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NEW ZEALAND
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CONSERVATION AUTHORITY
TE POU ATAWHAI TAIAO O AOTEAROA

**Proposed National Environmental Standard (NES) for
Marine Aquaculture**

**SUBMISSION FROM THE NEW ZEALAND
CONSERVATION AUTHORITY**

8 August 2017

To: aquaculture@mpi.govt.nz

Contact Information

| | |
|----------------------|--|
| Name of organisation | New Zealand Conservation Authority |
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| Submitter type | Other: Statutory body |

**1. The Legislative Basis for the New Zealand Conservation
Authority (NZCA) submission**

The New Zealand Conservation Authority (NZCA) was established under the Conservation Act 1987.

The NZCA has a range of powers and functions, under the Conservation Act 1987, as well as under other conservation related legislation. Under the Conservation Act, Section 6C (2) (c), the NZCA has the power to “advocate the interests of the Authority at any public forum or in any statutory planning process.” This includes the function to advise on national initiatives, policies and strategies affecting public conservation resources.

One of the functions of the NZCA is to investigate any nature conservation or other conservation matters it considers are of national importance and to advise the Minister or the Director- General of Conservation, as appropriate. The NZCA views the National Environmental Standard for Marine Aquaculture to be a conservation matter of national importance given the marine environment is public space, the use of which is an important issue for many New Zealanders. The NZCA views New Zealand’s marine biodiversity and ecological health of the coastal environment to be a significant conservation issue; and supports the establishment of further marine protected areas (and a wider diversity of these) as one pathway to enhance both.

Following the logic of the above powers and functions, the NZCA has decided to submit on the Proposed National Environmental Standard (NES) for Marine Aquaculture.

2. NZ Coastal Policy Statement (NZCPS) 2010:

The NZCA is a strong supporter of, and advocate for, the NZ Coastal Policy Statement 2010.

The NZCA believes this National Policy Statement, under the RMA 1991, provides clear Objectives and Policies about how New Zealand's coastal environment is to be managed. The NZCPS places a great deal of emphasis on the protection of the coastal environment and ecosystems, preservation of natural character of the coastal environment and protection of natural features and landscape values. It also provides direction on maintaining and enhancing public access to and recreational opportunities of the coastal environment.

Objectives 1,2,3,4 & 7 of the NZCPS align with the conservation responsibilities and role of the NZCA.

The NPS places considerable emphasis on the avoidance of significant adverse effects of activities in the coastal environment and requires the mitigation and remediation of adverse effects.

The 2014 Supreme Court Decision, *EDS vs The NZ King Salmon Company Ltd*, reinforced the significance of the Objectives and Policies of the NZCPS and implied the NZCPS emphasis on avoidance is non-negotiable, given it has been through an extensive public process, and that it is an integral part of PT 2 of the RMA 1991 and decision making around planning and resource consents.

The NZ Coastal Policy statement 2010 has driven the NZCA's Policies on:

- *Coastal Management Principles; and*
- *Marine Principles,*

copies of which are appended to this submission.

The NZCA conclusion is the Proposed NES Marine Aquaculture comes up short in terms of the preservation and protection Objectives and Policies of the NZCPS.

3. General Comments on the RIS and NES Marine Aquaculture:

The NZCA acknowledges the need for the NES Marine Aquaculture given the looming bottle neck of existing Coastal Permits requiring to be re-consented in the near future. As the New Zealand aquaculture industry grows and diversifies, the potential adverse effects of aquaculture on marine mammals, seabirds, and other aspects of marine biodiversity may become more significant.

The NZCA strongly supports the emphasis being placed on the mandatory requirement of on-farm Biosecurity Management Plans, and the associated compliance and enforcement provisions. We also support the requirement that they are kept up to date and current. Consistency of approach to marine biosecurity across New Zealand is vital and the pathways management concept reinforces this thinking.

The NZCA notes that under the NES, the replacement consents will become non-notified restricted-discretionary consents with limited discretion, within environmental limits. There are two main concerns with this approach:

- the removal of the New Zealand public's ability to submit on applications to replace consents even though these farms occupy public space and essentially have an exclusive right, for the term of the consent, over that public space.
- the limits of discretion associated with the restricted- discretionary consent is not supported by any **national environmental bottom lines and standards**. This is essential for an NES, as without environmental bottom lines and standards, national consistency in approach sought by the "national standard" will not be achieved. Regional Coastal Policy statements will continue to attempt to set environmental bottom lines and standards and these will be haphazardly drawn up and are likely to continue to be different for every region of New Zealand, as they are now.

This is viewed as a major flaw with the proposed NES. Detailed environmental bottom lines and standards are needed, such as water quality parameters, minimum water flow rates where appropriate, defined sedimentation rates over time, indicator species health, etc.

The NZCA is of the view the proposed NES places little importance on:

- Policy 21 - enhancement of water quality,
- Policy 22- sedimentation; and,
- Policy 23 – discharge of contaminants in the NZCPS.

In fact, it is worryingly silent on these matters. It provides no guidance for managing the significant adverse effects that can occur due to marine farming activity on water quality and sedimentation, or from the discharge of contaminants. These are of course some of the important matters for which environmental bottom lines and standards are required to be spelt out in the NES. Without environmental bottom lines and standards that must be achieved, Policies 11 (biodiversity), 13 (preservation of natural character), 14 (restoration of natural character) and 15 (natural features and natural landscapes) of the NZCPS will be much more difficult to implement.

The document provides some discussion on the status of marine farming activities, arguing many Regional Coastal Plans have discretionary and non-complying Rules which causes uncertainty for marine farm operators. The NZCA's view is that the discretionary and non-complying status assigned for marine farming activity at some locations reflects a precautionary approach, as neither the marine environment or the effects of the farming activity on these environments was not well understood at the time of Plan writing. Thus, this has been a responsible, reasonable and logical approach. The move to have the status of most marine farms as restricted -discretionary or controlled is concerning, as although more is now known about some marine ecosystems, the information may not be at a level to make informed decisions about the effects of marine farms on those ecosystems.

Public input to coastal management is to be largely restricted to the Plan development stage under the proposed NES. The NZCA does not support this aspect of the NES. Plans are not usually written with absolute certainty around the adverse effects of activities such as marine farming, as information is incomplete. It is often at the Resource Consent stage that more detailed information is provided about the marine environment, including the ecosystem, and the level of adverse effects is quantified. Members of the public need to retain the right to have a say at the Resource Consent stage, given the marine environment is public space. Many local spaces in the marine environment have special value for local people and have been widely utilised by the public over long periods of time. While the NZCA understands the commercial imperatives for marine farming, the proposal to have non-notified Resource Consent processes is unfair and inequitable. Public input to Resource Consents needs to be retained as far as possible. The public have much to offer about places within the marine environment in terms of the values and historic use of such areas.

Options Analysis:

The NZCA notes the preferred option is an NES with complementary measures. The NZCA understands the logic of the arguments supporting this option, but has some reservations about the detail of the proposed NES.

4. Specific Comments on The Proposed NES Marine Aquaculture:

The NZCA notes the key driver of the proposed NES is to provide for re-consenting of existing consents, species changes for existing farms, and Biosecurity Management Plans. We note it does not provide for the growth of existing space or new space.

Specific Comments:

Re-consenting

Clause 88 – proposes a restricted discretionary status and non- notification of most marine farming consents and Councils could make the status controlled. Either way – the public are likely to be shut out of process, as discussed above. We do not support this approach, especially if there are known adverse effects of a particular farm on the marine environment.

Clause 89 – the definition of affected parties is too narrow – confined to Tangata Whenua with Statutory Acknowledgement. The importance of public input is discussed above.

Clause 90 – limit of discretion is far too narrow in terms of significant adverse effects and adverse effects on the marine ecosystem. Marine ecosystems are more than seabed features, marine mammals and sea birds.

Clause 91 – defines other effects to be considered if supplementary feeding is to be used, which is good BUT the NES does not set any standards to be met, for instance, in terms of the effects on water quality, the benthic environment under farms and appropriate mixing zones.

Clause 93 – the management of cumulative effects of multiple farms where there is no zoning should be spelt out in the NES. This however is difficult given the NES has no quantitative environmental bottom lines and standards. The management of cumulative effects of multiple farms should have a time/trend component. And, this should be reflected in the standards.

Future Planning.

Clause 95 – the proposed discretionary Rule for “inappropriate areas” for marine farming in a Regional Coastal Plan is not a high enough status of activity – non-complying and prohibited should be used for such areas. The activity status for “inappropriate areas” should be set at the Plan stage at a more stringent activity status than discretionary. We also note the NES does not state if an activity status higher than restricted-discretionary requires a notified consent. It should spell this out clearly so the New Zealand public know there is an opportunity for input where marine farming is being applied for in “inappropriate areas”.

Biosecurity Plans and Pathway Management Plans

NZCA strongly supports this initiative. On-farm biosecurity and the “bigger picture” Pathway Management Plans are essential for a sustainable industry and preservation and protection of marine ecosystems.

5. Summary of concerns about the NES Marine Aquaculture:

The NES needs to more closely reflect and adhere to the NZCPS 2010 and there should be no weakening of the Objectives and Policies in the NZCPS 2010.

The NES must include a full suite of **environmental bottom lines and standards**. It lacks integrity without clearly defined bottom lines and standards.

Public input at the Plan development stage AND the Resource Consent stage is important and should be retained as:

- Marine farms occupy public space
- The public has a view and adds value to the Resource Consent decision making process.

6. Further Consultation

The NZCA would welcome the opportunity to meet with MPI or MFE officials to further discuss any of the matters raised in this submission.

Background to the NZCA

The New Zealand Conservation Authority was established by the Conservation Act 1987, with members appointed by the Minister of Conservation. It has a range of functions, but primarily acts as an independent conservation advisor to the Minister and the Director-General of Conservation. The NZCA's role has, in the past, been seen to be largely as a strategic advisor, but it has a growing role as an objective advocate on matters of national significance and interest in the conservation arena and, more recently, as a "board" to provide high quality independent advice to the Department of Conservation on its strategic direction and performance.

Current membership of the New Zealand Conservation Authority

In consultation with the Minister for Maori Development:

- Mita Harris of Kerikeri
- Rauru Kirikiri of Wellington

In consultation with the Minister of Tourism:

- Warren Parker of Rotorua

In consultation with the Minister of Local Government:

- Jan Riddell of Winton

On the nomination of Te Runanga o Ngai Tahu:

- Sandra Cook of Otautau

On the recommendation of Royal Forest and Bird Protection Society of New Zealand:

- Gerry McSweeney of South Westland and Arthurs Pass

On the recommendation of Federated Mountain Clubs of New Zealand:

- David Barnes of Lower Hutt

On the recommendation of the Royal Society of New Zealand:

- Mick Clout of Auckland

From public nominations:

- Mark Brough of Aria
- Mark Christensen of Christchurch
- Robyn Jebson of Okarito
- Tony Lepper of Alexandra

Appendices

1: NZCA Marine Principles (2016)

2: NZCA Coastal Management Principles (2017)

Appendix 1: NZCA Marine Principles (2016)

Marine Principles

NZCA has developed marine principles that include governance, conservation¹ and protection, and sustainable use of the marine environment².

Governance

1. Protection of marine biodiversity, marine ecosystems, the water column, benthic environments and marine landforms unique to New Zealand is a national, international and intergenerational responsibility.
2. The marine environment will be governed for the benefit of all New Zealanders.
3. The principles of the Treaty of Waitangi will be upheld and the resulting obligations will be delivered.
4. Decision-making will be informed by traditional knowledge of tangata whenua along with new sources of information and research and robust science.
5. Any allocation of rights to use marine resources will be based on robust and appropriate research and science
6. The marine environment should be regularly monitored: new information and research results reviewed, and management continually adjusted to incorporate findings
7. Where there is insufficient information, the precautionary principle will apply.

Conservation and protection

1. Marine protected areas are one essential element of marine management for the delivery of an ecosystem based approach and provide the framework to implement those measures necessary to conserve the most critical ecosystems, including species survival and reproduction, migration corridors, spawning grounds, and nursery areas. Our unique indigenous marine flora and fauna will be the priority for protection.
2. This will be achieved through a network approach to marine protected areas that are comprehensive, representative and effectively managed throughout New Zealand's territorial sea and exclusive economic zone.
3. Well designed and properly managed marine protected areas are integral to an ecosystem based approach to marine management providing safe havens for marine biodiversity.
4. Intergenerational equity requires that non-extractive values of the marine environment – intrinsic values, wildness values, spiritual values, ecosystem services - are protected.³

¹ Conservation includes the concepts of preservation, protection and restoration

² Marine environment includes the territorial sea (12nm) and the Exclusive Economic Zone (EEZ) (200nm)

³ Ecosystem services are the benefits people obtain from ecosystems. These include provisioning services such as food and water; regulating services such as flood and disease control; cultural services such as spiritual, recreational, and cultural benefits; and supporting services, such as nutrient cycling, that maintain the conditions for life on Earth.

5. A spectrum of protection mechanisms will be employed to enable communities to be involved in the protection, conservation, restoration and use of marine ecosystems. This includes upholding the principles of the Treaty of Waitangi and delivering against its obligations. Concepts of mātaitai and taiapure, should be integral to the development of marine protected areas, to recognise customary non-commercial rights.
6. Representative, rare, and special marine ecosystems will be conserved in perpetuity as "no take"⁴ areas within the limit of the EEZ.
7. Marine management regimes should acknowledge the changes brought about by natural processes including natural hazards, extreme weather events, and climate changes.

Sustainable use

1. The marine environment will be sustainably managed in a way that maintains its potential for future generations, and balancing the rights and interests of customary, individual and corporate users.
2. The marine and coastal environments will be managed in an integrated way that recognises the complex inter-relationships of land, sea and air.
3. Rights to use the marine environment should be exercised in an ecologically sustainable manner ensuring the maintenance of biological diversity to meet the needs of present and future generations.
4. Where finite resources are being used e.g. mining of finite resources, this is to be carried out in a manner that mitigates the adverse impacts of the activity on the marine environment and in accordance with the polluter/user pays principle.

⁴ By "no take" the Authority means nothing to be taken in the column from sea surface to seabed

Appendix 2: NZCA Coastal Management Principles (2017)

NEW ZEALAND CONSERVATION AUTHORITY COASTAL MANAGEMENT PRINCIPLES (April 2017)

These principles are a tool to guide the NZCA, its contribution to, and/or response to issues relating to coastal management. They recognise that the coast forms part of the continuum from the mountains to the open sea. These principles are consistent with and complementary to the Authority's existing marine and access principles.

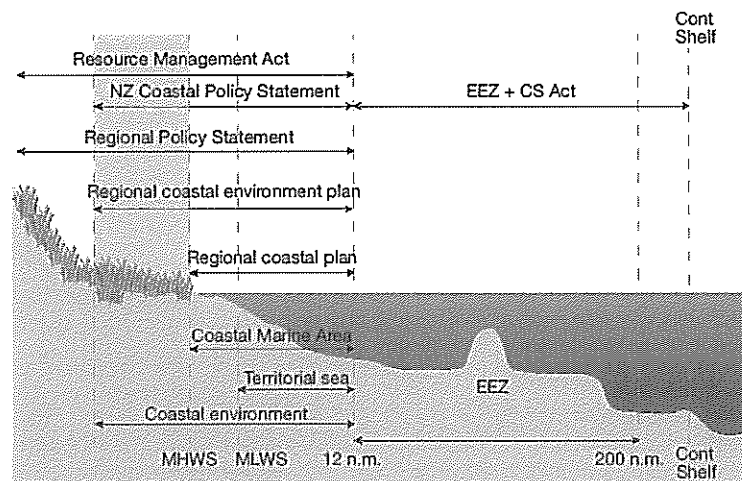
The principles were approved by the NZ Conservation Authority at its meeting on 3 April 2017.

PRINCIPLES

Governance

1. Protection of our coastal environment⁵ its coastline, its biodiversity, highly dynamic nature, its landforms unique to New Zealand is a national, international and intergenerational responsibility and the coastal environment be governed for the benefit of all New Zealanders. Marine coastal protected areas are one essential element of marine coastal environment management and should be implemented through an integrated approach.

RMA coastal management jurisdictions



MHWS = Mean High Water Springs
MLWS = Mean Low Water Springs
EEZ = Exclusive Economic Zone
Cont Shelf = Continental Shelf
EEZ + CS Act = Exclusive Economic Zone + Continental Shelf (Economic Effects) Act 2012
n.m. = nautical miles

2. The principles of the Treaty of Waitangi will be upheld and the resulting obligations will be delivered.

⁵ As defined by the diagram inserted into this document

3. The coastal environment is viewed as a taonga – there for everybody and upon which we rely.
4. Decision making will be informed by traditional knowledge of tangata whenua along with the public, new sources of information and robust science.
5. Decisions should be based on a comprehensive understanding of marine coastal processes, including its dynamic nature, the ecology and matauranga Maori.
6. Any allocation of rights to use coastal resources will be based on robust science and appropriate evidence.
7. The coastal environment area should be regularly monitored. New information and research results will be reviewed and the findings used for continuous improvement of the management of the coastal zone.
8. Where there is insufficient information the precautionary principle will apply.

Conservation and Protection

1. Marine coastal protected areas are one essential element of marine coastal environment management and should be delivered through an integrated management approach. This approach should provide the framework to implement those measures necessary to conserve the most critical ecosystems, including indigenous biodiversity, survival and reproduction, intrinsic values, natural landforms, historic and natural character, and wahi tapu.
2. Ideally this will be achieved through a network approach to coastal protected areas that are comprehensive, representative and effectively managed throughout the coastal zone.
3. Well designed and properly managed marine coastal protected areas are integral to an ecosystem approach providing safe havens for marine coastal biodiversity.
4. Intergenerational equity requires that non-extractive values for the marine coastal environment – intrinsic values, wilderness values, spiritual values, ecosystem services – are protected.⁶
5. A spectrum of protection mechanisms will be used to enable communities to be involved in the protection, conservation, restoration and use of the marine coastal environment. This includes upholding the principles of the Treaty of Waitangi and delivering against its obligations. Concepts of rahui, taiapure and kawenata should be integral to the development of the marine coastal environment to recognise customary non-commercial rights.
6. New Zealand should seek to protect representative, rare, and special marine ecosystems perpetuity within the marine coastal area.

Sustainability

1. The New Zealand Coastal Policy Statement provides guidance for the consistency and integration of the management of the coastal marine environment throughout New Zealand.
2. The marine coastal environment will be sustainably managed in a way that maintains its potential for future generations, and balancing the rights and interests of customary, individual and corporate users.
3. The marine coastal environments will be managed in an integrated way that recognises the complex inter-relationships of land, sea and air and the dynamic nature of this environment.

⁶ Ecosystem services are the benefits people obtain from ecosystems. These include provisioning services such as food and water; regulating services such as flood and disease control; cultural services such as spiritual, recreational, and cultural benefits; and supporting services, such as nutrient cycling, that maintain the conditions for life on Earth.

4. Rights to use the marine coastal environment should be exercised in an ecologically sustainable manner ensuring the maintenance of biological diversity to meet the needs of present and future generations.
5. Where finite resources are being used e.g. extractive mining, this is to be carried out in a manner that mitigates the adverse impacts of the activity on the marine environment and in accordance with the polluter/user pays principle.
6. Regional coastal plans are a tool to manage the coastal marine area, and actual or potential effects of use, development or protection.
7. Marine coastal management should acknowledge the changes brought about by natural processes in a dynamic environment e.g. coastal erosion, uplift from earthquakes, subsidence, storm impacts etc.
8. Marine coastal management should address the adverse effects of human activities originating from outside the coastal zone.
9. All steps should be taken to safeguard the coastal marine environment from invasive alien species

Footnote: These principles should be read in conjunction with other current NZCA principles (i.e. marine and access), the template for Section 4 of the Conservation Act (giving effect to the Principles of the Treaty), and differing land tenure categorisations and related management that may apply e.g. National Parks Act, Reserves Act and Marine Reserves Act.

4 August 2017

Ministry for Primary Industries
Private Bag 14
Port Nelson
Nelson, 7042

By email: aquaculture@mpi.govt.nz

Re: Proposed National Environmental Standard for Marine Aquaculture

Introduction

1. The New Zealand Law Society welcomes the opportunity to comment on the *proposed National Environmental Standard for Marine Aquaculture* (proposed NES). The Law Society's Environmental Law Committee has reviewed the proposed NES and considers it would be a useful addition to the regulatory toolbox for marine aquaculture under the Resource Management Act 1991 (RMA).
2. The Law Society welcomes greater consistency of marine aquaculture management between different regions where local context particularly in relation to environmental matters does not otherwise justify the application of different management regimes. The objective of ensuring national consistency in the re-consenting process is appropriate.
3. The comments set out below relate to the proposed changes to public notification requirements for replacement consents for existing marine farms. The Law Society is concerned that a blanket proposal to exempt replacement consents from the public notification requirements is inconsistent with:
 - (a) sections 6(d) and 12 of the RMA; and
 - (b) the provision for customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (MCAA).

Sections 6(d) and 12 of the RMA

4. Section 6 of the RMA states that matters of national importance must be recognised and provided for by anyone exercising functions or powers under the RMA, in relation to managing the use, development and protection of natural and physical resources. This includes the "maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers".¹
5. The coastal marine area (CMA) is recognised as public property and is accorded special status under section 11 of the MCAA. Section 11 establishes a 'no owner' regime and recognises there is a common interest in the CMA.² Notably, one of the purposes of MCAA is "to ensure

¹ Resource Management Act 1991, section 6(d).

² Marine and Coastal Area (Takutai Moana) Act, section 11.

*the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand”.*³

6. Accordingly, there is a general prohibition on (amongst other things) the use and occupation of the CMA unless expressly allowed for in a plan or resource consent.⁴ In *Golden Bay Marine Farmers v Tasman District Council*⁵ the Environment Court held that the prohibition emphasises the significance of the CMA to the environment and people of New Zealand and “provides a statutory presumption against wholesale development and use”.⁶
7. Marine farming case law has made it clear that public access is not limited to the shoreline, but also extends to the public’s access to and use of the sea.⁷ The Planning Tribunal (the predecessor to the current Environment Court) went so far as to say that any development which prevents free public access to the coastal marine area “amounts to an alienation of that public space and must be balanced against other relevant considerations”.⁸
8. The Environment Court held in *Re Auckland Regional Council*⁹ that there is a general thread in the RMA starting at section 6(d) and culminating with section 122(5)¹⁰ that requires “a council to actively address its mind – not to whether public access should be permitted – but to whether it should be excluded”.¹¹
9. The proposed NES suggests that public participation should be based on the extent to which an existing marine farm will change its impacts on the environment.¹² It further records that the public can still participate in second generation regional coastal plan processes to ensure marine farms are not located in inappropriate areas.¹³
10. Under clause 12 of the proposed NES, the list of matters of discretion for restricted discretionary activities includes issues in respect of which members of the public might legitimately have a different point of view to the consent holder and the Council. It includes:
 - (c) The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, in relation to:
 - i. ensuring continued reasonable public access (including recreational access) in the vicinity of the marine farm
 - ii. navigational safety, including the provision of navigation warning devices and signs
11. The Law Society submits that once public interest considerations are accepted to be relevant to the process, it would be hard to sustain a position that excludes public involvement.

³ Ibid, section 4(1)(a).

⁴ Above n 1, sections 12(1) and (2).

⁵ *Golden Bay Marine Farmers v Tasman District Council*, EC, Christchurch, W 42/2001, 27 April 2001.

⁶ Ibid at [268].

⁷ *Sanford (South Island) Ltd v Southland Regional Council*, EC, Christchurch, C 106/02, 3 September 2002.

⁸ *Thomas v Marlborough District Council*, PT, W 16/95, 21 February 1995 at p 17.

⁹ *Auckland Regional Council, Re*, EC, A 109/00, 14 September 2000.

¹⁰ Above n 1, section 122(5) which provides that no coastal permit should be regarded as conferring occupation to the exclusion of other classes of person.

¹¹ Above n 9, at p 9.

¹² Ministry for Primary Industries, Proposed National Environmental Standard for Marine Aquaculture, p 13.

¹³ Ibid.

12. The Law Society is concerned that a blanket rule exempting notification of applications for replacement consents could enable consented occupations of the CMA (whether exclusive occupation or not) to exclude public participation indefinitely. This would be inconsistent with the presumption under the RMA that the CMA should be retained for public access and/or use.

Customary Rights under the MCAA

13. The proposed NES states:¹⁴

Some Statutory Acknowledgements across the country recognise the relationship of tangata whenua with the coastal marine area. Any groups with Statutory Acknowledgements in or relating to the common marine and coastal area could be provided for through limited notification to them of applications for replacement consents for existing marine farms, if regional councils determined that they were affected parties.

14. The Law Society acknowledges that section 55(2) and (3) of the MCAA exempts existing aquaculture from the prohibition on granting consent where an activity will have a more than minor effect on the exercise of a protected customary right. Likewise, the RMA permission rights of customary marine title holders (to decline consent for any reason) do not extend to applications for consent of existing aquaculture.¹⁵
15. Notwithstanding that, section 62(2) and (3) provides, in relation to applications for customary marine title, that:¹⁶

(2) Subsection (3) applies if a person applies for a resource consent, a permit, or an approval in relation to a part of the common marine and coastal area in respect of which—

(a) no customary marine title order or agreement applies; but

(b) either—

i. an applicant group has applied to the Court under section 100 for recognition of customary marine title and notice has been given in accordance with section 103; or

ii. an applicant group has applied to enter negotiations under section 95.

(3) Before a person may lodge an application that relates to a right conferred by a customary marine title order or agreement, that person must—

(a) notify the applicant group about the application; and

(b) seek the views of the group on the application.

16. As at 30 June 2017 there were 186 applications before the High Court for various recognition orders under the MCAA.¹⁷ In practice the combined applications cover the entire coastal marine area of New Zealand.
17. In the Law Society's view, the notice provision under section 62 of the MCAA is intended to allow a customary marine title applicant group the opportunity to put its views on any application for resource consent before the regional council. The underlying principle is one of procedural fairness: in order to protect the legitimate interests of persons who might be

¹⁴ Above n 12, at p 31.

¹⁵ Above n 2, sections 64(2)(e) and 66(2).

¹⁶ Ibid, section 66(2) and (3).

¹⁷ Memorandum of counsel for the Attorney-General in response to Minute dated 1 June 2017 of Mallon J, dated 30 June 2017, at [14].


adversely affected by a decision, those persons should receive advance notice and have an opportunity to put their views to the decision maker.

18. The Law Society considers the inference from section 62(3) must be that the views of an applicant group on an application for consent will be a relevant matter that the regional council may have regard to under section 104(1)(c) of the RMA.
19. It would be incongruous with the statutory requirement that customary marine title applicants should be notified of consent applications under the MCAA not to have a corollary notification requirement in respect of existing marine farms under the proposed NES.
20. Furthermore, the Law Society believes it would be reasonable for the holders of protected customary rights and/or customary marine title to be notified of any renewal application that might affect those rights. It would be unusual in this respect to require notification of customary marine title applicants under the MCAA, but not to require notification of the holders of customary rights. This view is supported by the strong protection afforded to Māori under sections 6(e) and (g) of the RMA.

Recommendations

21. It is consistent with the RMA's purpose to seek a greater level of integration between different regional planning regimes for the coastal marine area, where good reason does not otherwise exist for different approaches. However, the Law Society is concerned that a complete removal of public notification of aquaculture consent renewals runs contrary to the public interest in the coastal marine area under the RMA, and the rights conferred on applicants and holders of customary rights under the MCAA and the RMA.
22. The Law Society does not consider that all applications for renewal of existing marine aquaculture consents should be notified. Rather, it recommends that further consideration be given to the aforementioned interests with a view to formulating methods that:
 - (a) enable identified groups representing the public interest in the CMA to be represented in replacement processes; and
 - (b) requires notification to applicants and holders of customary rights under the MCAA.

Conclusion

23. If you wish to discuss this submission, please contact the convenor of the Law Society's Environmental Law Committee, Phil Page, through the committee secretary Amanda Frank 

Yours faithfully



Kathryn Beck
President



Aquaculture Unit
Ministry for Primary Industries
Private Bag 14
Port Nelson 7042

8 August 2017

Submission on the
Proposed national environmental standard for marine aquaculture

This submission is made on behalf of the membership of the New Zealand Marine Sciences Society (NZMSS). It is made in good faith in my role as President of the NZMSS and in accordance with the Code of Ethics and Rules of the Royal Society of New Zealand.

NZMSS commends the Ministry for Primary Industries for initiating this important process of developing a national standard for marine aquaculture in New Zealand.

Please contact me at the email address provided below for any further information regarding this submission.

A handwritten signature in black ink, appearing to be 'H. Giles'.

Dr Hilke Giles
President
New Zealand Marine Sciences Society

Address for service:

Email: [REDACTED]

New Zealand Marine Sciences Society submission on the proposed national environmental standard for marine aquaculture

The New Zealand Marine Sciences Society (NZMSS) welcomes the opportunity to comment on the proposed national environmental standard for marine aquaculture (NES: Marine aquaculture).

The NZMSS is a non-profit incorporated society. It was formed in 1960 as a constituent society of the New Zealand Royal Society to encourage and assist marine science and related research across a wide range of disciplines in New Zealand and to foster communication among those with an interest in marine science. NZMSS membership covers all aspects of scientific interest in the marine environment and extends to the uptake of science in marine policy, resource management, conservation and the marine business sector. We speak for members of the society and we engage with other scientific societies as appropriate.

The NZMSS is supportive of the objective to develop a new planning framework for the management of existing marine farms within environmental limits and implement a nationally consistent framework for biosecurity management on all marine farms. We recognise the risks associated with the spread of non-indigenous species (NIS) and agree that all marine farms should be required to prepare, implement and regularly update Biosecurity Plans. We suggest that, given the potential harm caused by some NIS, implementation of the Biosecurity Management Plans should be advanced from 2025 to 2020, at the latest. The NZMSS is concerned at the rapid spread of some NIS, in particular, *Styela clava* (clubbed tunicate), *Sabella spallanzanii* (Mediterranean fanworm) and *Eudistoma elongatum* (Australian droplet tunicate), which the NZMSS understands have spread to and now infest a number of marine farms in the Northland, Auckland and Waikato regions. These examples alone highlight the importance of having plans in place to reduce the further spread of these species and to ensure new NIS are quickly detected and contained, or preferably eradicated.

The proposed Biosecurity Management Plans will support better management of existing farms as they become re-consented; however, to achieve effective biosecurity management, consistent approaches across all marine farms would be favourable. We therefore recommend MPI considers options for broadening the scope of the NES in respect to managing biosecurity to all marine farms, not just those going through a re-consenting process.

We have concerns relating to the lack of notification for a change of species as part of replacement consent applications. Species may have specific requirements and aquaculture methods may differ resulting in changed environmental effects. In particular, we suggest greater restrictions on category 3 and 4 changes.

The proposed NES will reduce the ability of iwi, stakeholders and the community to comment on and appeal replacement consent applications. Public notification and/or discretionary activity status should be considered for supplementary-fed farms and farms within or adjacent to areas of outstanding natural landscapes, outstanding natural character or outstanding natural features. While realignment may still be notified under the requirements of the Resource Management Act (RMA) or coastal plans, the current proposal reduces the ability of the public to engage in discussion.

As well as farms within outstanding areas, we think additional matters of discretion are needed for farms adjacent to outstanding areas. It will be important to ensure that farms adjacent to outstanding areas do not impact on the values of those outstanding areas (e.g. a salmon farm near an island that is considered to be an outstanding natural landscape).

The NZMSS is of the view that more guidance is needed for assessing the environmental effects from marine farming (Appendix G), particularly those proposed to be subject of discretion for replacement consents for existing farms. The limited availability of guidelines, acceptable environmental levels, consistent methodologies and general best practice is creating uncertainty for all involved, frequently leading to prolonged and expensive processes that create difficulties for all parties. Such guidance would also be beneficial for newly consented marine farms, thus creating benefits beyond the narrow scope of the NES.

The NZMSS strongly recommends adding effects on water quality to the list of effects that should be subject to matters of discretion for replacement consents for existing farms. Issues relating to water quality are of concern to most stakeholders, including marine farmers themselves as their activity depends on suitable water quality.

We have some concerns about farms that were originally consented under the Marine Farming Act 1971. At that time, little was done to assess whether these sites were suitable for aquaculture. If these farms have been assessed under the RMA since their original consent and shown to be suitable for aquaculture then re-consenting of those farms could be considered a restricted discretionary activity. If this has not been demonstrated, these farms need to be fully assessed for their environmental impacts before they can be re-consented.

A 10-year minimum between realignments is not long enough to avoid 'creep' of farms. A one-off realignment would be appropriate given the better environmental monitoring in place now and recognising that farms may not have been originally placed in the best areas. But once that realignment has taken place we do not see a need to keep allowing further realignments.

It would be preferable for areas to be managed in a holistic way, as a zone rather than on a farm by farm basis (e.g. areas zoned for aquaculture in Tasman and Waikato). This forward-thinking approach allows for adaptive management and management of cumulative effects.

We agree that there are sites that should be recognised in the proposed NES because of their particular importance to aquaculture. The Wainui Bay spat catching site is a good example as it has a disproportionate importance as one of a few spat catching areas in NZ.

We hope that the comments above will help the Ministry take a science-based approach to the development of the NES.

Proposed National Environmental Standard for Marine Aquaculture Submission

To the Ministry for Primary Industries

aquaculture@mpi.govt.nz

8 August 2017

Benjamin Haig

New Zealand Native Fisheries Ltd

58 Frantoio Ridge Rd, Mangonui, Northland

1.0 Introduction

I am the managing director of New Zealand Native Fisheries Ltd. I am writing on behalf of my family and my company. I have farmed Pacific Oysters for the past nine years on lease MF83, in Rangaunu Harbour, Northland. I have also worked directly on oyster farms in Parengarenga Harbour, Houhora Harbour, Whangaroa Harbour, and in the Bay of Islands. I have considerable understanding and respect for the oyster industry. My wife is a second generation oyster farmers in Rangaunu. We have a deep appreciation for the opportunity to operate a marine farm in Rangaunu Harbour. I have been on the New Zealand Oyster Industry Association executive committee for seven years.

Our current business plan is focused on transitioning away from the traditional "stick farming" method. We plan to modernize our farm for on-growing selectively bred "single seed" hatchery spat. A full transition in farming methods is going to take years due to the capital investment required to purchase new growing baskets, however we feel it is a worthwhile and sustainable long term plan.

We feel that the marine farm(s) add value to the ecology and the local economy. The natural filtering abilities of the oysters are well known and we feel strongly that they are a positive attribute to our harbour environment. The jobs and local spending that the oyster farm generate create much needed cash flow to our local economy. As a marine farmer I take great pride in farming a product that is environmentally and economically beneficial.

As an industry we are proud farmers, we are passionate farmers and we are good farmers. Our commitment to the recently launched A+ sustainable management programme is a clear demonstration of the care and respect we have for the waters and locations in which we farm.

I support the submission of Aquaculture New Zealand (AQNZ).

2.0 The Issues

- Aquaculture is the heart of regional communities like Havelock, Coromandel, Warkworth, Bluff and Twizel.
- Our products provide kiwis with healthy, sustainable food, produced in New Zealand – a far better choice than most other protein sources available worldwide.
- The industry offers tremendous sustainable growth potential for New Zealand to create more regional jobs, support associated industries and bring much needed export earnings into local communities and the economy.
- But for years the potential has been hampered by a regulatory regime that drains vital resources that could otherwise be invested in innovation, product development and building new premium markets
- Under the current regime, variations and inconsistencies for re-consenting rules in different regions create complexity and uncertainty – and creates extra delays and costs for industry, councils and communities
- With up to 75% of marine farm consents due to expire by 2025, the current consenting processes create a cloud over the future shape of the industry

3.0 General Support for the Proposed NES

- I broadly support the NES as proposed.
- The proposed NES will provide better outcomes for the industry, communities, councils, iwi groups and the environment
- The proposed NES will provide a more efficient and certain consent process for managing existing farms within evidence-based environmental limits.
- The NES proposal carefully balances improving certainty while recognising the values and characteristics that make our marine environment so special.
- It will allow efficient evidence based decisions to be made while encouraging regions to proactively plan for aquaculture in their regions into the future.
- It will require marine farmers to provide evidence and proof to councils that they are operating sustainably within environmental limits.
- The proposal will free up resources currently spent on consent processes, to invest in building value for New Zealand through innovation, product development and new premium markets as well as investment in proactive environmental management.

4.0 Specific Comments on the Proposal

- I agree that the NES is the best available option under the current circumstances.
- I agree that restricted discretionary activity should be given to all consent renewals for aquaculture but note that it is crucial to retain the accompanying proposal for consent renewals to be non-notified in order to meet the proposal's objectives.
- However, there is also a good case for making replacement consents for most existing aquaculture a controlled activity as for the most part, they are an accepted part of the existing environment and generally in appropriate locations.
- There is a strong need for the additional guidance, particularly in light of the current subjectivity and lack of clarity around implementation of the New Zealand Coastal Policy Statement (NZCPS).

- There is also a strong case for an NZCPS - Aquaculture to be progressed within its own timing as this would provide stronger policy support than the guidance as well as allowing for strategic planning for, and management of, aquaculture into the future.
- I support the intent of the biosecurity proposals, however note the AQNZ recommendations to ensure they are sensible and workable and set up in the context of other users in the coastal marine area.
- I support enabling innovation through providing for changes of species as a restricted discretionary activity.

5.0 Questions for Submitters

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?

Yes.

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?

Yes. Non-notification is essential for the proposal to meet its objectives. Controlled activity status is preferred and appropriate for existing marine farm consents.

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?

No.

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?

No.

Question 5: Do you have any feedback on the analysis of effects contained in Appendix G?

The positive social and community benefits could have been highlighted better.

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?

No.

Question 7: Do the provisions covering replacement consents for existing marine farms where supplementary feeding occurs require additional matters of discretion?

No.

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?

It would be preferable that the Minister determine which farms should be subject to assessment under policy 13 and 15 using the best available information.

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?

No.

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?

Not applicable.

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?

No.

Question 12: Are there certain types of aquaculture for which replacement consent applications should be publicly notified?

No.

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?

Allowing councils to take a more lenient approach encourages proactive planning in accordance with the NZCPS Policy 8.

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?

Yes.

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?

Yes. Spat farms of national significance such as the Wainui Bay mussel spat farms in Golden Bay.

Question 16: Are there other ways in which the proposed NES could usefully recognise council's future planning processes?

An NZCPS – Aquaculture should be implemented to support and encourage collaborative and strategic planning for new aquaculture in appropriate areas.

Question 17: What are your thoughts on the size restriction that is proposed to apply to realignments covered by the proposed NES?

It is appropriate.

Question 18: Is there further guidance that should be provided in the proposed NES in relation to realigning existing marine farms?

Yes.

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?

The matters that have been identified are relevant and sufficient.

Question 20: Should the proposed NES address change in farmed species?

Yes.

Question 21: Should the proposed NES limit the species it relates to?

No.

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?

The categories are an appropriate approach.

Question 23: Are there any other categories [that should be considered for the change of species provisions]?

No.

Question 24: Should herbivorous finfish be treated differently from carnivorous finfish?

No.

Question 25: Is restricted discretionary an appropriate status for most changes in species?

Yes.

Question 26: Should spat catching farms be excluded [from the change of species provisions]?

No.

Question 27: Are there any other forms of farming or species that should be excluded [from the change of species provisions]?

No.

Question 28: Do you have any feedback on the scope of matters of discretion?

It will be important to ensure that these categories all remain non-notified so that the decisions can be evidence based.

Question 29: Should change of species involving finfish require additional matters of discretion?

No.

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?

No.

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?

No.

Question 32: Are there certain species or types of species where consent applications should be publicly notified?

No.

Questions 33 to 40 – Biosecurity Management Plans:

I agree with the points raised regarding Biosecurity Management Plans in the AQNZ submission.

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?

Further detail could be provided/explored regarding the social and community benefits of the industry.

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?

As above.

6.0 Summary Statement

I am proud of my role providing healthy, nutritious, sustainable seafood to kiwis as well as jobs and a sense of community to regional New Zealand. I want to focus my business' resources on making this contribution better, through innovation, product development and collectively improving our environment. Without the proposed NES I will instead need to focus on engaging planners and lawyers to continue to operate beyond the consent horizon. The proposed NES is an essential and welcome initiative that will bring a better future for the industry and our communities.

Name: Benjamin Robert Haig
Managing Director
New Zealand Native Fisheries Ltd.

Signature:

Date: 3.8.17



Proposed National Environmental Standard for Marine Aquaculture Submission Template

We would like to hear your views on the proposed National Environmental Standard for Marine Aquaculture (NES: Marine Aquaculture).

Please feel free to use this template to prepare your submission. Once complete please email to aquaculture@mpi.govt.nz.

As stated in section 8 of the discussion document, your submission must include the following information:

- your name and postal address, phone number, and email address (where applicable)
- the part or parts of the proposed NES you are submitting on
- whether you support or oppose the part or parts of the proposed NES
- your submissions, with reasons for your views
- any changes you would like made to the proposed NES
- the decision you wish the Minister for the Environment and the Minister for Primary Industries to make.

For more information about how to make a submission, please refer to section 8 of the discussion document: *Proposed National Environmental Standard for Marine Aquaculture*.

Contact details

Name:

Piatarahi Bennett

Postal address:

Te Puke 3153

Phone number:

Email address:

Are you submitting on behalf of an organisation? Yes [X]

If yes, which organisation are you submitting on behalf of?

Ngati Makino Iwi Authority



Privacy Act 1993

Where you provide personal information in this consultation MPI will collect the information and will only use it for the purposes of the consultation. Under the Privacy Act 1993 you have the right to request access and correction of any personal information you have provided or that MPI holds on you.

Official Information Act 1982

All submissions are subject to the Official Information Act 1982 and may be released (along with the personal details of the submitter) under the Act. If you have specific reasons for wanting to have your submission or personal details withheld, please set out your reasons in the submission. MPI will consider those reasons when making any assessment for the release of submissions if requested under the Official Information Act.

Please indicate below if you wish your personal details to be withheld:

☐ Please withhold my personal details where submissions are made public

☒ Please withhold my personal details in response to a request under the Official Information Act 1982

Questions for submitters

The questions for submitters that are included throughout the discussion document are provided below. We encourage you to provide comments to support your answers to the questions below. You do not have to answer all questions for your submission to be considered.

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?

No. Ngati Makino consider that regional councils ("RC's") are best placed to deal with activities such as aquaculture within the regions. RC's are able to develop rules and policy that fit the regional context. Having a NES that would take jurisdictional powers to deal with aquaculture within a region away from RC's seems illogical. Ngati Makino would be very concerned if our rights and ability to influence the shape of rules [and other relevant processes] for our regional context were taken away.

Ngati Makino have invested an enormous amount of time and resources in processes such as the development of a second generation RPS and regional plan reviews. The gains we have



made would be seriously compromised by an NES. Some of the concepts being advanced by Ngati Makino with our RC and within a regional coastal plan review include the creation of spatial zones that spatially identify parts of the coastal marine area of importance to Ngati Makino; that recognise existing overlays (such as ONC's or ONFL's, toka tapu or other cultural values etc) but that takes a view that special planning including enforceable rules are needed to protect our development rights and other cultural aspirations. An NES standardises rules in a way that denies or strips away our ability to design such tools and mechanisms for our economic, cultural and environmental context and preferences. Central Govt's focus ought to be on finding ways to better support/empower and fund these iwi-RC relationship initiatives instead of interfering with and disempowering them.

Ngati Makino have had aquaculture development aspirations for some time. The coastal marine area off the Otamarakau coast (which is where one of the main marae of Ngati Makino is located) has an identified AMA and we want to protect our development rights in that area. The proposed NES puts this at risk as it makes it too easy for other developers to take advantage of this space which essentially renders Ngati Makino to mere on-lookers of an area that was once our source of sustenance/subsistence.

Ngati Makino believe that the imposition of an NES would harm our cultural revitalisation. We think our Treaty partnership with the Crown must be respected and honoured in a way that ensures our cultural revitalisation and development rights are protected and preserved so that growth can occur at a rate and in a way that future-proofs Ngati Makino. An NES will not achieve this balance and is therefore not consistent with the principles of te Tiriti o Waitangi

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?

Ngati Makino does not consider that a one-rule-for-all approach is appropriate. As signalled above, rules need to be shaped to suit regional (and even sub0-regional) contexts and iwi rights and interests include the right to participate in process to influence the design of rule frameworks in ways that aim to ensure the rules are appropriate and planned to cope with or suit certain regional contextual variations and other factors.

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?

These are matters already dealt with (reasonably well and appropriately in the BOP context anyway) in regional planning instruments. Ngati Makino do not accept that an NES is needed. Resourcing of the development of an NES would be better invested to supporting the protection of iwi development rights and through other cultural revitalisation



strategies/mechanisms, advice, placements, capital or loans, etc and other useful ways that support iwi/cultural development and revitalisation being realised.

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?

Ngati Makino reiterate that this is an issue that is best dealt with at a regional plan level. For example, farms situated inside harbours or estuaries for instance, require different controls including rules compared to offshore farms settings. The thinking around rules needs to be context specific and for issues such as supplementary feeding activities, any rules must be able to demonstrate how former and existing environmental conditions, planning overlays (such as ONFL's, ONC's, taonga and other factors and values) and the process for dealing with any adverse effects are considerations built into the controls. This is a good example and reason why an NES is not useful or appropriate.

Question 5:

Do you have any feedback on the analysis of effects contained in Appendix G?

Our brief observation of Appendix G concludes that the framework is not consistent with accepted case-law; contains fundamental omissions such as an assertion that landscape relates only to things above water which is incorrect. Landscape extends to or includes seascape and subtidal features such as rocks, reefs, boulders, crevices and marine flora & fauna/habitats, ecosystem functioning to name a few); landscape can also deal with natural features as distinct from landscape; landscape in its broadest and narrowest sense includes people values such as perception and sensory values; landscape also includes iwi Maori views, our connections, whakapapa, relationships, matauranga and tikanga practices; landscape also deals with view-shafts. Appendix G is severely deficient.

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?

See above. Ngati Makino maintain that an NES is not fit for purpose because it is too rigid and is unable to be adapted to suit certain regional conditions and contexts



Question 7:

Do the provisions covering replacement consents for existing marine farms where supplementary feeding occurs require additional matters of discretion?

As above. The answer is yes but those matters of discretion cannot be arbitrarily decided or generically applied which is what the NES proposes/intends. To do so would be totally inappropriate and inconsistent with the principles of sustainable development/management; would undermine a number of NPS's and compromise the integrity of regional conditions and their ecosystems and peoples

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?

In the scheme of things, if this can be done, then so be it but it is neither here nor there. An NES should not be advanced for the reasons given above nor does it require an NES before mapping errors can be corrected. This is an action that can and should occur at a regional plan level. However, the costs of any deficiencies in relation to mapping (margins of error etc) ought to fall squarely on aquaculture developers or companies;

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?

Ngati Makino do not support an NES.

Any areas referred to in Q.9 should be identified via regional planning documents in partnership with iwi Maori. The NZCPS does not deal with matters Maori at a level that we are able to provide a specific reference to in order to partly answer this question. Areas of significance to Maori are not dealt with so we cannot point to another Policy in the NZCPS such as Policy 11. Regional plans even struggle to deal with areas and values of importance to Maori. The question has not given any consideration to answers that seek to recognise and provide for Maori areas, relationships or values. This is telling and disappointing.

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?

This is a peculiar question. Only a select few might be able to answer this. Ngati Makino cannot provide an answer.

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?

Ngati Makino do not support an NES and do not see the point in providing an answer to this question. Planning of this nature must be done in a more accepted process that occurs at a regional level.

Question 12:

Are there certain types of aquaculture for which replacement consent applications should be publicly notified?

As above, one size does not fit all and won't work. This is a matter better planned for at a regional and possibly sub-regional level such as via spatial plans mechanisms

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?

Ngati Makino consider that variations could be looked at but that lens needs to be applied at a regional scale. We think there are definitely advantages and disadvantages but those observations apply to a BOP setting and would vary regionally. Hence regional plans are better equip and more appropriate place to develop context specific controls.

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?

That is something Ngati Makino believe should be left with the WRC and Tainui waka tribes and hapu to decide.

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?

Aquaculture sites can be identified by way of regional plans. We do not need an NES to undertake this work. Regional plans are more appropriate for the reasons outlined above. In this way, regional plans can also set up the controls where appropriate. In the past this has been done in the BOP but the process of transforming or integrating the identified areas into a regional plan with policy and rule controls has not really been done. Despite this, Ngati Makino see huge potential – process needs to be properly planned and resourced.

Question 16:

Are there other ways in which the proposed NES could usefully recognise council's future planning processes?

Refer to above answers – an NES will not be useful. There are better ways to recognise council planning processes

Question 17:

What are your thoughts on the size restriction that is proposed to apply to realignments covered by the proposed NES?

Due to time constraints, we were unable to respond to any further questions past this point.

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?

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Are there any other categories [that should be considered for the change of species provisions]?

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Should herbivorous finfish be treated differently from carnivorous finfish?

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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]?

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Do you have any feedback on the scope of matters of discretion?

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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?



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Contact details

Name:

Raewyn Bennett

Postal address:

TE PUKE 3189

Phone number:

Email address:

Are you submitting on behalf of an organisation? Yes

If yes, which organisation are you submitting on behalf of?

Ngati Pikiao Environmental Society

Ngati Pikiao Environmental Society is a mandated organisation of Ngati Pikiao Iwi. It functions to address environmental issues on behalf of Ngati Pikiao.

Please indicate below if you wish your personal details to be withheld:

☒ Please withhold my personal details where submissions are made public

☒ Please withhold my personal details in response to a request under the Official Information Act 1982



Questions for submitters

The questions for submitters that are included throughout the discussion document are provided below. We encourage you to provide comments to support your answers to the questions below. You do not have to answer all questions for your submission to be considered.

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?

Ngati Pikiao Environmental Society (NPES) does not accept that the reasons put forward for rushing change have integrity. Changing the RMA processes in order to meet the wants of a small group (and getting smaller as amalgamations and take-overs grow)

This is important as the aquaculture industry is becoming increasingly rationalised around a small number of large players whose operations extend over multiple regions.

based on scare tactics is not a good enough reason to rush into change. There is a bias evident and unsubstantiated claims made to justify the proposed changes.

Uncertain and inefficient processes are also barriers to realising the economic, social and cultural benefits that existing marine farms can provide.

There is a risk of a reduction in production, investment and innovation.

What cultural benefits do existing farms provide? What uncertain and inefficient processes? What risks? Where is the evidence? Are risks not a normal part of business? What is abnormal in this situation?

The Environment is the most precious resource in the equation, not the demands of investors. NPES are concerned that this is the thin edge of the wedge in undermining the RMA and that there is a risk of reverting to the unsustainable actions and policies from the past for which a small group profits, the environment suffers and all New Zealanders pay for the repairs. For eg. The Rotorua Lakes.

Furthermore, NPES note that other investors in other sectors have to jump through the hurdles that the RMA poses in sustainable management regimes (e.g. kiwifruit developers and earthworks applications) and are curious as to why Aquaculture investors should be exempted. Maybe the proposed NES has more to do with avoiding MACA claims than a claim of inefficient processes.



Ultimately uncertainty in relation to the process that an application for replacement consent for an existing marine farm might be subject to may lead to a reduction in the value of the marine farm, which limits a farmer's ability and incentive to borrow and invest new capital and invest in new technologies.

The economic argument needs to be balanced with the other well-beings arguments. These are largely absent in your analysis.

NPES recognise aquaculture as being a potentially high employment activity for Māori to be involved in, but this recognition does not seek to absolve anyone of due process under the RMA.

While Ngāti Pikiao does not have any established aquaculture farms in its rohe moana, we recognise that any changes enacted have the potential to influence the process for consenting of new, future aquaculture farms. Under former regimes, a suitable AMA has been identified in our rohe moana and we are making this submission cognisant of the possibility of this type of consenting process being adopted for new farms and other activities which may impact on Ngāti Pikiao rohe moana and kaitiakitanga.

The other two regions (Auckland and Bay of Plenty) are a significant way through the development of their second-generation regional coastal plans, with decisions having been released on both plans and appeals to the Environment Court currently being worked through.

Further Ngāti Pikiao through Te Arawa ki Tai Trust has been involved in the appeals to the Bay of Plenty Regional Coastal Environmental Plans.

This has been an expensive process for us in trying to ensure that natural and cultural features were appropriately provided for as per "NZCPS Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage". The small wins and hard work is under threat from this proposed NES. We need more certainty that this work, wins and costs will not be undermined by your proposal.

Some Statutory Acknowledgements across the country recognise the relationship of tangata whenua with the coastal marine area. Any groups with Statutory Acknowledgements in or relating to the common marine and coastal area could be provided for through limited notification to them of applications for replacement consents for existing marine farms, if regional councils determined that they were affected parties.

Ngāti Pikiao has no statutory acknowledgements on their coast. We have opposed others when they have consulted us for coastal recognition. However, the Crown ignores any objections to OIA determinations and based on flimsy evidence and even lies in some cases, make their own determinations in their rush to settle Treaty grievances. Ngāti Pikiao do not need the Crown to acknowledge our Pikiao mana over our coast. Ngāti Pikiao OWN land on the coast. We know our history. NPES has lodged a MACA claim. We have mana on our coast.



The Takutai Moana Act creates a special status for the common marine and coastal area, meaning neither the Crown nor any other person can own it.

We wonder then how the proposed NES gets around that assumption that the neither the Crown nor Maori can own it. So, who has the authority to make decisions about occupation of marine areas. Is there a conflict here?

Ngati Pikiao Environmental Society is surprised that the proposal pays little regard to the Takutai Moana Act. The proposal seems to assume an authority over the Takutai Moana. This not unlike the rush for water consents. Maybe the rush to deliver an NPES for aquaculture is really about wanting to avoid obligations to Maori which are bound to emerge from the MACA process.

In assertion of our Treaty rights, Ngati Pikiao expect to be involved in a meaningful way in decision-making on the use of natural resources in our Rohe and not be avoided due to any lack of statutory acknowledgements. Our rohe moana is a priority. The proposed changes have the potential to minimise our involvement in decision-making if a discretionary activity status is pursued for renewal of existing consents for aquaculture farms.

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?

No.

Our experience with restricted discretionary status consents is that Ngati Pikiao have no power to influence these applications. In particular, our experience of consents for water takes from Ngati Pikiao water-ways. The basis for assessing discretionary points were established before the development of a portfolio of Environment court decisions recognising Maori cultural impacts as needing to be resolved. The same is the case for existing marine farms. Were cultural issues impacts included in any of the marine farms environmental assessments? An automatic renewal of a consent may continue to avoid addressing any impacts on Maori cultural values and perpetuate an obvious injustice.



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?

See our rationale above re the preference for a substantial review of aquaculture planning and not just tinkering. This question implies support for more tinkering.

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?

Yes.

Question 5:

Do you have any feedback on the analysis of effects contained in Appendix G?

Sensitive Māori sites

Needs to be identified further through public

Historic heritage sites

consultation process

Mahinga kai
and traditional
food baskets

Submission No:0047

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

Not sure why the 'public' need to be involved in identifying these Maori cultural sites or relationships.

Neither should the sites to be assessed for cultural impacts be only confined to historic sites. Eg the Maori communities in the Bay of Plenty abutting the coast are all in the low decile (by education decile standards) categories. Interference with wave breaks for surfing activities would be shameful, since surfing is a healthy, free activity.

Kaitiakitanga needs to be provided for over our Ngati Pikiao water-ways, including our rohe-moana. The proposed NES is very light on how it will assess impacts on Maori cultural values.

Ref: Presence of sensitive ecological features should be considered

Comment: Change to: **MUST** be considered

Ref: Aggregations of shell provide a reef-like habitat for a variety of mobile fauna including fish, crustaceans, starfish, sea urchins, and other echinoderms

Comment: There is nothing outstandingly environmentally about this effect. If we put a million spaghetti cans in the ocean, the same thing would happen.

Recreation:

Recreational fishing is often enhanced. These opportunities will continue

Maybe adverse effects on public access, although the assumption is that this was assessed when the farm was first considered and if necessary would be dealt with at the plan making stage

Your analysis assumes a certain class of people (recreation fisherman) as the only recreational users of marine space. Flawed and narrow analysis.

See above reference to surfing breaks. In a BOPRC survey of beach users, most were family with children. Did any established marine farm due for consenting



take the needs of beach users and swimmers into consideration at the establishment stage of the entity?

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?

Yes. Supplementary feeding impacts need to be identified and avoided, remedied or mitigated.

Question 7:

Do the provisions covering replacement consents for existing marine farms where supplementary feeding occurs require additional matters of discretion?

The question is can any environmental impacts be properly addressed in a list of matters of discretion? Is there any updated research on environmental impacts of supplementary feeding? Our answer at Question 6 covers this.

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?

Yes. And then a decision needs to be made on whether the over-lap is a permitted activity. Do not assume the less than minor effects argument will be cover this anomaly.

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?

Yes.



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?

The question is what up to date research exists on the real effects (farms have been established long enough to identify impacts with certainty). The areas/values have already been identified in NZCPS 11. Not sure what this question is posing?

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?

Yes, there should be as a minimum a limit to number of farms in those areas. Visual impacts and effects on Mauri need to be identified and incorporated in any decision making.

Question 12:

Are there certain types of aquaculture for which replacement consent applications should be publicly notified?

Any applications where impacts as per part 2 section 6(e) have not been assessed and been taken into account in initial permits/resource consents for aquaculture farms, should be notified to affected Iwi and hapu.

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?

There are disadvantages. Councils are inhabited by Councillors with very little comprehension of sustainable development ethics. They in the main adhere to



trickle down theories of economic development. These theories have been long disproved as tools for addressing poverty. See UN Human Development Reports. If there is going to be any allocation of public space to corporates, factual information on benefits need to be provided. E.g. How many jobs, what sort of qualifications, what sorts of jobs. That way people can work out for themselves whether the trade-off (e.g. forgoing public space, environmental impacts) is worthwhile. The danger is that Councils will assume the trade-off is acceptable because of pre-conceived ideas about economic development..

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?

Yes

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?

If you proceed with the NES, yes.

Question 21:

Should the proposed NES limit the species it relates to?

Yes. Otherwise seek ERA approval as a condition.

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?



yes

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?

Yes

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?



Tangata whenua development zones should be provided for where lands adjacent coastal marine area are dominated by Maori Land ownership and or population. This is so as to avoid zoning by default of any undeveloped Maori coastal areas or coastal space as mitigation zones for over-developed coastal marine areas as can happen in the Bay of Plenty. There is a possibility that Maori economic aspirations can be curtailed by setting aside areas as no go zones for aquaculture. The proposed NES for aquaculture should ensure that provision for these zones is not compromised.

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?

Yes the activity status should be different for changing species on existing marine farms in outstanding natural features, outstanding natural landscapes and areas of outstanding natural character. It should be a non-complying activity status.

Question 32:

Are there certain species or types of species where consent applications should be publicly notified?

Non-indigenous species and Non-local species applications should be publicly notified unless they have ERA approval.

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?

Yes it is necessary for all marine farms to prepare, implement and keep up to date Biosecurity Management Plans (BioMP).

No concerns.



No exceptions.

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?

Yes

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?



Regional Councils should not have to carry the costs. They are not responsible for the invasion of foreign species. MPI or Maritime NZ should take responsibility for training and certification of BioMP monitors.

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?

Yes.

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?

See introductory remarks

Question 42:

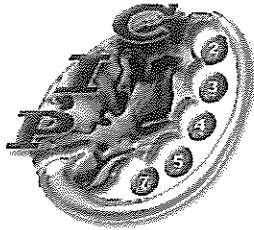
Are the estimates of costs and benefits accurate? Do you have information on costs and benefits that could assist the second stage of our assessment (of the impacts of the final proposal)? Do you have any information on costs and benefits that have not been quantified at this stage?



Please use the space below to provide any additional comments you may have, and if continuing an answer from another question please indicate the question number.

Your analysis has highlighted the many pieces of legislation that affect aquaculture. Another piece of tinkering as per the rushed, proposed EPS for aquaculture in order to assist renewals of consents does not make the current legislation any simpler to manage or monitor and just adds to the clutter. Why not wait and see what the Marlborough District Council aquaculture work produces, and other Councils and do a comprehensive reform of legislation affecting aquaculture.

The issue of use of "public space" is bound to have parallels with the ownership of water question. There may-be lessons to be learned there.



PAUA INDUSTRY
COUNCIL



NZ ROCK LOBSTER INDUSTRY
COUNCIL

Submission on Proposed National Environmental Standard for
Marine Aquaculture

8 August 2017

Introduction

1. This submission is made jointly by the NZ Rock Lobster Industry Council (NZ RLIC) and the Paua Industry Council (PIC) on behalf of our members who are quota owners, fishers and affiliated seafood industry personnel in the rock lobster and pāua fisheries.
2. NZ RLIC and PIC support the need for improved certainty in relation to new consents for existing marine farms. We also support improved management of biosecurity risks on marine farms. Importantly, we consider that these two outcomes can and should be achieved without increased risk to wild fisheries resources or commercial fishing activity.
3. Our submission is in three parts, as follows:
 - **Part One:** Support for aspects of the NES;
 - **Part Two:** New consents for existing farms (including realignment and species changes) – analysis of risks to fisheries resources and the activity of fishing, and recommendations to address identified risks; and
 - **Part Three:** Improving biosecurity management on marine farms.
4. Our main recommendations are, in summary:
 - Add “*adverse effects on fisheries resources*” as a matter for council discretion when considering new consents for existing marine farms, realignments of existing marine farms, and species changes for categories 2, 3 or 4;
 - Require new consents for existing marine farms to be non-notified only where the marine farm: (a) has already been subject to an RMA consent process, and (b) is in an area which

has been identified, through a comprehensive planning process, as being suitable for aquaculture;

- Do not provide for sites of particular significance to the aquaculture industry in the proposed NES;
- Allow councils to set a more stringent rule for new consents for existing marine farms in areas which are, in future, determined through regional planning processes to be inappropriate for aquaculture;
- Exclude species changes to pāua from the scope of the proposed NES;
- Exempt from the non-notification requirement for species changes in categories 1 or 2: (a) a change to a species that is not already present in the area, and (b) a change to a species that supports a significant wild fishery in the area; and
- Undertake further work on the biosecurity management components of the proposed NES to address the matters identified in this submission.

Part One: Support for aspects of the NES

5. PIC and NZ RLIC consider that it is important for the aquaculture sector to have certainty about the process by which new consents may be issued for existing marine farms. With greater certainty about the future of existing farms, the aquaculture sector will be able to make better use of existing space allocated to aquaculture so that growth in value need not be dependent only on access to new coastal space. We agree that *"confidence in the continuation of an activity is critical to continued investment and innovation in any industry"*¹ – this is true for the aquaculture industry, and equally true for the commercial fishing industry.
6. We therefore support the need for an efficient process for "re-consenting" and realigning existing marine farms, and for certain types of species changes on existing farms. We agree that a National Environmental Standard (NES) prepared under the Resource Management Act 1991 (RMA) is an appropriate tool to improve the efficiency of these processes.
7. However, we are less convinced by the claimed need for national consistency. In some cases, there are good reasons for variations, whether between regions or different parts of a region. The proposed NES itself provides for inconsistency by allowing councils to set more lenient rules for aquaculture than those in the NES. We think the NES is better described as providing a maximum level of severity or rigour in re-consenting, realignment and species changes, rather than an entirely consistent approach across regions.

¹ Proposed National Environmental Standard for Marine Aquaculture, page 12.

8. NZ RLIC and PIC support “restricted discretionary activity” status for most applications for new consents, realignments and species changes for existing marine farms. For the majority of applications, restricted discretionary activity status improves certainty (by limiting the matters that may be considered by councils) while still allowing potential risks to be adequately assessed and managed.² However, in order to maintain environmental standards and minimise risks to other marine users, the matters over which councils may exercise discretion need to be carefully defined. Our analysis and recommendations in Part Two of the submission address this issue in more detail.
9. We also support improved biosecurity management on marine farms. However, we consider that this aspect of the proposed NES is under-developed and that further work needs to be undertaken to justify the proposed approach and clarify the outstanding issues raised in Part Three of our submission.

Part Two: Proposed NES provisions for existing marine farms

10. The proposed NES removes the ability of councils to manage any adverse effects of existing marine farms on fisheries, while at the same time preventing the input of potentially affected commercial fishing interests. In our view this approach would be acceptable only if the government can demonstrate with a high level of confidence that existing marine farms are of no more than minor risk to wild fisheries. However, the reality is that almost no research or monitoring has been undertaken on the effects of existing marine farms on wild fish populations and habitats in New Zealand. Furthermore, the information presented in the NES supporting documentation does not support an assumption that the risks to fisheries resources are minor.
11. In preparing this submission, NZ RLIC and PIC analysed the proposed NES provisions in order to identify whether, in comparison to the *status quo*, the proposals increase the risk of adverse effects from existing marine farms on fisheries resources or the activity of commercial fishing. Our analysis was informed by the information in the NES supporting documentation.
12. The main findings of this analysis were:
 - No direct increased risks to the activity of fishing were identified, primarily because the Fisheries Act 1996 undue adverse effects (UAE) assessment applies if any new space is to be occupied by realignment of an existing marine farm; and
 - Eight increased risks to fisheries resources were identified, each of which is addressed in more detail in items 1) to 8) below, together with recommendations to address the identified risk.

² For the avoidance of doubt, we would not support the use in the NES of “controlled activity” status for re-consenting, realignment or new species on existing farms.

1) New consents for existing farms – matters for council discretion

13. Currently councils are able to determine, through their planning processes, whether to consider adverse effects on fisheries resources when assessing applications for new consents for existing marine farms. In the proposed NES, the list of matters over which councils may exercise discretion does not include effects on fisheries resources, so councils will be prohibited from considering or managing any adverse effects on fisheries resources when assessing applications for new consents for existing marine farms. In comparison with the *status quo*, this NES provision increases risks to fisheries resources.
14. Aside from biosecurity effects (which is a matter for council discretion in the proposed NES), existing marine farms have a number of potential adverse effects on fisheries resources, for example:³
- Changes in the distribution of wild fish as a result of attraction to farm structures or underwater lighting;
 - Adverse effects on fish habitats through the deposition of shell litter, particulate matter, fish faeces and waste feed – this is of particular significance if a marine farm is located in or adjacent to fish spawning grounds or nursery areas;
 - Egg and larval fish depletion by farmed shellfish and or/potential trophic interactions (e.g., alteration of plankton composition and food availability);
 - Consumption of waste feed by wild fish, which may alter body condition and reproductive success of wild fish;
 - Physical interference of marine farming structures with the larval stages of wild fish species;
 - Enhanced predation risk by farmed fish and other predators (seals etc) of fish attracted to aquaculture structures;
 - Accumulation of metals from use of antifoulants and additives in fish feed;
 - Increased recreational fishing pressure in the vicinity of marine farms; and
 - Changes to the genetic distinctiveness, fitness, adaptability and diversity of local wild populations as a result of escapees from marine farms or, in the case of farmed shellfish, as a result of broadcast spawning which interacts with wild populations
15. Some of these effects are likely to be more significant for marine farms where supplementary feeding takes place than for non-fed farms.
16. In spite of many years of marine farming, little is known about some of these adverse effects in the New Zealand context. “Knowledge gaps” identified by MPI include: the effects of shellfish aquaculture on larval stages of wild fish; the effects of increased recreational pressure around

³ Ministry for Primary Industries (2013). Overview of Ecological Effects of Aquaculture; Ministry for Primary Industries (2013). Literature Review of Ecological Effects of Aquaculture. Effects on Wild Fish.

marine farms on wild fish populations; the risks and ecological consequences of transgenic and polyploidy shellfish; genotype-by-environment effects; accumulation and interactions of trace contaminants; effects of fish farms on neighbouring habitats important to wild fish, such as rocky reefs; effects of farms on fish movements to spawning or fishing grounds; the amount of predation by caged fish on wild species attracted by submerged artificial lighting; the effect of escapees on native species; and effects of therapeutants on sediments and ecological processes.⁴

17. These knowledge gaps mean that the adverse effects of existing marine farms on fisheries resources are uncertain and, in some cases, unknown. MPI notes that:

*At present, no specific information is available on how the existing finfish farms in New Zealand might affect wild fish populations (positively or negatively) in the vicinity of the farms;*⁵

*Unlike the literature for finfish farms, studies that describe how shellfish farms affect wild fish assemblages are hard to find;*⁶ and

*Fish associations have been described in New Zealand studies relating to mussel farms... but do not appear to have been considered for oysters.*⁷

18. In the case of marine farms which were originally granted consents under the RMA, impacts on fisheries resources should have been considered at the time the consent was granted. This assessment was required under either:

- Fisheries Act 1983 section 67J(8) which, from 1993 to 2004, required a marine farming permit to be declined if it resulted in an undue adverse effect on “fishing or the sustainability of fisheries resources”; or
- The RMA from 2004, when the requirement to assess the effects of aquaculture on the sustainability of fisheries resources was removed from the Fisheries Act with the expectation (but no specific requirement) that regional councils would instead consider these impacts under the RMA consent process.

19. However, farms that were originally authorised during the period 1968 to 1993 under marine farming legislation were unlikely to have been subject to any assessments of adverse effects on fisheries resources as there was no statutory requirement to assess this type of effect.⁸ Although councils were required to assess the impacts of aquaculture activities on fisheries resources from

⁴ Ministry for Primary Industries (2013). Overview of Ecological Effects of Aquaculture, various pages.

⁵ Ministry for Primary Industries 2013. Overview of Ecological Effects of Aquaculture, page 47.

⁶ Ministry for Primary Industries 2013. Literature Review of Ecological Effects of Aquaculture. Effects on Wild Fish, page 5-6.

⁷ Ministry for Primary Industries 2013. Literature Review of Ecological Effects of Aquaculture. Effects on Wild Fish, page 5-7.

⁸ The Marine Farming Act 1971 required an objection to a marine farm to be upheld if the farm interfered unduly with commercial fishing [MFA 1971, section 7]. The Marine Farming Act 1968 had a similar requirement for objections to be upheld if a marine farm substantially interfered with commercial fishing [MFA 1968, section 6].

2004, this was a new responsibility for councils and in the early years following the aquaculture law reforms such assessments may not have been particularly rigorous or well informed. Furthermore, during the transition to the new aquaculture regime, certain categories of applications fell through a legislative gap whereby coastal permits were granted in the absence of any statutory requirement to assess effects on the sustainability of fisheries resources.⁹ There is therefore an unknown, but potentially significant, number of existing marine farms for which adverse effects on fisheries resources have either never been assessed or may not have been adequately assessed.

20. Even in cases where adverse effects on fisheries resources were assessed when consent was originally granted, circumstances may have changed over the duration of the consent. In particular:

- Effects of a marine farm on fisheries resources can change over time – e.g., selective breeding programmes for farmed species can alter the genetic composition of farmed species which may change the risks of genetic alteration in wild populations; use of different feed pellets may alter the risks to wild populations from consumption of feed;
- New information may have become available in relation to:
 - the knowledge gaps identified above;
 - adverse effects of a particular marine farm on fisheries resources (e.g., rates of nutrient enrichment in surrounding waters, or the distance from the farm at which environmental changes are detected); or
 - fisheries resources (e.g., more may now be known about the location and significance of fisheries habitats such as important juvenile or spawning grounds);
- The distribution and abundance of commercially harvested species may have changed, either as a consequence of the marine farm (through fish attraction and/or recreational fishing pressure) or in response to other stressors (e.g., sedimentation from land-based activities); and
- Cumulative adverse effects on fisheries resources from marine farming in an area or region may now be apparent that were not anticipated at the time the farm was originally authorised (e.g., water column effects such as plankton depletion or nutrient enrichment).

21. Literature reviews in the documentation supporting the proposed NES suggest that effects of marine farms on wild fish populations “are likely to be small in comparison with the effects on other aspects of the marine ecosystem”.¹⁰ However, the requirement in the RMA to avoid, remedy or mitigate adverse effects of activities on the environment is dependent not on the *relative* significance of the adverse effect in comparison to other adverse effects, but on the presence of an actual adverse

⁹ See New Zealand Seafood Industry Council Ltd (2011). Submission to the Primary Production Committee on the Aquaculture Legislation Amendment Bill (No 3) 11 February 2011.

¹⁰ Ministry for Primary Industries 2013. Overview of Ecological Effects of Aquaculture, page 47.

effect (including a future effect or cumulative effect) “*regardless of the scale, intensity, duration, or frequency of the effect*” and also includes potential adverse effects.¹¹

22. Importantly, measures taken to avoid, remedy or mitigate other adverse effects of existing marine farms where councils do have discretion to impose conditions (e.g., effects on seabirds or public access) will clearly not address the identified risks to fisheries resources.

23. In summary:

- Existing marine farms have potential adverse effects on wild fisheries resources;
- Some of these types of effects are uncertain or poorly understood;
- An unknown but potentially significant number of existing farms have never been subject to an assessment of adverse effects on fisheries resources;
- Changes may have occurred over the duration of the consent and/or new information may have been acquired about the interactions between marine farms and fisheries resources; and
- Conditions that may be imposed to address matters for council discretion under the proposed NES will not avoid, remedy or mitigate all identified risks to fisheries resources from existing marine farms.

24. In these circumstances PIC and NZ RLIC submit that prohibiting councils from considering and managing adverse effects of existing marine farms on fisheries resources creates unacceptable additional risks to the sustainability of fisheries resources. This is contrary to the Fisheries Act’s purpose of providing for the utilisation of fisheries resources while ensuring sustainability, and is inconsistent with regional councils’ responsibilities for managing the adverse effects of aquaculture on fishing and fisheries resources under the RMA.¹²

Recommendation: Add “*adverse effects on fisheries resources*” as a matter for council discretion when considering new consents for existing marine farms.

2) New consents for existing farms – notification

25. Currently applications for new consents for existing marine farms are either notified, non-notified or subject to limited notification, depending on the region and area in which the farm is located. Under the proposed NES, all such applications will be non-notified. NZ RLIC, PIC and all other parties who have an interest in the sustainability of fisheries resources will therefore be prevented from

¹¹ RMA section 3 (emphasis added). The potential adverse effects include any potential effect of high probability; and(f) any potential effect of low probability which has a high potential impact.

¹² RMA section 30(3).

submitting on applications for new consents for existing marine farms. In comparison with the *status quo*, this NES provision increases risks to fisheries resources.

26. NZ RLIC and PIC have no problem with individual councils determining, after undertaking a comprehensive planning process, that applications for new consents for existing marine farms should be non-notified either throughout the region or in particular parts of the region which have been identified as being suitable for aquaculture. However, we object to non-notification being imposed through the NES because:

- It fails to acknowledge local circumstances. The fishing industry has a direct interest in the effects of marine farming on fisheries resources in regions that support important wild fisheries – for example, the Bluff oyster industry has a legitimate interest in impacts of marine farming around Stewart Island on the sustainability of the wild oyster fishery;
- It does not recognise that new information may have become available or the nature and extent of adverse effects may have changed since the farm was originally consented (as documented above in relation to fisheries impacts). Non-notification is therefore inconsistent with the principle that *“public participation should be based on the extent an existing farm is changing its impacts on the environment”*,¹³
- It assumes councils have access to the full range of expertise and perspectives to assess specialised technical matters that are of direct relevance to other sectors – for example, the impacts on wild fisheries of biosecurity management on marine farms;
- It pre-empts council decisions on whether applications for existing marine farms should be notified in regions where comprehensive planning has not yet taken place to identify areas which are or are not suitable for aquaculture;
- It does not allow for notification, even in areas that have been determined to be unsuitable for aquaculture; and
- It means that existing marine farms that were first authorised prior to 1991 will never receive the level of local public scrutiny that should have been provided under the RMA.

27. Although we agree that it is generally more appropriate for interested parties to submit on planning provisions (rather than on every consent application), this expectation cannot be applied retrospectively. If an operative regional plan states that new consents for existing aquaculture are non-notified, then the fishing industry and other interested parties at least had an opportunity to submit on the non-notification provision at the time the plan was proposed. However, in all other cases (i.e. where a plan requires or is silent on notification), interested parties would expect that standard RMA rules for notification continue to apply. The NES interferes with that expectation.

¹³ Proposed National Environmental Standard for Marine Aquaculture, page 13.

Recommendation: Require new consents for existing marine farms to be non-notified only where the marine farm: (a) has already been subject to an RMA consent process; and (b) is in an area which has been identified, through a comprehensive planning process, as being suitable for aquaculture.

3) New consents for existing farms – sites of particular significance for aquaculture

28. The discussion document suggests that replacement consents for sites of particular importance to the aquaculture industry (e.g., for spat collection) should be recognised differently – the implication is more leniently – in the proposed NES. Assigning sites of particular importance for aquaculture with controlled activity status or further reducing the matters for council discretion exacerbates the increased risks to fisheries resources identified in point 1) of this submission.
29. Regional planning processes already allow the aquaculture sector to seek recognition of and provision for sites of particular significance to aquaculture. These sites are discrete and region-specific and there is no issue of consistency or certainty that needs to be addressed through special recognition above that already provided in the proposed NES.

Recommendation: Do not provide for sites of particular significance to the aquaculture industry in the proposed NES.

4) New consents for existing farms – effect of future planning

30. Currently if a council identifies an area where aquaculture is inappropriate, the council is able to determine whether existing marine farms within that area are discretionary, non-complying or prohibited activities. Under the proposed NES, all existing marine farms in inappropriate areas will be discretionary activities. In comparison with the *status quo*, this NES provision increases risks to fisheries resources because existing marine farms can no longer be classified as prohibited or non-complying activities, even if they are located in areas where aquaculture is inappropriate – for example because the area is ecologically significant or a habitat of particular significance for fisheries management.
31. Allowing councils to set more stringent rules would provide greater certainty for all parties, including the aquaculture sector, about where aquaculture may be located in the future.

Recommendation: Allow councils to set a more stringent rule for new consents for existing marine farms in areas which are, in future, determined through regional planning processes to be inappropriate for aquaculture.

5) Realignment of existing farms – matters for council discretion

32. Currently councils are able to determine, through their planning processes, whether to consider adverse effects on fisheries resources when assessing applications to realign an existing marine farm. Under the proposed NES, councils will be prohibited from considering or managing any adverse effects on fisheries resources. In comparison with the *status quo*, this NES provision increases risks to fisheries resources.
33. PIC and NZ RLIC consider that this risk is unacceptable for the reasons outlined in point 1) of this submission. Furthermore, up to 3.33ha of a realigned farm may be in “new space” and may therefore have adverse effects on fisheries habitat or fisheries resources which differ from the impacts of the farm in its original location. Although a Fisheries Act UAE assessment must still be undertaken for realignments under the proposed NES, the UAE assessment does not address adverse effects on fisheries resources.

Recommendation: Add “*adverse effects on fisheries resources*” as a matter for council discretion when considering realignments of existing marine farms.

6) Change of species to pāua

34. Currently the addition of pāua to an existing farm, or changing an existing farm fully to pāua farming, is authorised through a change in consent conditions (a fully discretionary activity) or a completely new consent (varying activity status, depending on region and area). In the proposed NES, the risk to wild pāua fisheries is increased as a result of (a) the requirement to process applications as a restricted discretionary activity, and (b) the restricted list of matters over which councils may exercise discretion.
35. PIC and NZ RLIC submit that a change of species (addition or complete change) to pāua should be excluded from the scope of the NES in the same way that species changes to rock lobster, scampi and crabs are excluded, because:
- Pāua farming has unknown ecological impacts;¹⁴
 - The information that is available suggests there may be significant benthic and enrichment effects from feeding farmed pāua;¹⁵
 - Pāua farming may cause genetic changes in wild pāua populations;
 - Internationally, wild populations have experienced significant mortality from pathogens originating on abalone farms; and
 - Wild pāua fisheries are highly valued by commercial, customary and recreational fishers.

¹⁴ Cawthron Institute (2017). Report No 2984. Grouping aquaculture species by their ecological effects.

¹⁵ Keeley, Nigel et al (2009). Review of the Ecological Effects of Farming Shellfish and Other Non-fish Species in New Zealand Cawthron Report No. 1476 August 2009.

36. Restricted discretionary is an appropriate activity status only if the types of adverse effects that might arise from a species change are well defined and known in advance. PIC and NZ RLIC consider that the adverse effects of pāua farming, especially the effects on wild pāua populations, are insufficiently known and understood for species changes involving pāua to be classified as a restricted discretionary activity. We note in particular that:

- The Cawthron Institute report that underpins the NES describes the majority of ecological impacts of abalone farming (floating subtidal lines) as *“an educated guess for which we were highly uncertain”*, and the remainder of impacts as *“an assumption regarding relative effects, but generally lack[ing] concrete information on the actual impacts”*,¹⁶
- A 2009 Cawthron report concluded that *“No robust studies could be found that describe actual environmental effects from culturing pāua in sea-based containment systems. The two known farms in New Zealand are small in both scale and intensity, and function in a co-culture situation which makes species-specific assessments difficult”*,¹⁷ and
- The documentation associated with the proposed NES considers only the impact of pāua farmed on longlines, and does not address pāua farmed on seabed structures.

37. Pāua differ from other farmed shellfish because feed must be provided – in the form of either macro-algae or specially designed feed pellets. The 2009 Cawthron report estimated that a pāua farm could conceivably produce waste products at a rate of between 2 and 20 kg m² yr⁻¹ and noted that the upper range of this estimate is comparable to that of modelled predictions for functioning salmon farms in the Marlborough Sounds. The report concluded *“it is therefore fair to assume that given sufficient scale and commercial intensity, waste production may be sufficient to induce deposition and enrichment related effects. As with other forms of aquaculture, the extent of these effects will be influenced by environmental and farming management practices, which need to be considered in an overall site assessment.”*¹⁸

38. PIC is particularly concerned about the adverse effects of marine-based pāua farming on wild pāua populations – in particular the risk of genetic contamination and the introduction of diseases. Pāua are broadcast spawners and it is therefore impossible to prevent the gametes from adult farmed stock mixing with those of wild populations. Farmed progeny may also settle on adjacent natural coastline given suitable habitat. The consequences for wild populations are unknown, particularly if pāua bred for aquaculture purposes exhibit different traits than those of the receiving wild populations.

39. Abalone are susceptible to a number of disorders, diseases, viruses and parasites and there are international examples of pathogens spreading from farmed abalone to wild populations with

¹⁶ Cawthron Institute (2017). Report No 2984. Grouping aquaculture species by their ecological effects.

¹⁷ Keeley, Nigel et al (2009). Review of the Ecological Effects of Farming Shellfish and Other Non-fish Species in New Zealand Cawthron Report No. 1476 August 2009.

¹⁸ Keeley, N et al (2009) *ibid*.

devastating consequences. Most notably, in Victoria in 2005 abalone viral ganglioneuritis (AVG) caused mass mortality of abalone on land-based aquaculture farms and by 2006 had caused significant mortality (up to 90 or 100% in some affected areas) of wild abalone, reducing the total allowable catch by over 50%. In 2008 the virus was confirmed in Tasmania although it has not caused significant mortalities in wild populations in that state. Mortalities on the scale experienced in Victoria are likely to have ecosystem-level effects beyond the direct effects on wild abalone populations.

40. In New Zealand, pāua is an iconic taonga species that is highly valued by commercial, customary and recreational fishers. PIC and NZ RLIC consider that it is not worth risking this prized resource simply in order to provide a streamlined consent process to encourage marine farmers to switch to small scale, relatively low value pāua farming.

Recommendation: Exclude the addition of or complete change in species to pāua from the scope of the proposed NES.

7) Change of species – matters for council discretion

41. Under the proposed NES, species changes which fit the criteria for categories 1, 2, 3 or 4 are restricted discretionary activities, with a limited list of matters over which councils may exercise discretion. While some fisheries effects are included in this list, councils are prohibited from considering the full range of potential effects on fisheries, resulting in an increase of risk to fisheries resources.
42. In particular, councils are prohibited from considering the impacts on fisheries resources of changes to sub-surface structures (relevant to categories 2, 3 and 4). Any species change which entails a change in subsurface structure may have adverse effects on fisheries resources by physically disrupting fish life-cycles – for example, by inadvertently capturing juveniles or spat of wild species on farming structures, or changing fish aggregation patterns. These types of effects may result in local or more widespread changes in fish abundance or distribution.

Recommendation: Add "*adverse effects on fisheries resources*" as a matter for council discretion when considering species changes in categories 2, 3 or 4.

8) Change of species – public notification

43. Currently applications for species changes are either notified, non-notified or subject to limited notification, depending on the region and area in which the farm is located. In the proposed NES, applications for species changes in categories 1 or 2 will be non-notified. NZ RLIC and PIC, together with all other parties who have an interest in the sustainability of fisheries resources, will therefore be prevented from submitting on applications for species changes in these categories. In

comparison with the *status quo*, this NES provision increases risks to fisheries resources for reasons similar to those identified in point 2) of this submission.

44. Denying councils the opportunity to seek public input is particularly unsound where the species change entails either a change to a new species that is not already present in the area, or a change to a species that supports a significant local fishery that is valued by commercial, customary or recreational fishers.

Recommendation: Exempt from the non-notification requirement for species changes in categories 1 or 2 the following categories of applications:

- A change to a species that is not already present in the area; and
- A change to a species that supports a significant wild fishery in the area.

Part Three: Biosecurity management on marine farms

45. PIC and NZ RLIC support the need for effective biosecurity management practices on marine farms.

We consider that some biosecurity measures for aquaculture are best implemented nationally, others regionally or locally, and others at the level of individual marine farms. Although the discussion document states that *“a dual response, through the Biosecurity Act 1993 and with support from the proposed NES under the RMA is appropriate”*¹⁹ it is not at all clear how this dual response is intended to operate at national, regional, local and on-farm level, and it is not clear how the two Acts are intended to interact in practice to achieve the required level of risk management.

46. We do not think that the discussion document makes a strong or clear case that an NES is an optimum or desirable way of improving biosecurity management on marine farms. In many respects the biosecurity provisions appear to be “tacked on” to a proposed NES that is primarily directed at facilitating the granting of new consents for existing marine farms.

47. When describing the “drivers” for the proposed NES, the discussion document states that *“Biosecurity practices on marine farms need to be implemented consistently and effectively to protect the environment, communities and the aquaculture industry from the introduction and spread of marine pests and diseases.”*²⁰ While we agree that biosecurity management needs to be effective, it is less clear that “consistent implementation” is necessary or desirable. The discussion document does not define or describe what is meant by consistent implementation. We support the need for *consistent standards* with respect to the required level of risk mitigation, but consistent standards do not necessarily require the adoption of identical methods or identical biosecurity management plans.

¹⁹ Proposed National Environmental Standard for Marine Aquaculture, page 16.

²⁰ Proposed National Environmental Standard for Marine Aquaculture, page 5.

48. PIC and NZ RLIC are concerned that the discussion document omits any reference to the potential adverse effects of biosecurity risks arising from marine farms on wild fisheries and the economic performance of the fishing industry. Instead the focus is on risks to farmed stock, the reputation of New Zealand aquaculture, and the environment. This omission means that the benefits of taking additional biosecurity precautions on marine farms will be under-estimated because the costs of biosecurity events to the fishing sector have not been factored into the equation.

49. We are unable to assess whether the proposed NES is likely to be an effective tool for improving biosecurity management on marine farms for the following reasons:

- *Unclear requirements:* Aside from requiring the implementation of a biosecurity management plan (BioMP) on each marine farm, the content of the NES is not specified. Matters to be included in a BioMP would be set out in a separate document (which is not currently available) and would be incorporated by reference into the NES. There is no explicit provision for public consultation on the separate document even though this is critical for determining the content of BioMPs and the effectiveness of the NES;
- *Unclear status:* The status of a BioMP is not clear with respect to enforcement and penalties for breaches. If BioMPs are required to be written in a rule-like form (where non-compliance with a particular provision is readily discernable) the provisions may be enforceable, but if the provisions take the form of vaguely worded policies or guidance then the BioMP provisions cannot be effectively enforced. Even if a BioMP provision is written as a rule, it is not clear whether breaching a provision in a BioMP is equivalent to breaching a consent condition in terms of penalties and other consequences;
- *Lack of transparency:* The NES is silent on the question of whether BioMPs will be publicly available or subject to public consultation. If a consent application for a marine farm is publicly notified, the BioMP should also be available for submissions and amendment (in the same way that a proposed consent condition is). If the consent application is non-notified, the NES provides no mechanism for ensuring transparency in relation to managing biosecurity risks on the marine farm – even though third parties may be adversely affected by failure to manage biosecurity risks effectively;
- *Unclear relationship to consent conditions:* It is not clear whether particular measures such as controls on the type of feed used or stock movements between farms would be written into a BioMP or imposed as consent conditions, or whether a council would have discretion as to which of these methods to adopt. We would be very concerned if the requirement to prepare a BioMP had the effect of transferring controls from consent conditions (generally transparent, available for public scrutiny, and enforceable) to a document of uncertain status that is not visible, not available for scrutiny and not enforceable; and
- *Expertise and resources:* We do not know whether regional councils have the expertise to assess BioMPs against the content of the NES or associated specifications, and to monitor

and enforce the provisions of BioMPs. In the absence of effective monitoring and enforcement, BioMPs will not be an improvement on the *status quo* and may even provide a false perception of adequate risk management.

50. NZ RLIC and PIC see no valid justification for the proposed 31 January 2025 deadline. If BioMPs are considered necessary from the day the NES comes into force for some farms (i.e., new farms and existing farms requiring new consents), then BioMPs should be required for all farms from that date. Consistent and effective management of biosecurity risks will not be achieved if over 30% of existing farms are able to operate without a BioMP for the next seven years. This level of leniency suggests that BioMPs are not seen to be a critical or necessary component of the biosecurity management regime for aquaculture.

51. In summary, NZ RLIC and PIC consider that further work is required on the biosecurity aspects of the proposed NES in order to address the issues raised above. We are particularly concerned to ensure that, if this aspect of the proposed NES is progressed:

- BioMPs are not just a paper-based exercise, but are demonstratively more effective than the *status quo* in reducing biosecurity risks on marine farms, including risks to wild fisheries resources;
- The identified issues of transparency are addressed;
- Adequate attention is given to resources for monitoring and compliance, and to ensuring that biosecurity requirements on marine farms are fully enforceable; and
- BioMPs or equivalent measures are implemented as soon as practicable for all marine farms.



Mark Edwards
Deputy Chief Executive
NZ Rock Lobster Industry Council



Storm Stanley
Chairman
Paua Industry Council





Proposed National Environmental Standard for Marine Aquaculture Submission Template

We would like to hear your views on the proposed National Environmental Standard for Marine Aquaculture (NES: Marine Aquaculture).

Please feel free to use this template to prepare your submission. Once complete please email to aquaculture@mpi.govt.nz.

As stated in section 8 of the discussion document, your submission must include the following information:

- your name and postal address, phone number, and email address (where applicable)
- the part or parts of the proposed NES you are submitting on
- whether you support or oppose the part or parts of the proposed NES
- your submissions, with reasons for your views
- any changes you would like made to the proposed NES
- the decision you wish the Minister for the Environment and the Minister for Primary Industries to make.

For more information about how to make a submission, please refer to section 8 of the discussion document: *Proposed National Environmental Standard for Marine Aquaculture*.

Contact details

Name:

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Are you submitting on behalf of an organisation? Yes [] No [X]

If yes, which organisation are you submitting on behalf of?

I'm submitting as a private individual. I am a beneficiary of a small family trust that owns several marine farms growing mussels in the Marlborough Sounds.



Privacy Act 1993

Where you provide personal information in this consultation MPI will collect the information and will only use it for the purposes of the consultation. Under the Privacy Act 1993 you have the right to request access and correction of any personal information you have provided or that MPI holds on you.

Official Information Act 1982

All submissions are subject to the Official Information Act 1982 and may be released (along with the personal details of the submitter) under the Act. If you have specific reasons for wanting to have your submission or personal details withheld, please set out your reasons in the submission. MPI will consider those reasons when making any assessment for the release of submissions if requested under the Official Information Act.

Please indicate below if you wish your personal details to be withheld:

- ☐ Please withhold my personal details where submissions are made public
- ☐ Please withhold my personal details in response to a request under the Official Information Act 1982

Questions for submitters

The questions for submitters that are included throughout the discussion document are provided below. We encourage you to provide comments to support your answers to the questions below. You do not have to answer all questions for your submission to be considered.

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?

I support an NES which provides certainty for investment and innovation in marine aquaculture to add further value and employment, while providing appropriate protection for the environment.

This is an excellent initiative. Thank you for making this happen.

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?

I strongly support the Restricted Discretionary status provided that it means no public or limited notification for the required level of certainty.

I'm tempted to recommend controlled status under certain circumstances, but don't recommend that for two reasons:

1. certainty also requires that the NES is broadly acceptable and isn't rescinded by a future administration. Restricted discretionary status is likely to be more broadly acceptable than controlled.
2. the proposed NES provides for councils to have a more lenient status if their communities want that.

Any status more stringent than Restricted Discretionary would be severely detrimental to the NES benefits as it would not achieve the following policy objectives of the NES set out in Sect 3.8 of the consultation document:

- efficient : a more restrictive status would open up more matters for consideration which would require more cost and resources of both applicants and councils.
- Supporting sustainable aquaculture: a more restrictive status would not be supporting aquaculture

In addition a status more restrictive than restricted discretionary would be inconsistent with Policy 8 of the New Zealand Coastal Policy Statement 2010.

To gain the above policy objectives it is essential that there is no public or limited notification at the consenting stage, as most matters will have being dealt with at the planning stage. Relitigating the same matters 1147 times would be neither efficient nor sustainable and the depressive effects of uncertainty will rob the New Zealand coastal communities concerned of investment, jobs and opportunities for self-respect.

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?

I think not. Let the community decide through the plan process. An NES that seeks to be too controlling of areas of community engagement may not last. However it does need to specify matters of public notification for run-of-the mill consent renewals as discussed in my response to q.2 above.

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?

Yes.



Question 5:

Do you have any feedback on the analysis of effects contained in Appendix G?

1. The analysis in Appendix G looks good except for navigation which states:

• *Existing sites pose a navigational risk, although their long-term establishment in those locations should lower the risk.*

Existing sites pose a potential navigation risk but they clearly do not pose an actual risk in practice, or at least not a significant risk, I'm aware not aware of the loss of any vessel through collision with a marine farm in New Zealand. This is remarkable record, given that the consultation document cites that there are over a thousand existing marine farms, some of which have been in place for over 30 years. While I can't be certain that my information is complete, I do take a particular interest as a marine farmer, risk manager (and currently a harbour master) and believe I would certainly know if such losses were anything other than extremely rare.

This is to be contrasted with actual navigational hazards such as other vessels, submerged reefs, running aground, bar crossings and collisions with wharfs and jetties, all of which commonly result in loss or serious damage to vessels.

I put this down to the springy nature of long-line mussel farms which will gradually arrest an errant displacement vessel. Also fish farms are generally well lit and sited off the direct navigational pathway between headlands.

A term put to the Environment Court (and if I recall correctly, accepted by the court) is that properly lit marine farms in appropriate locations are a "navigational inconvenience".

Given that MPI is an evidence-led organisation, I'm expecting the NES to be guided by the actual record of navigational safety performance of existing marine farms. This is important as an NES falsely stating that existing farms pose an actual navigational risk will be cited by antagonists to new applications or in submissions of those farms which do need to be publically notified. This would be a disservice to New Zealand public discourse and would create unnecessary effort and cost by applicants to debunk such false assertions, thereby undermining some of the benefits of the NES.

With a view to making minimal change to Appendix G, I recommend adding the word "potential" to the opening sentence under the heading "Navigation and Safety", for it to read:

"Existing sites pose a potential navigational risk,"

2. My second comment relates to the weakness implied by the first two words of the heading to the second column Assumptions about the relevance of those effects for consideration of applications for replacement consents (emphasis added).. To my mind those two words greatly devalue the authority of Appendix G. Anyone can state assumptions. I suggest that Appendix G would benefit from this column being more firmly titled, and more in line with the Appendix title. Following consultation I suggest that MPI can be rightfully more confident about the content of Appendix G. I therefore suggest that the first two words in the title to this column are replaced with "Summary of....". Alternatively the words "Assumptions about..." can simply be deleted.

3. Please refer to my response to Question 22 for additional comments on hydrodynamics.



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?

OK for them to be included, so long as the effects of supplementary feeding on benthos are considered.

Question 7:

Do the provisions covering replacement consents for existing marine farms where supplementary feeding occurs require additional matters of discretion?

Please refer to my response to Q.6 above.

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?

Yes. In principle this is an excellent initiative. However 1% seems very small, and potentially less than the width of a carelessly drawn line on a Regional Plan at the scales that they are commonly published. Understanding that it is meant to deal with drafting errors, could it be something a bit more meaningful, like 5% (or at least 2%)?

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?

No. Aquaculture benthic effects have been extensively studied in numerous studies and have been found to be modest and highly localised, and have strong recovery after a farm is removed. In the 2012 NIWA study *Assessment of anthropogenic threats to New Zealand marine habitat*, the top ranked aquaculture threat (benthic accumulation of debris) was assigned an overall score that was ranked between 19th and 26th (that is rated equal to 7 other threats which collectively made up ranks 19 to 26th on a list of anthropogenic threats - refer Table 10 of NIWA 2012).

This relatively low ranking illustrates the low benthic impact of marine farms. It is consistent with the findings of many studies by different science providers, conducted repeatedly at significant expense to both the industry and by science research organisations funded from the public purse. The NES presents an opportunity to build on these findings and to frame the NES in such a way as to prevent needless re-examination of matters that have been already very well studied. The draft NES largely achieves this and is supported. Care needs to be taken that the final NES remains focussed and effective.

Generic matters concerning the suitability of marine farming in an area are best addressed



in other instruments such as the regional plan. Site-specific matters will have been addressed at the time of consent. Also other regulatory tools are available for a review to be conducted at any time and would be far more effective than forcing every consent renewal to consider a wider range of matters during the renewal process.

Opening up the restricted discretionary status to reconsidering further matters will increase consent costs and uncertainty, thereby significantly reducing the expected benefits of the NES identified in Section 3. If a matter is identified in the NES as requiring consideration then it can be expected that submitters will do just that and will commission scientific studies and expert opinion.

As a consultant myself, who both delivers consultancy services and commissions expert advice, including for aquaculture related matters, my experience is that a typical minimum scale of commission is \$10k. You can't get much for less than \$10k. Assuming that some of the 1147 farms to be re-consented can be grouped together in some manner, there may be say 1,000 resource consents. Multiplying that through, each matter identified that needs to be attended to will cost the industry around \$10m. That's equivalent to a quarter of the low estimate of benefits identified by NZIER in *Proposed new national direction in aquaculture - A preliminary economic analysis* (NZIER March 2017). It would take very few additional matters to wipe out the entire expected benefit of the NES.

For these reasons it is important that the additional matters to be assessed are not introduced into the NES and that it remains tightly focussed to achieve the objectives.

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?

None.

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?

No. Same activity status, but I recognise that the additional matters for discretion as proposed in the draft NES are necessary and I support them. Given that so-called "second generation" regional plans will address these matters, I suggest a sunset clause to this provision.

Question 12:

Are there certain types of aquaculture for which replacement consent applications should be publicly notified?

Not by type, but perhaps replacement consents for aquaculture in areas where it is no longer allowed. This is adequately covered by the draft NES.



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?

The proposal has advantages, such as in the Northland example.

The wording of the proposed NES appears to not preclude more stringent rules: it only says that councils may be more lenient.

I suggest that the clause be clarified to achieve the intent by replacing the words "more lenient than" in both clauses 18 and 40 of the proposed NES with "not more stringent than".

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?

I am supportive in principle.

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?

Absolutely. Those sites that the industry relies on for spat should be identified and protected, for example by being noted in the Regional Plan as of national importance to the marine aquaculture industry. This might need to be preceded by a statement of fact from MPI. Then MPI needs to monitor and perhaps make submissions to RC's to ensure that these spat catching areas are recognised and that they are protected.

Question 16:

Are there other ways in which the proposed NES could usefully recognise council's future planning processes?

The NES already recognises council's future planning processes. If for instance a council identifies a location as having outstanding landscape values, after consent is granted, then relevant additional matters of discretion can be considered in subsequent renewals under this NES proposal.

Question 17:

What are your thoughts on the size restriction that is proposed to apply to realignments covered by the proposed NES?

As a beneficiary of marine farms falling (just) on either side of this limit I think it's about right. A limit smaller than 10ha would exclude many farms when the average size of a



marine farm is 6-7ha. A benefit of the 10 ha size limit is that it allows the little farms to be repositioned, without raising concerns to larger farms which could affect more area.

Question 18:

Is there further guidance that should be provided in the proposed NES in relation to realigning existing marine farms?

The proposal looks reasonably comprehensive and are supported. The one third, two-thirds rules is supported.

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?

No. The converse applies. Why should the additional matters of discretion include seabirds and mammals? There is no explanation and this additional discretion is inconsistent with the comments on effects listed in Appendix G. If the total area is unchanged then it is reasonable to expect that the effects on seabirds and marine mammals will also be unchanged.

Question 20:

Should the proposed NES address change in farmed species?

Definitely. This will be the next wave of innovation to add value to New Zealand.

Question 21:

Should the proposed NES limit the species it relates to?

No – generic descriptions are appropriate.

The draft NES covers macroalgae (seaweed). This is endorsed, Growing seaweed is a billion dollar industry in countries with similar temperate waters and could be so here.

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?

I have some interest in hydrodynamic effects. I have commissioned university wave tank studies of marine farming growing systems, I have visited leading hydrodynamicists at the Woods Hole Oceanographic Institute in New England (generally regarded as the world's leading oceanographic research institution), and I commission hydrodynamic studies for non-aquaculture purposes and quality assure the results. I also obtain copies of original theses by masters and PhD students on hydrodynamic effects of aquaculture, I assess those theses and draw conclusions that I use to develop highly simplified conceptual hydrodynamic models of the marine farms that I'm associated with. In addition I have been



sufficiently interested in such matters to develop and patent a submerged marine farming system. (Note that there has been no commercial application of the patented marine farming system and I am not planning any activity to commercialise it.)

In my view the draft NES provisions around Category 2 are too tightly drawn and place too much emphasis on hydrodynamic effects.

The distinction between Category 1 and 2 appears to be based on a false premise that the existing farm operations are fixed. That is not the case. For instance, to get the best overall yield, mussel farmers routinely adjust the spacing of mussel droppers, the length of drop and total length of crop rope, geometry of how the crop rope is looped, harvest cycles, spat variety, spat size and seeding rate. In addition every crop has changing hydrodynamic effects over time, as the crop matures and individual organisms (i.e. hydrodynamic roughness elements) get bigger.

Secondly, a misplaced focus on hydrodynamics could lead to resource consent conditions that seek to specify subsurface structures so as to limit hydrodynamic effects. Such provisions this could have the perverse effect of stifling the very innovation that the NES seeks to promote. The type and arrangement of subsurface structures is likely to be a key area of innovation. Rigid consent conditions will stifle that.

Thirdly marine farmers have a strong incentive to self-limit any adverse hydrodynamic effects as such effects will limit the growth rate of crops on their own crops. Outside of the confines of the farm, hydrodynamic features such as currents are likely to be little affected. It is unnecessary for the consent process to seek to manage the internal effects of each marine farm on production within their own farm.

Fourthly the consultation document states in Appendix G that:

Mussel farm lines and floats reduce wave action and current speeds within farms, but this effect is not well understood (Cole 2001).

It is difficult to reconcile this quotation with a proposed requirement that hydrodynamic effects be taken into account. At the very least the approving quote from Coles needs to be removed as it undercuts any assessment of hydrodynamic effects, which the NES is calling for.

For these reasons, I recommend that Categories 1 and 2 are merged and that reference to hydrodynamic effects is deleted from draft NES clause 28 (d).

Question 23:

Are there any other categories [that should be considered for the change of species provisions]?

There should no more categories. Instead consideration should be given to merging Categories 1&2. Please refer my response to Question 22 above.

Question 24:

Should herbivorous finfish be treated differently from carnivorous finfish?



No comment.

Question 25:

Is restricted discretionary an appropriate status for most changes in species?

Yes. It strikes an appropriate balance between certainty for marine farmers and council control of effects.

Question 26:

Should spat catching farms be excluded [from the change of species provisions]?

No comment.

Question 27:

Are there any other forms of farming or species that should be excluded [from the change of species provisions]?

It is very important that the final NES continues to cover macroalgae (seaweed) growing and harvesting. This is a multi-billion dollar industry in Japan, which has similar temperate waters to NZ.

Question 28:

Do you have any feedback on the scope of matters of discretion?

For small changes in location why should the additional matters of discretion include seabirds and mammals? There is no explanation offered in the consultation document. This additional area of discretion is inconsistent with the minor or nil net effects listed in Appendix G. If the total area is unchanged then it is reasonable to expect that the effects on seabirds and marine mammals will also be unchanged. This additional area of discretion is inconsistent and should be deleted.

1b. As a fall-back position, if this matter is to be retained then condition 15(d) of the draft NES should be changed.

15(d) In the newly occupied space, adverse effects on marine mammals and seabirds (emphasis added).

This clause currently only allows adverse effects on the area of new water space to be considered, thereby prohibiting consideration of net effects taking account of the benefits of the water space relinquished. This seemingly perverse outcome is presumably unintended. In my view such a provision would be inconsistent with sustainable management of biophysical resources and with natural justice.

I recommend that the draft NES 15(d) is changed as follows:

15(d) Net adverse effects on marine mammals and seabirds taking into account benefits from the space relinquished from the existing authorised area.



Question 29:

Should change of species involving finfish require additional matters of discretion?
No comment.

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?

No. The proposed provisions relating to outstanding natural features, outstanding natural landscapes and areas of outstanding natural character already introduce considerable uncertainty to replacement consents.

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?

No. When I look at the features and values cited by Marlborough DC as giving rise to declarations of natural features, outstanding natural landscapes and areas of outstanding natural character in existing and proposed RC plans, they are not matters that would be significantly affected by a change in species.

Question 32:

Are there certain species or types of species where consent applications should be publicly notified?

Yes. Applications to farm non-native species that are not already present in the wild in the vicinity of the application area concerned should be considered for public notification.

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?

I have not studied the BioMP requirements in detail but am supportive in principle, and particularly if the NES provides real relief from re consenting uncertainty and cost.

Question 34:



Is the deadline of 31 January 2025 appropriate, and why?

Yes. It allows for most farms to be captured through the reconsenting process by that time.

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?

Regional differences should be accommodated. A treatment in one region will not necessarily be optimal in another. Optimal treatments in each region may also change with time due to changing sea temperatures due to climate change, changing, improved knowledge and through technological advances. So any rules governing BioMPs should not be prescriptive.

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?

No comment as I have not assessed this.

Question 37:

Is requiring a BioMP using an NES under the RMA the best approach to nationally requiring a Biosecurity Management Plan for aquaculture?

I don't know if it's the best way, but agree that it's a way to do it and likely to be effective.

Question 38:

How would regional councils certify, audit and enforce BioMPs? Could external professionals be used to provide the required skills and expertise?

An independently accredited third party programme should be acceptable evidence.

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?

Yes but the word "comprehensively" alarms me as it implies without restraint which could be very expensive. I would prefer "reasonably" or "efficiently", or simply delete the word.



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?
Yes. – as part of a recognised industry led independently accredited programme.

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?

I'm concerned that the BioMP has been tacked into this proposal and may not have been well considered, and that the costs of the BioMP activities may rapidly get out of hand, if an over-zealous approach is taken.

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?

Yes. Uncertainty has a major effect on investment. Industry participants are less likely to make necessary investments in new species, plant and equipment if they don't have reasonable certainty of return. That affects jobs and the ability of New Zealand Inc to generate the income required to keep our resources in New Zealand ownership and to achieve our sustainable development goals.

Please use the space below to provide any additional comments you may have, and if continuing an answer from another question please indicate the question number.

1. It will be vital that that councils don't get overzealous in how they interpret and implement the provisions of the NES. MPI needs to monitor compliance and nudge councils into line. Otherwise many of the expected certainty benefits will be lost if each RC interprets the NES in it's own way, without any influence from MPI.

2. Proposed NES Clauses 23, 26, 29, 33 and 44 refer to "change in farmed species". Most farms are consented for a range of species, most of which they don't currently grow. The proposed wording invites interpretations whereby famers lose their rights to grow species that they are consented for but don't farm. This outcome is presumably unintended.

If the proposed wording is retained as it is, marine farmers will be incentivised to grow a little of everything consented so as to ensure that their rights are protected. Such a hypothetical scenario would be a hot bed for transfer of biological agents, which would undermine the concurrent Biosecurity Management initiative that the NES is also introducing. This outcome would be potentially detrimental for the industry and for the environment.



Recommend change to: "A change in ~~farmed-consented~~ species....".

3. What is the intent and effect of the references to "statutory exception" in draft NES clauses 16 and 38. This would be of concern if it could become a back door method for RC's to broaden public notification to a wider range of consent renewals.

Thanks once again for this initiative and for the opportunity for comment.

Confirming that I'm happy to be contacted to clarify any of these comments.

Kind regards
Kevin Oldham

Submission to the Ministries of the Environment and Primary Industries on the proposed National Environmental Standard for Marine Aquaculture.

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Questions of proposed NES addressed: 1,2,3,5 ,9,10,11,12,15,26, 40

Question 1

I support the establishment of an NES with reservations. Generally it rationalises what is currently a piecemeal process and brings simplicity to all concerned. It looks comprehensive and potentially has balance.

However, rationalising via an NES does reduce current avenues for the public voice in some instances (especially publicly notified) and channels consent processes into routine council matters. My support is based upon the understanding that the elimination of public input is not the objective here. So if the public loses a wider voice in the interests of efficiency and rationalisation, it should gain a new voice or efficiencies in communication specified by the NES.

If councils haven't already established good website interaction with the public, I believe this could take the following form or similar:

1. Council websites could have a marine section and give a full description of the NES and what it covers, plus a full description of the relationship of the NES to local coastal policy and consenting.
2. They could also give clear and easy access for the public to identify any aquaculture consent, its history and the full information relating to it, including conditions.
3. They could further provide a facility for the public to register with the council and submit information if they believe an upcoming consent re-approval is inappropriate; or once approval has been granted, if conditions are not being met. The parameters would be those of restricted discretionary, assuming this is settled upon. In this scenario, council would then process this information routinely, having programmed alerts of decisions to be sent to the interested registered parties. In the interest of transparency, a summary of reasons could be given for decisions and be entered upon the consent's history. Council would then need the legal prerogative to not engage in the matter past a reasonable time if a

complainant or complainants became inappropriately insistent or vexatious, but at least opportunity would have been given to be heard as a matter of structure and council would be expected to have acted in good faith. Finally, the council would need to have standard advice available guiding people to their next recourse if dissatisfied (probably the environment court).

The NES is an opportunity to improve council/public communication for marine consents. With the parameters of consent restricted, councils can be expected to deal more confidently with consenting issues – including enforcement. Good enforcement is easiest with good information; and the eyes and ears of the public are one of the best sources of information. If the public can be confident that the council knows about things and is prepared to act, the level of public concern around the environment could actually drop. So streamlining the flow of information to council seems necessary for this to work well. Otherwise there will be concerns about the loss of democracy through the loss of discretionary consents. Database interface changes are likely to be needed and more compliance activity for council staff may result. This may need to be supported by an industry levy.

Question 2

I support the use of restricted discretionary as an appropriate status for replacement consents for existing marine farms.

Question 3

It is important that the NES does create as full a restricted-discretionary rule framework as possible. The purpose of this change is clarity, not new ways to be unclear and create inconsistency. Having said that, guidance provisions need to assist councils in setting site related conditions (within the restricted-discretionary rule framework), for areas of outstanding natural character.

Question 5

Appendix G is comprehensive. The cultural section though has yet to be completed and historic sites are not yet covered.

Question 9

Regions of outstanding historical significance should be recognised. Wainui Bay, where Maori and Pakeha (Abel Tasman) first interacted, is of considerable historic significance to national heritage. I don't think you could get one of greater significance. Cook's landings are also highly significant. Consideration of historic, site-related events like this should not be overlooked when considering what constitutes an area of outstanding natural character. I'm not sure if this is an issue for the NES or Tasman Council, but the matter is alluded to in appendix G and needs addressing.

Question 10

The values affected by marine farms in such historical areas are that the presence of structures and the activities of work detract from the visual and energetic simplicity of the scene. For instance, if you stand at the top of the Wainui Hill and look towards the old pa site at Taupo point, you get an excellent view across the quiet of Wainui Bay. You can easily imagine Abel Tasman's ships meeting Maori on the water in that very same landscape. This is particularly so when the area is uncluttered. People weren't using large, industrial plastic buoys in a significant area of the sea back in 1642, in the same way they weren't regularly running motors for industrial purposes. The stabilisation of historic values in the area by reducing industrial impact is theoretically desirable at least. In the case of Wainui Bay, this stability is already supported by DOC who operate a policy of rejecting certain activity consents (like water taxis) in order to maintain the quiet of the northern end of the Abel Tasman National Park.

Question 11

I agree the activity status *should be slightly different* for replacement consents for existing farms in outstanding natural features, outstanding natural landscapes and areas of outstanding natural character. The provision for consent augmentation through the application of broader conditions appears to be necessary in these areas. While the purpose of the NES in general is to make life more straight forward for all concerned, this is not necessarily suitable where old farms have become established in inappropriate areas. Matters that were not environmentally or culturally important prior to the RMA may have become so since. I do not agree that all of these matters will have been dealt with adequately or finally by subsequent coastal planning and council reviews. The important question is not "how do we allow inappropriate, old farms to by-pass the broad environmental effects upon special areas", but "how do we allow these older farms to remain appropriately or eventually fall away?"

In situations where older farms are not appropriately placed, the NES should support councils to apply appropriate site-specific conditions on incumbents. They must be achievable within councils own coastal policy and I understand this is where the next big debate will happen for regions without finished coastal plans related to special areas. Any council that has a blanket rejection of visual structures in special areas will have a very upset industry on its hands. Yet I understand industry is working on submerged structures for spat farming at least. *Where a future pathway for mitigation of an environmental effect such as "visual structures" can be demonstrated to council, the NES should specify leniency as a matter of discretion; and consent holders should be well consulted and given a generous amount of time to change.* However, this should not be indefinite. The

NES needs to emphasise the natural-character/features effects in such instances and not create a pathway in perpetuity for avoiding the special issues. In other words, the NES needs to clearly lean upon the side of the environment in areas of special significance and not just validate the status quo. If it doesn't, the public have a legitimate concern about losing their voice in the use of a public resource.

Other issues should be able to be dealt with by immediately applying enhanced conditions. Here is an example of how this might work: Normal parameters of the focussed list for restricted discretionary activities around noise might be general along the lines of being respectful to others, not being a nuisance and have a decibel measure attached. Older farms close to shore and settlements in areas of special character might need higher or specific noise standards applied because decibel measures close to shore over still water aren't relevant to the real effect of sound on a still night. This might restrict working times for the consent holder, for instance, to a defined "normal working hours" (rather than any old time as long as they are not a theoretical nuisance related to decibels).

Question 12

I would like to think that giving parties the opportunity to routinely offer up-front information on re-consenting via website registration and comment will mean consents are routinely "notified" in a limited fashion. (Please refer to my answer in question 1).

Question 15

I will use the example of Wainui Bay to discuss this point.

I *do not* favour recognising sites because of their particular *importance* to aquaculture. In fact, I'm not entirely comfortable with the question. As I see the question, it could have been better phrased like this: "Do you agree that there are sites that should be recognised in the proposed NES because of their particular *convenience* to aquaculture?"

It has to be accepted that spat farming has been successful in Wainui Bay since 1980. If it wasn't, the farmers would have given up long ago and left. The figure of \$126 million presented in the government's discussion document regarding Wainui Bay spat collection is impressive and compelling and very difficult for members of the public to dispute. I have reviewed Andrea Strang's research graph for spat collection since 2006 and find that similarly difficult to dispute. So it's true, Wainui Bay is a really good place to collect spat!

The Wainui sites are established (that takes a lot of financial investment and work), provide good employment and are convenient (close to Tarakohe harbour). Fair enough. These are very valid matters and peoples' livelihoods are involved.

But the issue is not whether spat is successfully collected there. Spat can be collected elsewhere. It would almost certainly be more costly, less efficient, of greater

inconvenience, involve lots more work on a regular basis and be galling to the incumbents. The cost of spat would rise. Ripples would flow through the industry as others adjusted. But the industry would not fail, especially if time was given for people to adjust. So “particular importance” is a misnomer.

Notwithstanding, none of what I have said above means I think the current incumbents should be forced out. The Wainui farmers have made efforts to improve their environmental performance over the years. Rubbish levels are way better and noise issues have improved (although they are not gone). I would expect the farms to largely pass most of the new restricted discretionary rules. I would also like to think that with increasing collaboration between the farmers, council and the affected public through the application of noise conditions, the status quo could be tweaked and largely retained (especially with a plan to submerge buoys/structures over time). But if you give the area special status you lose some of that incentive to collaborate. It would be like granting a rock solid escape valve to push the boundaries of noise related start times because the area is of such “particular importance”. It would be the same with structures. It would be a step backwards, inviting a shield of non-accountability and resistance to change.

Similarly it sets a precedent for expansion. Retaining the farms should be about balance and getting that balance better, given that we are where we are because of the past. But if you designate an area to be of “particular importance” the pressure for expansion becomes increasingly latent. If an existing area gains acceptance because it is of “particular importance”, what an argument that is for expansion!

I understand that in 2015 the Wainui spat group made a submission to council suggesting their consents should become controlled activities. In that submission they also stated they had no intentions to apply for expansions of their existing activities. I have no reason to disbelieve this. But we all change. If the area becomes one of “particular importance”, the spat group may feel encouraged to change their minds and we are all back in the struggle.

Because Wainui Bay has been drafted by Tasman District Council as an area of outstanding natural character, local farmers are justified in being concerned that their existing consents hang under a cloud. However, the NES proposes that councils will have the power to define rules regarding areas of outstanding natural character in ways that could allow the current activities to remain. I expect them to want the existing farms to be able to remain. Hopefully when they do, they will also make it clear that expansion of marine farming is inappropriate in Wainui because of the natural features. If the NES defines the area as of “particular importance” to the industry, I have much less faith this will happen.

The current NES proposal aims to protect existing Wainui farms by designating them as particularly important. This is an overkill and not necessary. Other pathways need to be found to be fair to the farmers. As far as renewing the existing consents is concerned, I believe the Wainui situation is best managed by what I said in my answer to Question 11 as it relates to areas of outstanding natural character: *Where a future pathway for*

mitigation of an environmental effect such as “visual structures” can be demonstrated to council, the NES should specify leniency as a matter of discretion; and consent holders should be well consulted and given a generous amount of time to change. This could sound glib or facile to the industry but many other industries are currently facing major challenges and pressures to change; technology/robotification, cyber security, social media/market connection, supply chain management, country of origin identification and carbon emissions are to name a few. We are all living in the age of disruption.

Question 26

I agree that spat farms should be excluded from the change of species provisions because of their lesser environmental impact

Question 40

Marine farming monitoring in general is important to ensure environmental standards are met. I am not sufficiently qualified to say how much or by who. There are however plenty of industries that are monitored and there is no reason why primary industries would be exempt. If councils' websites and processes were enhanced to collect public feedback on restricted discretionary activities, councils could refer some of the information gained in these processes to an expert monitoring body. That would take some of the technical (and maybe even legal) burden off councils' compliance teams.

I believe the ultimate success of the NES depends upon public support. An expert monitoring body will assist this.



Otago Regional Council Submission

to the

Ministry for the Environment

on the

Proposed National Environmental Standard for Marine Aquaculture

This is a submission to the Ministry for the Environment on the proposed National Environmental Standard for Marine Aquaculture.

The Otago Regional Council does not wish to be heard in support of this submission.

Signature of submitter (or person authorised to sign on behalf of submitter):

A handwritten signature in black ink, appearing to read "P. Bodeker", followed by a long horizontal line.

Peter Bodeker
Chief Executive

8 August 2017

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Introduction

Otago Regional Council (ORC) appreciates the opportunity to provide the Ministry for the Environment (the Ministry) input into the proposed National Environmental Standard for Marine Aquaculture.

While there is limited Marine Aquaculture within Otago's coastal waters, ORC takes an active interest in the marine aquaculture industry, its benefits and the need for appropriate environmental management of its activities.

ORC supports the principles of the proposed NES for Marine Aquaculture.

1. Otago's Coastal Regulatory Framework

ORC's proposed regional policy statement contains the following policies that are relevant to the management of activities in coastal waters:

Policy 3.1.5 Coastal water

Manage coastal water to achieve all of the following:

- a) Maintain or enhance healthy coastal ecosystems;
- b) Maintain or enhance the range of habitats provided by the coastal marine area, including the habitat of trout and salmon;
- c) Recognise and provide for the migratory patterns of coastal water species unless detrimental to indigenous biological diversity;
- d) Maintain coastal water quality or enhance it where it has been degraded;
- e) Maintain or enhance coastal values;
- f) Recognise and provide for important recreation values;
- g) Control the adverse effects of pest species, prevent their introduction and reduce their spread.

And;

Policy 3.1.9 Ecosystems and indigenous biological diversity

Manage ecosystems and indigenous biological diversity in terrestrial, freshwater and marine environments to achieve all of the following:

- a) Maintain or enhance ecosystem health and indigenous biological diversity;
- b) Maintain or enhance biological diversity where the presence of exotic flora and fauna supports indigenous biological diversity;
- c) Maintain or enhance areas of predominantly indigenous vegetation;

- d) Recognise and provide for important hydrological services, including the services provided by tussock grassland;
- e) Recognise and provide for natural resources and processes that support indigenous biological diversity;
- f) Maintain or enhance habitats of indigenous species and the habitat of trout and salmon that are important for recreational, commercial, cultural or customary purposes;
- g) Control the adverse effects of pest species, prevent their introduction and reduce their spread.

The Regional Plan: Coast is ORC's operative coast plan. While it is an effects based plan, and not activity based, its objectives, policies and rules manage the effects of marine aquaculture activities.

ORC recognises that a significant objective of the proposed NES for Marine Aquaculture is to provide for the efficient re-consenting of existing aquaculture activities. **ORC supports this objective.**

ORC supports the other objective of the proposed NES for Marine Aquaculture which is to require all marine aquaculture activities to adhere to a biosecurity management plan.

2. Proposed Marine Protection Areas Act

The Ministry has proposed a Marine Protection Areas Act which ORC supports in principle.

ORC notes the South-East Marine Protection Forum's draft strategy identifies areas that may be appropriate to become marine protection areas.

ORC requests that the proposed NES for Marine Aquaculture is consistent with the provisions for the management of any marine protected areas.

End.

