 2000

1.1 NEW ZEALAND COASTAL POLICY STATEMENT 2010

Objective 1

The matters of discretion for replacement consent, realignment and change of species applications under the proposed NES ensure that:

- natural biological and physical processes in the coastal environment are maintained (and in places enhanced)
- representative or significant natural ecosystems and sites of biological importance are protected
- coastal water quality is maintained (with regard to discharges from fed aquaculture)
- adaptive management approaches can be introduced where required

The realignment provisions of the proposed NES will enable the enhancement of natural biological and physical processes in the coastal environment and the restrictions preventing realignment into significant ecological areas will ensure the protection of representative or significant natural ecosystems and sites of biological importance.

The future planning and inappropriate areas provisions of the proposed NES²²⁰ will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could theoretically include to ensure that significant natural ecosystems and sites of biological importance are protected.

Objective 2

The proposed NES ensures that potential adverse effects of marine farms on outstanding areas are avoided by applying a matter of discretion on this issue only to farms located within an outstanding area identified in a proposed or operative regional policy statement or regional coastal plan.

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could include to ensure the preservation of the natural character of the coastal environment and the protection of natural features and landscapes.

Objective 3

The proposed NES includes a requirement for pre-application engagement with tangata whenua and a matter of discretion for replacement consent, realignment and change of species applications to ensure tangata whenua values are meaningfully considered early in the process.

While the proposed NES precludes limited and public notification for a number of replacement consent and change of species applications, the RMA notification requirements would still enable limited notification of consent applications to affected protected customary rights groups, affected customary marine title groups (for accommodated activities, which includes existing aquaculture) and holders of statutory acknowledgements that have been identified as an affected party.

Where a consent application does not meet the pre-application engagement requirement the proposed NES would introduce a broader matter of discretion around tangata whenua values and

²²⁰ For further description of the future planning and inappropriate areas provisions of the proposed NES refer to section 4.9 of this report.

would not preclude limited notification (i.e. any potentially affected tangata whenua group could be notified).

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could include to ensure sites and areas of significance to tangata whenua are protected.

Objective 4

The proposed NES includes matters of discretion for replacement consent, realignment and change of species applications which enable conditions to be set around the layout and positioning of a marine farm to ensure continued reasonable public access (including recreational access) in the vicinity of the marine farm.

Objective 6

The proposed NES has been developed, in part, to recognise the significant benefits of existing aquaculture to the social, economic and cultural well-being of people and communities. This is reflected in the activity status and notification requirements for replacement consent, realignment and change of species applications under the proposed NES.

The leniency provisions of the proposed NES²²¹ enable regional councils and communities to identify where existing aquaculture is appropriate and provide for it as a controlled activity status.

The matters of discretion for replacement consent, realignment and change of species applications have been developed to ensure the key effects of aquaculture that need to continue to be managed within environmental limits, including biophysical (such as the protection of significant habitats), social and cultural effects.

The realignment provisions of the proposed NES will ensure any potential adverse effects on historic heritage can be avoided, and the restrictions preventing realignment into significant ecological areas will ensure the protection of habitats of significance.

Objective 7

The proposed NES will continue to ensure the management of marine aquaculture provides for New Zealand's international obligations regarding the coastal environment, including relevant indigenous biodiversity²²² and biosecurity obligations.²²³

Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage

The proposed NES includes a requirement for pre-application engagement with tangata whenua and a matter of discretion for replacement consent, realignment and change of species applications to ensure tangata whenua values are meaningfully considered early in the process.

While the proposed NES precludes limited and public notification for a number of replacement consent and change of species applications, the RMA notification requirements would still enable limited notification of consent applications to affected protected customary rights groups, affected customary marine title groups (for accommodated activities, which includes existing aquaculture) and holders of statutory acknowledgements that have been identified as an affected party.

Where a consent application does not meet the pre-application engagement requirement the proposed NES would introduce a broader matter of discretion around tangata whenua values and would not preclude limited notification (i.e. any potentially affected tangata whenua group could be notified).

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could theoretically include to ensure sites and areas of significance to tangata whenua are protected.

²²¹ For further description of the leniency provisions of the proposed NES refer to section 4.7 of this report.

²²² For example, Ramsar Convention on Wetlands 1971, Convention on Conservation of Migratory Species 1979, Convention on Biological Diversity 2000.

²²³ For example, MARPOL 73/78.

Policy 3 Precautionary approach

At current levels of production, the effects of aquaculture activities on the environment are largely known, manageable, and in most cases, reversible. However, the proposed NES recognises that some effects of existing aquaculture, particularly cumulative effects, are not well known and provides for adaptive management approaches introduced in regional coastal plans to be included as consent conditions for replacement consent, realignment and change of species applications.

Recognising that some of the potential effects of certain types of aquaculture are uncertain, unknown or little understood, a broader range of matters of discretion are included in the proposed NES for fed aquaculture and certain change of species applications.

Policy 4 Integration

The proposed NES has been developed in a collaborative way between central government agencies with input from local government. It intends to ensure co-ordinated and integrated management of marine aquaculture.

The proposed NES would improve integration where aquaculture occurs close to regional council administrative boundaries (or, hypothetically, in the future should a marine farm cross a regional council administrative boundary), ensuring that a nationally consistent management framework is in place.

Policy 6 Activities in the coastal environment

The proposed NES has been developed, in part, to recognise the significant benefits of existing aquaculture to the social, economic and cultural well-being of people and communities. This is reflected in the activity status and notification requirements for replacement consent, realignment and change of species applications under the proposed NES.

The leniency provisions of the proposed NES enable regional councils and communities to identify where existing aquaculture is appropriate and provide for it as a controlled activity status.

It is recognised that marine aquaculture has a functional need to be located in the coastal marine area.

The proposed NES includes matters of discretion for replacement consent, realignment and change of species applications which enable conditions to be set around the layout, positioning, lighting and marking of a marine farm to ensure both continued reasonable public access (including recreational access) in the vicinity of the marine farm and navigational safety is maintained. Matters of discretion also enable councils to impose bonds (or alternative charges) on marine farms should a decision-maker consider them to be at risk of abandonment.

The consent lapse provisions of the RMA plus the fact that the proposed NES addresses the management of existing aquaculture ensures that space occupied for an activity is used for that purpose effectively and without delay.

Policy 7 Strategic planning

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate and provide for them as a discretionary, non-complying or prohibited activity.

The leniency provisions of the proposed NES enable regional councils and communities to identify where existing aquaculture is appropriate and provide for it as a controlled activity status.

The proposed NES recognises that, in response to Policy 7, regional coastal plans may start to identify coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects. Where a regional coastal plan introduces an adaptive management approach the proposed NES will enable relevant consent conditions to be included for replacement consent, realignment and change of species applications.

In recognition of the strategic planning that has already occurred with the Wilson Bay Marine Farming Zone (in the Waikato region) and Tasman Aquaculture Management Areas (including consideration of

adaptive management), farms within these zones from the replacement consent, realignment and change of species provisions of the proposed NES.

Policy 8 Aquaculture

The proposed NES has been developed, in part, to recognise the significant benefits of existing aquaculture to the social, economic and cultural well-being of people and communities. This is reflected in the activity status and notification requirements for replacement consent, realignment and change of species applications under the proposed NES.

The leniency provisions of the proposed NES enable regional councils and communities to identify where existing aquaculture is appropriate and provide for it as a controlled activity status.

Policy 11 Indigenous biological diversity (biodiversity)

The proposed NES provides for the management of indigenous biodiversity (including the species, areas or habitats listed in Policy 11) at a site specific level through targeted matters of discretion for replacement consent, realignment or change of species applications which focus on significant seabed values such as reefs or biogenic habitats and the management of marine mammal and seabird interactions with marine farms, the entanglement of large whales in offshore marine farms and the management of shark interactions with marine farms.

Where broader scale issues such as habitat exclusion across multiple farms arise the future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could include to ensure that areas of indigenous biodiversity are protected.

Regional councils may also choose to address broader scale issues through introducing an adaptive management approach in their regional coastal plans. Where this occurs, the proposed NES will enable relevant consent conditions to be included for replacement consent, realignment and change of species applications.

The proposed NES also restricts realignments into areas identified as having significant ecological values in operative or proposed regional policy statements and regional coastal plans.

Policy 12 Harmful aquatic organisms

The proposed NES includes a matter of discretion for replacement consents, realignment and change of species applications around biosecurity risks to ensure appropriate conditions can be set to manage any biosecurity concerns.

Policy 13 Preservation of natural character

The proposed NES ensures that potential adverse effects of marine farms on areas of outstanding natural character are avoided by applying a matter of discretion on this issue only to farms located within an outstanding area identified in a proposed or operative regional policy statement or regional coastal plan.

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could include to ensure the preservation of the natural character of the coastal environment.

Policy 14 Restoration of natural character

Analysis concludes that the restoration of natural character appears to be best addressed, in the context of existing aquaculture, through strategic planning during the plan development stage, rather than on a consent-by-consent basis through matters of discretion imposed by the proposed NES.

Policy 15 Natural features and natural landscapes

The proposed NES ensures that potential adverse effects of marine farms on outstanding natural features and natural landscapes are avoided by applying a matter of discretion on this issue to farms located within an outstanding area identified in a proposed or operative regional policy statement or regional coastal plan.

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this

could include to ensure the protection of natural features and natural landscapes of the coastal environment.

Policy 17 Historic heritage identification and protection

The realignment provisions of the proposed NES will ensure any potential adverse effects on historic heritage can be avoided. Outside of the realignment of existing marine farms, analysis concludes that impacts of existing aquaculture on historic heritage is not a significant issue.

Policy 21 Enhancement of water quality

As noted in Policy 21, aquaculture benefits from having high water quality.

The proposed NES includes matters of discretion for replacement consents, realignment and change of species applications for fed aquaculture to ensure the potential effects on water quality from these activities can be managed.

Policy 22 Sedimentation

The impacts of existing aquaculture on sedimentation is not considered to be a site-specific issues that needs to be addressed through the proposed NES.

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate, this could include to manage impacts of sedimentation.

The realignment provisions of the proposed NES could also be used by marine farmers experiencing the impacts of sedimentation.

Policy 23 Discharge of contaminants

The proposed NES includes matters of discretion for replacement consents, realignment and change of species applications for fed aquaculture to ensure the discharge of contaminants from these activities can be managed.

1.2 HAURAKI GULF MARINE PARK ACT 2000

Sections 7 and 8

The proposed NES has been developed, in part, to recognise the significant benefits of existing aquaculture to the social, economic and cultural well-being of people and communities. This is reflected in the activity status and notification requirements for replacement consent, realignment and change of species applications under the proposed NES.

The future planning and inappropriate areas provisions of the proposed NES will enable regional councils, through their regional coastal plans, to identify existing marine farms as inappropriate and provide for them as a discretionary, non-complying or prohibited activity.

The leniency provisions of the proposed NES enable regional councils and communities to identify where existing aquaculture is appropriate and provide for it as a controlled activity status.

The matters of discretion for replacement consent, realignment and change of species applications under the proposed NES ensure that key potential adverse effects of aquaculture can continue to be avoided, remedied and mitigated.

The proposed NES includes a requirement for pre-application engagement with tangata whenua and a matter of discretion for replacement consent, realignment and change of species applications to ensure tangata whenua values are meaningfully considered early in the process.

While the proposed NES precludes limited and public notification for a number of replacement consent and change of species applications, the RMA notification requirements would still enable limited notification of consent applications to affected protected customary rights groups, affected customary marine title groups (for accommodated activities, which includes existing aquaculture) and holders of statutory acknowledgements that have been identified as an affected party.

Where a consent application does not meet the pre-application engagement requirement the proposed NES would introduce a broader matter of discretion around tangata whenua values and

would not preclude limited notification (i.e. any potentially affected tangata whenua group could be notified).