

Summary of Submission to the Marlborough Sounds Salmon Advisory Panel

Submitters:

Dr John Hellstrom ONZM
Judy Hellstrom

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Introduction

On 27 March we sent our full submission to Ministry of Primary Industries (MPI). This document summaries the main points of that submission. We intend to talk to our full submission.

We will begin by briefly introducing ourselves as long-time and permanent Sounds residents, with significant experience in conservation, biosecurity and landscape management policy development and advice, at both regional and national level.

We are focussing our comments on the following issues in relation to the proposal:

1. Process, including that of the working group that informed the consultation document, where this process has informed the submission process;
2. Landscape and natural character
3. Social impact
4. Navigation

We will introduce comments in addition to those made in our original submission, where there have been further developments since 27 March 2017 (for example, we refer to the Environment Court decision on McKenzie Basin with respect to landscape).

1 Process:

1A Use of s360 We submit that the process by which it was decided by the Minister (with advice by MPI) to use Section 360 (s360) of the Resource Management Act (RMA) was not transparent, either in terms of the timing by which this information was given to the Salmon Working Group, or in general communication to the community at an early stage. We submit that this lack of transparency amounted to a dishonest process, by which the community was either not engaged or not engaged early enough, and not given full and timely information at an early stage.

Further, the Government proposes to use this clause to override the Marlborough District Council's (MDC's) plans that will prohibit aquaculture in the high-landscape value areas of the Outer Sounds. The use of s360 disregards the 2013 Board of Inquiry [BOI] and 2014 Supreme Court decisions about expansion of salmon farming into prohibited areas (currently CMZ1) of the Marlborough Sounds. We discuss this issue further within our comments on landscape.

This proposal will enable a privately-owned (with largely foreign ownership) company to use public water space for free, above the interests of other users of the Marlborough Sounds, including iwi.

2A Conflicts of interest

We have submitted on three conflicts of interest that were demonstrated through the MSWG process. The first concerns Mr Ron Crosby's statement to the working group that his view (supported by his longstanding Environment Court commissioner experience) is that the threshold of salmon farms in Waitata Reach has not been reached. He stated that he did not believe that this was the finding of the Supreme Court in its judgment concerning King Salmon applications.

We note that Cabinet Paper Sub 16-0078 (obtained through OIA) raises the importance of the independence of the advisory panel: *An independent panel will provide greater public confidence in the process and is in line with the Working Group's recommendations on the need for independent testing of the information* (p.20/24). We submit that the conflict of interest noted above has caused loss of confidence in the process. We have checked with others from the MSWG, who also concur that Mr Crosby's views on the threshold of salmon farms in Waitata Reach were clearly stated. We are not aware that this conflict of interest has been either recognized or disclosed, and we submit that without either of those, the risks associated with it cannot be managed¹. At the very least, Mr Crosby appears to be biased, in that he appears to have pre-determined the issue, by making up his mind before all the relevant information is available to him.

The second major conflict of interest concerns the initially undeclared interest of the Te Atiawa representative on the MSWG. Not until about the third meeting of the MSWG was it declared that NZKS and Te Atiawa were planning a partnership with respect to one potential farm in Tory Channel (Tio Point). That person's role was then clearly seen as one of advocating for that site – his views could not be seen as anything other than biased towards the proposal.

This further exacerbated the apparent poor process of determining representation on the MSWG by iwi – for example, not until very late in the process was a representative of Ngati Kua brought into the MSWG. We do not consider that the requirements of s360B (3) (b) have demonstrably been met. The other initial iwi representative did not take up the representative role, as he did not attend any but the first meeting. We question whether these arrangements meet the Crown's obligations under the statutory agreements reached with the affected iwi under the Settlements of Te Tau Ihu o Te Waka a Maui.

Finally, a number of technical reports have been prepared by the same individuals and/or companies that presented evidence through the Board of Inquiry process on behalf of NZKS (and in several cases the original reports have barely been amended). Given that they have been contracted this time by MPI, but clearly nominated and/or selected by NZKS, there are apparent conflicts of interest for the report writers and for the independence of the findings and conclusions of such reports. One in particular has an overt conflict of interest: the Social Impact Assessment (see further comment below).

¹ We refer to Controller and Auditor General: 2016 Publications: reflections from our audits: Governance and Accountability. Part 4: Managing Conflicts of Interests.

3A Consideration of alternative options during the MSWG process

The NZKS Supreme Court decision ruled there was an obligation to consider alternatives under the NZ Coastal Policy Statement and Section 32 of the RMA. “Particularly where the applicant for a plan change is seeking exclusive use of a public resource for private gain.” [SC 172-173].

The aims of the MSWG were:

- to consider options **for existing salmon farms** in Marlborough to adopt the guidelines; and
- to ensure the enduring sustainability of salmon farming in Marlborough, including **better environmental outcomes including landscape, amenity, social and cultural values.**

There was no serious consideration by the MSWG of any of the listed possible alternatives (reduce production, relocate to land sites, relocate to higher flow sites, capture wastes in-water, remove organic waste from sea-bed, improve feed efficiency), except relocation to higher flow sites.

The first aim of the working group was not adhered to. The second aim was also not adhered to. We will discuss this issue further when we appear before the panel.

B Landscape and Natural Character

B 1 The expert advice received

In assessing the landscape and natural character values of the outer Sounds, for example Waitata Reach, the contracted landscape expert (John Hudson) paid scant attention to the landscape values held by communities, including local residents, iwi, and the wider Sounds communities. Any assessment of landscape must take into account historical, community, aesthetic, amenity values, and values must be acknowledged as belonging to those who hold them².

Mr Hudson also appears to have largely dismissed the findings of the 2011 Board of Enquiry with respect to landscape. In particular we consider that Mr Hudson has not sufficiently considered the **seascape** as an intrinsic part of the Sounds landscape (ref para 606 of the BOI):

“.....the role of the sea, or at least the surface of the marine environmentis unambiguously an integral part of all Marlborough Sounds landscapes at any scale of analysis.”

Neither John Hudson (as the nominated landscape expert) nor any other person in the papers provided has mentioned the mirage phenomenon of the “floating island effect” that occurs frequently in the Sounds in light south-easterly conditions. (Ref. floating island mirages https://en.wikipedia.org/wiki/Fata_Morgana). We will discuss this effect further.

² Para 596 of the BOI describes landscape thus:

“Landscape does not require precise definition. It is an aspect of the environment and includes natural and physical features **and social and cultural attributes.**”

B 2 Landscape values of Waitata Reach

The seascape was also seen by the BOI as an intrinsic aspect of landscape for this consideration (ref para 606, BOI). The BOI found that “the Reach as a whole has high natural character value which extends close to outstanding in some places, particularly on the western headlands” (para 655). The proposed MEP defines all of the outer Waitata Reach, including the seascape, as an ONL. The BOI found the Waitata Reach as a whole to be a landscape of very high visual amenity (para 665).

The BOI’s decision identified the threshold number of salmon farms for Waitata Reach as TWO – Waitata and Richmond – and turned down three others because of the cumulative effects on Landscape, Natural Character, King shag feeding and Tangata Whenua values. [BOI 1252]

We consider that this same conclusion would also apply to the proposed mid-channel site in Waitata Reach. It would result in a built form highly visible both from the seaward entrance to Pelorus Sound looking towards the outstanding landscape feature of Maud Island, and from Maud Island out through the seaward entrance of the sound (this seaward end of the Reach is also an ONL).

We refer here to the very recent Environment Court report concerning sustainability of intensive dairy farming in the McKenzie Basin. An environment court Judge (Judge Jon Jackson) has said there is a strong case for an “immediate moratorium” on freeholding parts of the McKenzie Basin, due to the rapid rate of ecological values being lost. “The accumulative actions of farmers throughout the Basin have.....brought the McKenzie Basin to a point where its landscape values (and status) as an ONL (Outstanding Natural Landscape) is being threatened” (Judge Jackson) (quoted in Stuff.co.nz, 19 April 2017).

Para 697 of the 2011 BOI states, with respect to the Waitata Reach: “salmon farms are a highly visible form of marine farm. As a consequence, the mere presence of salmon farms in the Waitata Reach, and their cumulative effects constitutes a substantive issue in respect of the effects of the proposal on the natural character of that Reach.” The BOI said that, individually, each new farm would have a negative effect on natural character. There was thus both an individual effect and a cumulative natural character effect of salmon farms in this area.

We consider that the proposal for any additional salmon farms within the Waitata Reach will degrade the Outstanding Natural Landscapes and High Natural Character values of the Waitata Reach.

B 3 Blowhole Point sites

Most of the same comments also apply to the two proposed Blowhole Point farm sites. These sites are within the proposed Outer Sounds Outstanding Natural Landscape and within a proposed Outstanding Natural Feature (with Port Ligar, Forsyth Island and Kaitira Headland), and part of the Pelorus Sound ‘gateway’. We do not accept that farms at these sites would not compromise the outstanding natural landscape. These Blowhole Point farm sites are located in the ‘gateway’ and will be lit at night. Cumulative effects need to be

considered both for the 'gateway' entrance and for the relatively pristine Waitata Reach as a whole.

We thus do not support the establishment of new salmon farms at Blow Hole Point (North or South).

B 4 Horseshoe Bay and Richmond South sites

We consider that the cumulative effects need to be carefully considered for the relatively pristine Waitata Reach as a whole, and for these two sites in close proximity to each other. The Horseshoe Bay site is also in the vicinity of an outstanding natural (benthic) feature, the biodiversity of which is likely to be compromised by the proximity of a salmon farm. Our previous comments about landscape in Waitata Reach as a whole also apply to both of these sites. Richmond South is partly in the foraging area for the King Shags ³.

B 5 Tio Point site

The potential site at Tio Point is in the high natural character area of the outer Tory channel. The MDC *et al* publication previously referred to⁴ defines Tory Channel coastal natural character as "high" at Scale 4:

Those areas that exhibit a combination of natural elements, patterns and processes that are exceptional in their extent and relative intactness, integrity and lack of built structures (the 'clutter' factor) and other modifications compared to other areas in the Marlborough Region (p.262).

Given the other approved salmon farms in Tory Channel, including the recent enlargement of the Clay Point farm (also in a partnership arrangement between NZKS and Te Atiawa), we do not recommend that yet another farm is approved for this high natural character area, one that will be highly visible to the hundreds of thousands of ferry passengers traversing this route every year. It will add to the 'clutter' and high visibility of several salmon farms along this main gateway to the South Island. It has also been identified as being very close to the ferry route (Navigatus Report), and thus also potentially a navigation hazard, should there be a navigation incident with a ship. We comment further under Navigation.

C Social Impact Assessment (SIA)

*Social impact assessment includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment (IAIA 2003)*⁵. This definition is very close to the RMA definition of purpose: S5 (1) and (2).

³ We have not submitted on the issue of King Shags, whilst noting it is a matter of great importance, given the vulnerability of this species. We support Rob Schuckard in his submission on this matter.

⁴ Marlborough Landscape Study August 2015 by Boffa Miskell and Marlborough District Council, page 108; Natural Character of the Marlborough Coast, Defining and Mapping the Marlborough Coastal Environment, June 2014 by MDC, Boffa Miskell, DOC, Landcare Research and Lucas Associates,

⁵ International Association for Impact Assessment, Fargo, USA

This further statement from the IAIA guidelines is pertinent: *Most importantly, SIA focuses on the individuals, groups, communities and sectors of society that are affected by change.* This is the first major failing of the Taylor Baines SIA report for the NZKS proposed new sites. SIA can be a policy-level assessment, or as in the NZKS case, a project-level assessment. In this case the analysis is in anticipation of a proposed change. We will discuss this issue and our submission in more detail.

Because of the limited approach of the Taylor-Baines report to SIA, we have no confidence in the conclusions that those new sites out of sight of their neighbours have greater social acceptability, and therefore we conclude that this social impact assessment has not fulfilled the requirement of the RMA (Part 2, Section 5).

There is another more serious failing of the Taylor Baines report, affecting its credibility, and also involving MPI. The reviewer who was contracted by MPI to give an independent critique of the Taylor Baines report was Rob Quigley, with whom James Taylor was already collaborating on a publication that had been commissioned by MPI⁶. This is a conflict of interest and also a process issue, as noted above. The author (Taylor) had previously advocated for NZKS' original application before the BOI, so appears to be conflicted. His minimal coverage of the social impact of the proposed new sites reinforces our view on this.

We have some further comments to make about social licence, given the apparent assumption by NZKS that its social licence to farm salmon can be maintained or enhanced by relocating salmon farms.

D Navigation

The technical report, prepared by Navigatus Consulting (Auckland) appears immediately to be flawed, because there was no consultation during its preparation with the Picton/Sounds Harbour Master. Although the potential risks are clearly set out in the executive summary, they are treated as theoretical. For example, "there is a conceivable possibility of a farm breaking free" would be more credible if the fact that a farm has been known to break free was recorded.

We have now referred to the submission to the panel written by the Picton Harbour Master, which refers specifically to the proposed farm in mid-Waitata Reach. We note that the Harbour Master has serious concerns about this proposal, on three counts. Some of the mitigation measures suggested would also seriously compromise the landscape values of this outstanding natural landscape. For example, painting the farm a bright colour or putting additional lighting on it.

Navigatus also underplays the effect of funnelled winds in parts of the Sounds (particularly Tory Channel), although noting that there can be severe gusts. In fact there can be whole days when the wind speed is gusting at well over 100km/hr, thereby causing potential navigation risks with ferries passing each other in the channel and with salmon farms in the channel as well. The activity of cruise ships in Pelorus Sound is also understated, given the

⁶ James, J., Quigley, R. Aug 2016. The Social and Community Effects of Salmon Farming and Rearing: A Case Study of the Top of the South Island. (Prepared for aquaculture Unit, MPI)

Harbour Master's recent statement that cruise ship visits into the Sound are expected to increase.

Given the uncertainties implicit in this report, we have concerns about navigation risk, concern about lighting of farms, concern about charting (given likely delays before cruising guides and charts will be updated), and concern that it is assumed that all farms will be staffed at all times. These concerns reinforce our view that none of the proposed farms in Waitata Reach, or the proposed Tio Point farm, should be approved.

E Conclusion

We have commented on the process involved in consideration of six potential new salmon farm sites, including the MSWG; consultation and the "expert" reports; conflicts of interest; and the intended use of s360 of the RMA to override the MDC Sounds Resource Management Plan and future Marlborough Environment Plan.

We have commented in particular on three further aspects: landscape values, social impact assessment and navigation concerns. We have not commented on other crucial aspects of this proposal, including water column and benthic effects, cumulative effects of feed levels, King Shags foraging areas. We support the submission on these matters by Rob Schuckard, for the Friends of Nelson Haven and Tasman Bay Inc., and Kenepuru & Central Sounds Residents' Association Inc. We share the serious concerns expressed in that submission.

We have no confidence in the ability of NZKS to meet best management (Benthic) guidelines even if the farms move to higher flow areas: this company has not yet demonstrated that it is meeting them in the newly-approved farms, because monitoring reports have not been made available.

Our strong recommendation to the Advisory Panel and to the Minister is that none of the proposed new sites should be approved under s360A, and that NZKS should work to meet the agreed best practice (benthic) guidelines with the existing farm sites, by lowering its production to more sustainable levels. We submit that this may be its best opportunity to secure support for its activities (and hence "social licence").

We submit that there should be no more salmon farms in the Marlborough Sounds until NZ King Salmon shows it can operate the ones it has within the agreed benthic guidelines.

Desired outcome: Option C: The Minister does not recommend the proposed regulations.