

## Contents Page: Akaroa- Auckland

All written comments received on the proposed National Environmental Standard for Marine Aquaculture, grouped alphabetically according to business/organisation/iwi/surname.

Written Comments Number	Business/Organisation/Iwi/Surname	First Name
0041	Akaroa Salmon (NZ) Ltd	
0106	Ambush Marine	
0079	Anatimo Trust	
0002	Aotea Marine Farms	
0080	Aquaculture New Zealand	
0065	Auckland Council	
0059	Auckland Regional Public Heath Service	





In the Matter of -

Proposed National Environmental Standard for Marine Aquaculture (NES)

A submission from Ben Normand for and on behalf of –

Akaroa Salmon (NZ) Ltd

P.O.Box 8265

CHRISTCHURCH 8440

P [REDACTED]

C [REDACTED]

E [compliance@akaroasalmon.co.nz](mailto:compliance@akaroasalmon.co.nz)

Akaroa Salmon is submitting on the following parts of the proposed NES –

- Chapter 4: Options for Solving the Problem
- Chapter 5: How an NES: Marine Aquaculture would work
  - 5.2 Replacement consents for existing farms
  - 5.3 Change of species
  - 5.4 Biosecurity – ensuring effective biosecurity management on farms
- Appendix F: Indicative NES provisions

## **1.0. Introduction**

**1.1.** Akaroa Salmon (NZ) Ltd congratulates the Ministry for the Environment and the Ministry for Primary Industries on this positive step and welcomes the proposed NES for Marine Aquaculture

**1.2.** This submission expresses overarching support for the proposal and, without prejudice, seeks to add to the proposal by way of further refinement.

## **2.0. Akaroa Salmon (NZ) Ltd (Akaroa Salmon)**

- 2.1. Akaroa Salmon has been farming salmon in Akaroa harbour since 1986
- 2.2. Akaroa Salmon has remained under the same management structure since that time.
- 2.3. Akaroa salmon is a vertically integrated company, producing salmon at its two consented areas in Akaroa harbour, processing and distributing its fresh and smoked salmon products around New Zealand and the world from its factory in Christchurch, and restocking its production farms from its hatchery located north of Christchurch.
- 2.4. In 2016 Akaroa Salmon grew and processed 450 T of Chinook/King salmon, employed 28 full time and 4 part time New Zealanders, and added \$7.5M to the national, regional, and Banks Peninsula economies.
- 2.5. Akaroa Salmon continues to grow the reputation of New Zealand as a premium food growing country whilst preserving the coastal marine environment we richly value.
- 2.6. Akaroa Salmon seeks to fully utilise its space allocation allowed for in its consents by the year 2022 and in so doing increase its annual production to 900 T
- 2.7. In order to protect the existing financial investment as well as any future investment, Akaroa Salmon supports any initiative designed to simplify and create certainty around marine farm consent renewal processes.
- 2.8. Akaroa Salmon is an active member of the Banks Peninsula and Pegasus Bay Marine Farmers Group (BPPBMF)
- 2.9. Akaroa Salmon supports, in most part, the submission on the NES made by the BPPBMF but does not support some parts of that submission

## **3.0 General Comments on the NES**

3.1 Keeping in mind the comments contained within this submission, Akaroa Salmon believes that:

- this standard has struck a good balance between industrial, public and environmental values
- This standard generally encourages rational decision making by decision makers based on evidence, instead of assumptions
- When deemed appropriate by the council, renewed marine farm consents should be classified as a controlled activity

- This standard will be of financial benefit to farmers and councils, as it will simplify the re-consenting process
- This standard should, ideally, be followed by the introduction of an aquaculture specific New Zealand Coastal Policy Statement
- In addition to being committed to A+, our support of this standard further formalizes our commitment to enhancing biosecurity

#### **4.0 Section 4: Options for solving the problem**

##### **4.1 Section 4.4 – Preferred Option – a National Environment Standard**

4.1.1 Akaroa Salmon agrees that a National Environment Standard for Marine Aquaculture is the best option for achieving a consistent and efficient regional planning framework for the management of existing marine aquaculture activities. Akaroa Salmon agrees that it will do so in a timely manner

#### **5.0 Section 5: How an NES: Marine Aquaculture Would Work**

##### **5.1 Section 5.2 Replacement consents for existing marine farms**

- 5.1.1 Akaroa Salmon agrees that it is important to nationally align the activity status of all existing marine farms.
- 5.1.2 Akaroa Salmon agrees that of the four possible designations, Restricted Discretionary is the most appropriate for marine farming activities.
- 5.1.3 The NES document acknowledges that 'it is possible to develop a focused list of effects that should be subject to matters of discretion for replacement consents for existing farms.'
- 5.1.4 Under Policies 13 and 15 of the NZCPS 2010 adverse effects on areas of outstanding natural character, outstanding natural features, and outstanding natural landscapes in the coastal environment are to be avoided. For applications for replacement consents for existing marine farms in these areas, the proposed NES would classify them as restricted discretionary activities, but an additional matter of discretion would apply.
- 5.1.5 Akaroa Salmon submits that the NES should be more prescriptive towards the extra matter of discretion regarding what is considered to

be 'outstanding', to assist both council and consent holders towards reaching positive outcomes during the renewal process.

- 5.1.6 Akaroa Salmon also believes that it would be wise for regional councils to follow the example of the Auckland Council which has formally stated that the outstanding areas with existing farms are outstanding inclusive of these farms
- 5.1.7 Akaroa Salmon agrees that marine farm renewal consent applications, in most cases, should not be publicly notified.

## **5.2 Section 5.3 Change of species**

- 5.2.1 Akaroa Salmon agrees that a change of species application should be included in the NES
- 5.2.2 Akaroa Salmon agrees that a change in species should be classified as a discretionary activity
- 5.2.3 Akaroa Salmon submits that the NES should be non-prescriptive in regards to which species the application relates.

## **5.3 Section 5.4 Biosecurity –ensuring effective biosecurity management on farms**

- 5.3.1 Akaroa Salmon agrees that a consistent and effective biosecurity programme is required on all marine farms and the NES is the appropriate place to achieve this
- 5.3.2 Akaroa Salmon does not agree that regional councils are the appropriate administrators of Biosecurity Management Plans
- 5.3.3 Akaroa Salmon would have concerns that regional councils do not have the resources or expertise to assess and/or audit individual BioMP
- 5.3.4 Akaroa Salmon would have concerns that the costs associated with assessing and auditing BioMP would not be manageable, were they administered by regional councils
- 5.3.5 Akaroa Salmon believes that those marine farms operating under the AQNZ A+ Sustainable Management Framework, which incorporates a BioMP and is a program audited by leading experts, should by right be seen to be biosecurity compliant by regional councils

## 6.0 Appendix F

### 6.1 Section 2 to 4

- 6.1.1 Further to 4.1.6 in this submission, Akaroa Salmon submits that Appendix F 2 to 4 should be more prescriptive in relation to the extra matter of discretion, to assist both council and consent holders towards reaching positive outcomes during the renewal process.

### 6.2 Appendix F 9 to 11 referring to realignment of existing marine farms

- 6.2.1 Small realignments are defined as those that do not exceed a total of one-third of a 10 hectare marine farm. Two thirds of any farm where realignment is proposed must remain within the currently consented area
- 6.2.2 Akaroa Salmon agrees that realignment should be a restricted discretionary activity.
- 6.2.3 Akaroa Salmon submits that the prescribed scale of realignment is restrictive and may defeat the purpose of the reason or requirement for the realignment.
- 6.2.4 Akaroa Salmon submits that a realignment of an existing marine farm is designed to benefit the environment
- 6.2.5 Akaroa Salmon submits that realignment is designed to move an existing marine farm to a more suitable location within the general location that marine farm has historically existed
- 6.2.6 Akaroa Salmon submits that realignment is not designed to increase the scale of the existing marine farm
- 6.2.7 Akaroa Salmon submits that there should be no restriction on the size of the farm to be realigned.
- 6.2.8 Akaroa Salmon submits the realignment can only occur once
- 6.2.9 Akaroa Salmon submits that fed aquaculture or aquaculture requiring supplementary feeding should not be excluded from realignment





Proposed National Environmental Standard for Marine Aquaculture Submission

To the Ministry for Primary Industries

[aquaculture@mpi.govt.nz](mailto:aquaculture@mpi.govt.nz)

8 August 2017

Submitter Details

Full Name of Submitter

Mr/Mrs/Miss/Ms (Full Name)

MARK + LOERAINÉ HISLABIE

Organisation Name

AMBUSH MARINE

Address for Service

1599 East Coast Road, RD 3, POKERI

Email

1.0 Introduction

Insert information about your marine farming business; particularly

Where I farm

Haukei Gulf Western Side

What species I farm

Mussels

If I'm not directly farming, what relationship I have with marine farming

Family Business

How many employees I have

Three

Add in any additional specific information about your business such as:

- What you value about your business; IS A VALUED FOOD & HEALTH PRODUCE
- What you have planned for your business in the future; Small Expansion
- How your business adds value to your local community. Employment & Supporting Local Business

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. & SCHOOLS

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

2.0 The Issues

- Aquaculture is the heart of regional communities like Havelock, Coromandel, Warkworth, Stewart Island 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, at a cost of \$50.3 million in total, the current re-consenting processes create a cloud over the future shape of the industry

### 3.0 General Support for the Proposed NES

- I broadly support the National Environmental Standard (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

You can choose to answer any or all of these questions. You can refer to the AQNZ submission for guidance, answer these in your own way or use the answers below. Alternatively, you could delete this section entirely.

*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. No public or limited 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.

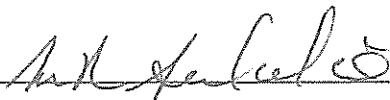
## 6.0 Summary Statement

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

MARK Aislabie LORRAINE Aislabie

Signature



Date

7-8-2017

Michael Nielsen

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**From:** Jillian r & darren i Burrell & foxwell [REDACTED]  
**Sent:** Tuesday, 8 August 2017 3:17 PM  
**To:** Mailbox\_Aquaculture  
**Subject:** submission to proposed national environment standard for marine aquaculture

I Jillian Foxwell submit for myself and representing Anatimo Trust that Wainui Bay spat catching area remain as a discretionary activity in the new Environment Standard for Marine Aquaculture.

It is an area that needs to remain a notified consent area given the evolving nature and development of spat catching and the artificial spat farming that will replace this site in the near future.

Also spat catching factories in Wainui Bay have been slow to adhere and amend unwelcome practice historically and currently to do with noise, rubbish, light and visual pollution. Also issues around the length of working hours and numbers of boats working in the area at one time.

☐ An industry of this sort has no place and is inappropriate in an area of outstanding natural landscape such as Wainui Bay.

Please leave Wainui Bay spat catching sites as a Discretionary activity.

I am a permanent resident, landowner, represent Anatimo Trust and directly affected by Wainui spat negative activities.

Yours sincerely

Jillian Foxwell

[REDACTED]

Wainui Bay

☐ Takaka

8/8/2017







## 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](mailto: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:

Ross Dockery (Aotea Marine Farms)

Postal address:

████████ Kawhia 3843

Phone number:

████████

Email address:

████████████████████

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

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

Aotea Marine Farms



## ***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.

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### **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 a NES is needed to sort out the mess the consents are in and to bring clarity to aquaculture.

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**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?

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I think restricted discretionary is appropriate as long as the restrictions are not too difficult to work and are not open to abuse.

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**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?

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Yes, this would make it consistent throughout the regions and provide clarity.

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**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?

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No.

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**Question 5:**

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

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**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, they should not be allowed to be moved if sites are inappropriate and have sediment build up.

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**Question 7:**

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

They should be allowed to be moved.

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**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?

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No.

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**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?

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No.

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**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?

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N/A.

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**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?

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No.

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**Question 12:**

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

No. They have already been through this. It will only be used by people to move farms that have been there all along and they have moved in since.

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**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?

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See reply at end of section.

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**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?

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Yes.

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**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?

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Yes, there are sites that are very important to NZ Aquaculture. Re: Spat Catching sites, sites found in the future to produce something special to the economy or health of New Zealanders.

See continuation at end of document.

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**Question 16:**

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

They can recognise that the farms were there a long time before people began populating the area, but are given little consideration when matters arise years later. New comers get a feeling of ownership of an area with little consideration of something that has been there all along and causing no harm.

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**Question 17:**

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

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Fair.

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**Question 18:**

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

Re-alignment should be allowed under NES for farms in areas of outstanding natural character as these are the places that may need to be moved for reasons that make them outstanding, it would be too hard otherwise.

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**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?

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Navigation problems, tidal flow, changes in depth, e.g. sand build up.

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**Question 20:**

Should the proposed NES address change in farmed species?

Yes

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**Question 21:**

Should the proposed NES limit the species it relates to?

No, as long as they are not new introduced species. A new species could be identified in the future that could be viable, so you don't want to shut the door now and make it too hard to do.

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**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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Yes.

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**Question 23:**

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

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Not at this stage, but could be in the future.

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**Question 24:**

Should herbivorous finfish be treated differently from carnivorous finfish?

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Don't know enough about them.

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**Question 25:**

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

Yes.

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**Question 26:**

Should spat catching farms be excluded [from the change of species provisions]?  
No, because if spat catching becomes un-viable in the future it would give us an alternative. There are also other species that would have no impact on the spat catching, i.e. gooey duck.

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**Question 27:**

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

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Not that I know of other than new introduced species.

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**Question 28:**

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

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No, very hard to cover until the farming of different species takes place and then more fine tuning may be necessary. A lot of trial and error goes on when developing new ways to do things.

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**Question 29:**

Should change of species involving finfish require additional matters of discretion?

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No.

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**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?

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No

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**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?

Restricted Discretionary.

### Question 32:

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

No.

### 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, A+ should be compulsory, that should be enough. We have to be careful not to change biosecurity management so that it would make it too hard to transfer spat from catching area to grow out area as this is a very time sensitive operation. Any hold ups would make it impossible to do. We have been doing it for 20 years with no problems, don't make things un workable.



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**Question 34:**

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

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Yes, it will take time to make it work.

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**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.

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Regional differences should be accommodated.

There will be site specific differences.

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**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?

I don't know if all the matters needed will ever be covered as it is an evolving thing. Too much detail will stifle its effective operation. Common sense to prevail.

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**Question 37:**

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

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At this stage, yes. As long as it doesn't get too carried away and become unworkable. Use of A+ the best way forward.

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**Question 38:**

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

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See reply at end of questionnaire.

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**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?

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No, because everybody would be working to produce the same thing. It should be at national Bio MP for all farms to follow, e.g. A+.



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**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?  
No. Educate the operators to what they should be looking out for as they are on the water all the time.

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**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?

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Too early to tell.

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**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





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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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I have found that any costing with the resource management act involved is open ended and hard to nail down. But the benefits will be huge if it works.

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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.

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Q.13:

Allowing Council's to take a more lenient approach.

Farms should not be subject to refusal of consent because the farm is located in an area that has become an ONL-ONC-ONF and the farm has been there for years before hand. Even when the site has been evaluated as such with the farm in place.

It is not fair to change the rules once you have done all the hard work to set up a business with all the associated costs and investment, and then all of a sudden have no consent.

This should be recognised in the R.C.P.

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Q.15 continued:

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Site of Particular Importance to Aquaculture.

I am writing this submission because our 2 Mussel Spat Catching farms totalling 7.50 ha in the Aotea Harbour on the West Coast of the North Island have been crucial to the supply of spat to the Coromandel Mussel Industry.

We supply 600,000m of mussel spat caught on lines that are transported to Coromandel and go on to produce between 1.2 and 2 million meters of grow out rope that produces thousands of tons of mussels for processing and export.

The flow on effect if our farm was not supplying spat would be huge to the viability of some producers/farmers/processors. Even though our area is only 7.50ha it is probably the most important farm in the Waikato/Auckland area, comparable to the Wainui spat catching farm in the Marlborough area.

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We are in an area that is a Draft Outstanding natural character site. Our farm is one of the oldest in the area being consented in 1986 and extended in 2000. The extension took us 8 years to complete. I would not have the fortitude to go through that process again as it was a nightmare of Council, Government changes in legislation and rules. A Moratorium was thrown in for good measure!

I think the NES is a good move but these sites need special attention because of their importance to the mussel farms we supply. Without spat you do not have an industry. These sites are a freak of nature and are very rare. They need protection for as long as there is a need for the spat they supply and are well run. These sites should be given the maximum 35 years allowed and be given special consideration to roll them over if the need is still there in 35 years' time.

The Aotea farms need to be recognised specifically as a particular site of importance.

Note:

There are a lot of farms consented for spat catching, but very few that have a proven track record of actually being able to catch spat year in and out consistently as the Aotea and Wainui Farms have proven.

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Q.38: Bio Security Management Plan:

Bio security is very important for aquaculture to progress.

A BMP needs to be practical and workable for the industry.

A BMP needs to encompass all users of the marine environment e.g. Yachts, shipping, oil and gas, recreational fishers.

It is no use only having 1 section of users under restrictions and not others as the whole process would then be a waste of time and effort.

Marine Farms are more in tune with the marine environment than say shipping/ yachting.

Marine Farmers notice things more easily.

It is no use leaving the door half open.

Aquaculture NZ A+ strategy should be compulsory for the industry.

External professionals would be ineffectual and costly.

Keep it simple and effective through A+.



Aquaculture New Zealand Submission  
on 'Proposed National Environmental Standard for Marine Aquaculture'

To the Ministry for Primary Industries

[aquaculture@mpi.govt.nz](mailto:aquaculture@mpi.govt.nz)

8 August 2017

## 1.0 SUMMARY OF SUBMISSION

- 1.1 Aquaculture New Zealand (AQNZ) welcomes the proposed National Environmental Standard (NES) for Marine Aquaculture.
- 1.2 Aquaculture has been recognised by the Government as a priority industry on the Business Growth Agenda for its real potential to help create a more productive competitive economy with a light touch on the environment.
- 1.3 The proposed NES represents a significant milestone towards realising this potential and we strongly support its objectives to:
  - Provide better outcomes for the industry, communities, councils, Iwi groups and the environment.
  - Provide a more efficient and certain consent process for managing existing farms within evidence-based environmental limits.
  - Carefully balance improving certainty while recognising the values and characteristics that make our marine environment so special.
  - Allow efficient evidence based decisions to be made while encouraging regions to proactively plan for aquaculture in their regions into the future.
  - 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.
  - Formalise the industry's commitment to maintaining and enhancing biosecurity.
- 1.4 This submission expresses overarching support for the proposal and makes a number of recommendations for refinement and consideration.
- 1.5 Particularly key elements of our submission are:
  - We agree that the NES is the best available option under the current circumstances and agree that the other options are not feasible or do not meet the objectives of the proposal.
  - We agree that restricted discretionary activity be given to all consent renewals for aquaculture unless a regional plan allows a more lenient status. We consider, however that controlled status would be more appropriate.

- We note that the accompanying proposal for consent renewals to be non-notified is a crucial element of the NES and that this needs to be retained in order to meet the proposal's objectives.
- We suggest that the provisions that add an additional matter of discretion to assess the impact of existing farms on outstanding natural character, features and landscape should include a sunset clause which recognises and encourages second generation planning for these values.
- There is a strong need for the proposed additional guidance, particularly in light of the current subjectivity and lack of clarity around the directive provisions of the New Zealand Coastal Policy Statement 2010 (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 will as well as allowing for strategic planning for and management of aquaculture into the future.
- We support the intent of the biosecurity proposals.
- We support enabling innovation through providing for changes of species as a restricted discretionary activity.
- We have appended<sup>1</sup> some suggested amendments to Appendix – F: Indicative NES provisions, in general to refine the matters of discretion.
- We have appended legal advice<sup>2</sup> we have received and support, which, for the most part, has reinforced the appropriateness of the proposal in the context of good planning and good policy making for aquaculture in the coastal marine environment. Some recommendations are also included.

1.6 The decisions we request are as follows:

- Enact the NES as a matter of priority with the suggested amendments included in Appendix One of our submission.
- Review the schedule of farms which are subject to assessment under policy 13 and 15 using the best available information.
- Include a sunset clause for the additional matter of discretion on outstanding values to recognise and encourage councils providing for these in their plans.
- Progress the proposed accompanying guidance as a matter of priority.
- Progress an NZCPS – Aquaculture as a matter of priority.
- Require that more lenient rules remain by default.
- Recognise the Wainui Bay and Aotea Harbour spat farms specifically for their strategic importance to the industry and the communities in which it operates.
- Ensure close industry involvement in progressing Biosecurity Management Plans.

## 2.0 AQUACULTURE IN NEW ZEALAND

2.1 AQNZ represents the interests of the aquaculture sector in New Zealand. This sector has combined export and domestic earnings in excess of \$500 million and a growth strategy with a goal of reaching \$1 billion per year in sales by 2025. Aquaculture directly employs more than 3,000 people primarily in regional communities.

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<sup>1</sup> Appendix One – Tracked Changes to Indicative NES Provisions

<sup>2</sup> Appendix Two – Gascoigne Wicks Legal Advice to Accompany AQNZ Submission on NES for Aquaculture

- 2.2 The activities of the industry take place largely in the coastal marine zone and the industry's internationally recognised reputation for quality and food safety depends heavily on the purity and sustainability of our growing waters. The industry prides itself on its commitment to preserving and enhancing the coastal marine environment and AQNZ has recently launched a new sustainable management framework, A+ ([www.aplusaquaculture.nz](http://www.aplusaquaculture.nz)), to maintain our world-leading stewardship status.
- 2.3 Aquaculture is a key contributor to the future of food security – producing 13% of all human consumed protein with less of the world's primary resources (<4%) than we use to feed pets and horses. Marine farming is one of the most environmentally sustainable forms of protein production. Kiwis want to eat healthy sustainable food produced in New Zealand but sometimes are not provided with a realistic, objective overview of what the costs and benefits of our food choices really are.
- 2.4 Maori investment makes up a significant proportion of the current ownership of the industry and their role is expected to grow as aquaculture settlements deliver 20% of any new development to local Iwi. This creates both cultural and economic benefits, particularly in the regions.
- 2.5 The Government's Aquaculture Strategy and Five-Year Action Plan to Support Aquaculture confirms Government's commitment to enabling the aquaculture industry to reach its \$1 billion goal. This strategy identifies that quality planning and permitting, and effective and responsive regulation, are key strategic requirements to help enable growth. The proposed National Environmental Standard for Marine Aquaculture is a welcome and essential initiative to provide this.
- 3.0 MANAGING AQUACULTURE IN THE CMA UNDER THE RMA**
- 3.1 AQNZ understands and respects that the public expects marine farmers to be good tenants within the Coastal Marine Area (CMA) and that means delivering very high levels of environmental management. We are also conscious that there are a range of other activities in the water space – commercial, recreational, and customary fishers; boaties and other recreational users; customary users; tourism operators; and many others. We are also aware that our activities can affect people on the land.
- 3.2 For these reasons we support the transparent public consultation processes that are an intrinsic part of the Resource Management Act (RMA). These processes provide an opportunity to ensure that aquaculture is developed in harmony with other uses of New Zealand's waters and that all affected people have the opportunity to have meaningful input into the process.
- 3.3 We are, however, mindful that in its current form the RMA does not always meet the Government's Business Growth Agenda in providing a resource management system that enables growth, provides good environmental outcomes, and is capable of adapting to changing values, pressures, and technology. Particularly for aquaculture as one of the few activities in the coastal marine area that requires resource consent, the focus on site-by-site

effects and characteristics can be out of kilter with the magnitude of those effects in the broader context of all uses, activities and impacts on and in the marine environment.

- 3.4 The industry's experience operating within the current resource management system is in line with the Local Government New Zealand<sup>3</sup> view that *'processes under the resource management system are time consuming, complex and often not proportional to the risk or impact of a proposal'*.
- 3.5 Particular issues for aquaculture include:
- There has been limited growth since the 2001 moratorium, despite extensive legislative reforms in 2005 and 2011.
  - Our estimate is that 72% of current farms are due for re-consenting in 2024/25 – the outlook at this time is that there is a potential for many of these consent applications to be declined. As a result, *'investors in New Zealand's marine farms are beginning to respond to re-consenting risks by reducing their level of exposure below what they would likely otherwise seek.'*<sup>4</sup> With reduced access to investment, the industry will be less able to progress its growth potential through substantive infrastructural, productivity, innovation and/or market/product development initiatives.
  - The likely cost of the re-consenting process, regardless of how many farms are granted or declined, is estimated to be \$50.3 million<sup>5</sup>. This equates to a corresponding \$50 million in lost opportunity for reinvestment into industry improvements.
  - The 2014 New Zealand King Salmon Supreme Court decision<sup>6</sup>, relating to the application of the New Zealand Coastal Policy Statement 2010 (NZCPS), has added an additional level of risk to both current industry renewals and potential growth.
  - Considerable resources are being expended by industry and Government agencies on attempting to maintain a holding pattern – to smooth the pathway for the 2024 consent renewals – when these resources should ideally be concentrated on our growth pathways.
- 3.6 We note that *'recognising existing aquaculture activity'* was a recommendation made during the 2010 aquaculture reform through limiting *'the range of information an applicant would be required to provide to a consent authority when seeking a consent to continue an existing aquaculture activity beyond the original term'*<sup>7</sup> This was left for consideration in *'a wider legislative review of the RMA'* and although left out of the most recent RMA amendment we welcome its inclusion in the NES proposal. Its intended purpose that *'the process for applying for a consent to continue an existing aquaculture activity will be simpler and less costly'*<sup>8</sup> is a crucial outcome for the industry.

<sup>3</sup> MartinJenkins for LGNZ (2015). A *'blue skies'* discussion about New Zealand's resource management system.

<sup>4</sup> NZIER (2015). *NZIER overview of the impacts of re-consenting uncertainty and delay on aquaculture investment in New Zealand*.

<sup>5</sup> NZIER (2017). *Proposed new national direction in aquaculture – preliminary economic analysis*.

<sup>6</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

<sup>7</sup> Primary Production Select Committee (2011). *Aquaculture Legislation Amendment Bill (No 3) Commentary*.

<sup>8</sup> Aquaculture Unit (2010). *Re-consenting Aquaculture – Aquaculture Legislative Reforms Technical Guidance Note 4*.



- 3.7 We also supported the DOC initiative to carry out an effectiveness review of the NZCPS. We participated in the workshops and provided a number of background papers and case studies to the review. It is unfortunate that the outcome of the review has not been shared at this time as it would have provided important context for the NES proposal, particularly in light of the current weight given to the subjective assessment of impacts on values that make areas outstanding.
- 3.8 We are, however, very encouraged by the Government's recognition of the current concerns for aquaculture and the current initiative to progress the NES for aquaculture. AQNZ has welcomed the opportunity to participate collaboratively with a range of stakeholders in the National Direction for Aquaculture working group and broadly supports the proposal that has resulted from this work.

#### 4.0 SPECIFIC COMMENTS ON THE PROPOSAL

##### Problem Definition

- 4.1 The problem is well summarised and is expanded on in 3.5 above. An in-depth analysis of the problem is provided by NZIER (2015). As well as the risk that uncertainty in the consenting process will undermine the confidence of investors are the equally problematic decreases in the ability of a business to borrow and service loans, and the reduction in *'the amount of investment and maintenance on existing assets, along with product (and market) development and R&D, perhaps to levels required simply to keep production ticking over'*. These effects are keenly felt across the industry, including the small family businesses and they flow on to the communities that the farms operate in.
- 4.2 The essence of the problem is that too many resources, time and money are being expended on maintaining a holding pattern and the only beneficiaries of this concentration of resources are the planners and lawyers involved in the consenting processes. A more efficient renewal process will enable these resources to be used where they can provide multipliers into the local economy, into innovation and research, into proactive projects for the environment and into New Zealand's reputation for a provider of high quality nutritious food.
- 4.3 Regarding the consideration of options, it is important to note that the need for certainty is not at 2024, it is at least 5 years sooner. The effects of uncertainty are already evident and NZIER (2015) notes that *'action from policy makers to address the re consenting risks is required well before the re consenting wave hits industry in the next decade'*.
- 4.4 Also regarding the consideration of options we disagree that the status quo will recognise future strategic planning for aquaculture. As noted above, the current settings mean that the industry, through region by region consenting and planning, is almost entirely focused on stabilising existing production. Our view is that a New Zealand Coastal Policy Statement – Aquaculture should follow the NES to guide strategic and collaborative planning into the future.

##### Costs and Benefits

- 4.5 The costs and benefits are well expressed and we agree that the most prudent solution is

progressing the NES in its proposed form. It is important to remember the less tangible benefits of giving stability to New Zealand's marine farming industry such as the corresponding stability that will flow to regional communities and the families within those communities such as Twizel, Havelock and Coromandel who depend on the industry for their way of life.

4.6 These benefits are well described in a number of reports:

- Quigley, R. and Baines, J. (2014) *The Social Value of a Job*. Ministry for Primary Industries.
- Quigley, R. and Baines, J. (2015) *The Social and Community Effects of Aquaculture*. Ministry for Primary Industries.
- Quigley, R. and Baines, J. (2016) *The Social and Community Effects of Salmon Farming and Rearing*. Ministry for Primary Industries.
- Bay of Connections (2013) *Bay of Connections Aquaculture Strategy*.
- MartinJenkins (2015) *Te Tai Tokerau Northland Growth Study – Opportunities Report*. Ministry for Primary Industries.
- Reid, R. (2014) *Nelson Tasman Regional Prosperity Report*. Nelson Regional Economic Development Agency.
- Clough, P. and Corong, E. (2015) *Economic Contribution of Marine Farming in Marlborough*. NZIER
- SeaChange Stakeholder Working Group (2017) *Tai Timu Tai Pari – SeaChange Hauraki Marine Spatial Plan*.
- Taylor Baines and Associates (2000) *Resource Community Formation and Change: A Case Study of Havelock*.
- Wyatt, S. (2011) *Economic Impact of Coromandel Aquaculture*. Sapere Research Group.
- Pambudi, D. and Clough, P. (2017) *The Economic Impact of Aquaculture in the Thames Coromandel District*. NZIER.

## Opportunities

4.7 The discussion identifies that the NES is one part of a broader Government approach to support the aquaculture industry. It is important to note that the industry is also progressing a range of initiatives focussed on sustainable growth and improvement, tied back to the New Zealand Aquaculture Strategy and Ten Point Plan. These include programmes for research and development, biosecurity, environmental sustainability, market development, engagement with communities and collaborative planning. Once the NES has been enacted AQNZ will be in a position alongside the industry to renew the focus on these more proactive activities.

## Collaborative Planning

4.8 We strongly support the intent of the NES to direct focus toward collaborative plan making in the marine environment rather than site-by-site, often court-directed decisions. We particularly support RMA processes which allow evidence based and peer reviewed expertise and community values to guide planning to a level where there is confidence that consent by consent decisions can be streamlined and efficient. The multi-stakeholder SeaChange project, Tai Timu Tai Pari was a positive example of communities making positive decisions for their

future. The recommendation from that process was that most of the existing industry should be re-consented as controlled activities.

- 4.9 Following from this, we submit that in an ideal planning/management framework, there should be a clear division of functions between planning and resource consenting. The planning regime should comprehensively address all environmental effects in the context of the full range of uses and values. The resource consent stage should be focussed only on site-specific matters that cannot be easily anticipated as part of a broad-brush planning regime. The proposed NES, for the most part, achieves this division well except where it seeks to manage effects on outstanding landscape and natural character.
- 4.10 We recognise that, at this point in time, not all regions have achieved the level of planning that strategically addresses aquaculture in the context of outstanding landscapes and natural character and so it is appropriate that the NES sets out an additional matter of discretion to assess this. However, we submit that this additional 'category' is only necessary in the short term while the remaining regions carry out their second-generation plans. Ideally there would be a sunset clause relating to the replacement consents for existing marine farms within areas of outstanding value. We have attached legal advice which explores this idea further in Appendix Two of this submission.

#### Reconsenting Principles

- 4.11 We strongly support replacement consents for all marine farms having an activity status no more restrictive than restricted discretionary and agree that the proposed matters of discretion are appropriate to assess and manage the effects of existing marine farming. We do have some suggested amendments to further refine the matters of discretion so their intent and implementation are clear. These are included in our tracked changes to the indicative NES provisions in Appendix One of this submission.
- 4.12 There is still a good case for making replacement consents for most existing aquaculture a controlled activity<sup>9</sup> as for the most part, they are an accepted part of the existing environment and generally in appropriate locations. Therefore, it is important that the proposed NES is enacted with non-notification for all replacement consents as well as with provision for councils to apply a more lenient (controlled) status through proactive planning.
- 4.13 We strongly support replacement consents being non-notified and reiterate the point above that this is a critical element for the NES to achieve its objectives. We support communities collaboratively working together to identify areas that are appropriate for all uses of the coastal marine area. Public participation is a critical component of good planning. However, when applied at a consent by consent level 'participants' do not always necessarily represent the best interests of the wider community and the outcomes can be inefficient, uncertain, costly and sometimes influenced by bias. We agree with the discussion on page 16 *'the policy objective aims to retain communities' input to planning for aquaculture activities, but at a regional level at the plan making stage, rather than consent by consent'*.

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<sup>9</sup> Aquaculture Technical Advisory Group (2009). *Restarting Aquaculture*.

- 4.14 We strongly support the provisions to enable realignment of 1/3 of a farm as this can support outcomes that are better for productivity, the environment and the community. This provision may be important for the upcoming aquaculture provisions of the Marlborough Environment Plan for example where the general preference may be to move the coastal ribbon slightly further away from the coastline.

## Guidance/Policy

- 4.15 The reinterpretation of the 'directive provisions' of the NZCPS 2010 brought about by the NZKS Supreme Court decision has substantially added to the current level of consent renewal uncertainty.
- 4.16 Unfortunately, it has also created the unintended consequence of elevating the 'human perception' aspect of an activity over and above any ecological outcomes. Furthermore, the very nature of 'landscape' and 'natural character' assessments is that they are subjective and open to interpretation.
- 4.17 Added to this, while plans are now required to map outstanding natural features, landscapes and character many are not sufficiently progressed to identify the associated values or determine the effect of any particular activity on those values. The Auckland Unitary Plan and the Bay of Plenty Regional Coastal Plan do provide these additional levels of guidance and certainty in this regard.
- 4.18 For these reasons, it is essential that the NES is accompanied by additional guidance that brings consistency and clarity across these issues. The guidance should provide definitions and methodologies that reduce the level of subjective interpretation, inconsistency and uncertainty. This will reduce the risk that arguments around outstanding areas will become proxy battles over which aquaculture is fought.
- 4.19 There is still a compelling case for the need for an NZCPS-Aquaculture as outlined in the discussion document. AQNZ's preferred solution would have been to progress a combined NES/NPS if the timing had allowed however we support the decision to progress the NES on its own given the imminence of the 2024 consent horizon. The NZCPS-Aquaculture should then be progressed to its own timeline.
- 4.20 The NZCPS-Aquaculture would provide important policy guidance, instead of the current NZCPS-Policy 8 Aquaculture, to support the strategic planning for and management of aquaculture into the future. An NZCPS-Aquaculture could include objectives and policies that apply to both existing and new aquaculture activities, and objectives and policies which are specific and limited to either existing or new aquaculture activities. In doing so it could reflect that existing aquaculture activities have been operating in the coastal environment for many years, have effects that are generally well-understood, and contribute to the characteristics and qualities of the coastal environment.
- 4.21 With respect to new aquaculture activities, an NZCPS-Aquaculture could require that regional policy statements and regional coastal plans enable the sustainable growth of aquaculture activities in appropriate locations within the coastal environment (and via an efficient process

that avoids duplication). It could also further assist in the delivery of the Crown's aquaculture settlement obligations.

## Biosecurity

- 4.22 We agree that it is appropriate that marine farms have Biosecurity Management Plans (BioMPs) in place by the end of January 2026 (the end of the consent renewal horizon). Industry should be closely involved in the development and implementation of these.
- 4.23 We note however, that other activities which could have a biosecurity impact in the coastal marine environment should be required to be as responsible as the marine farming industry in developing BioMPs or contributing towards national marine biosecurity.
- 4.24 We include suggestions regarding the template and incorporation of this into the A+ sustainable management programme. We support a programme that encourages industry responsibility without unnecessary added imposition on individual councils.

## New Species

- 4.25 We support the proposal to enable a change of species and, as appropriate, structures as a restricted discretionary activity to encourage innovation and efficiency in the industry into the future.

## 5.0 QUESTIONS FOR SUBMITTERS

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?*

An NES for marine aquaculture WITH accompanying guidance is definitely required and has our strong support. The status quo is not sufficient and will not solve the problems or enable the opportunities we have outlined above. Furthermore, we disagree that the status quo will recognise future strategic planning for aquaculture and submit that a future NZCPS-Aquaculture will be necessary to achieve this.

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?*

Aquaculture is generally appropriately sited and has effects on the environment that are generally well-understood and should be provided for, subject to good industry practice. Most existing farms have already been through an RMA process and even for those granted under the previous legislation care was taken to ensure that farms were appropriately located. Marine farm leases and licenses granted before the RMA were nevertheless subject to a navigation assessment, a commercial fishing assessment, an assessment of the effects on recreation, neighbouring properties and science, and a public interest test. Restricted discretionary is therefore an entirely appropriate status for replacement consents.

However restricted discretionary status needs to be incorporated with no public or limited notification for the required level of certainty. As noted above, this is not an intent to exclude public participation, just encourage it in a strategic planning context instead of case by case, particularly as it allows evidence based decisions and management requirements that will ensure aquaculture operates in harmony with the community and its environment.

As noted above there remains a strong case for controlled activity status particularly as strategic plan making can provide for future situations where that aquaculture may no longer be in an appropriate location.

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, the farms that cannot meet the requirements to be a restricted discretionary activity are generally special cases – i.e. they would be the result of future strategic planning that finds that they are not in an appropriate location or they would be farms that are looking to expand or relocate. It is appropriate that individual communities make the decisions on these activity rules through their plan processes rather than trying to provide a ‘one-stop-shop’ across the country for these special circumstances.

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, there is no reason to treat marine farms with supplementary feeding differently from those without other than to include additional matters of discretion relating to farm specific effects as per the current proposal. In fact, the effects of finfish farms are generally much more intensively monitored and well understood and it is entirely appropriate that they be assessed and managed as a restricted discretionary, non-notified activity.

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

We generally agree with the analysis of effects noting though that the positive social benefits we refer to above have not been as well articulated as they could be.

We also note that the narrative in Appendix G sometimes implies that marine farming always has an effect rather than it has the potential to have that effect. Two examples with suggested amendments are:

- ‘Existing sites pose a potential navigational risk’ rather than inferring that in all cases they pose a navigational risk, as in most cases any risks are recognised as minor and able to be managed.
- ‘Habitat exclusion is not an issue for existing farms, but it can be for new space’ rather than inferring that all new space automatically excludes habitat. This is particularly pertinent in the context of the NES as any ‘new space’ would result from a realignment which may offset exclusion or indeed improve habitat overall.

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, there is no reason to treat marine farms with supplementary feeding differently from those without, other than to include additional matters of discretion relating to farm specific effects as per the current proposal. We note that re consenting finfish farms to date has not been controversial and as noted above the effects are well understood and the proposal enables their assessment and management appropriately.

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

No, there is no need for further matters of discretion over and above those that are proposed. These feed specific matters of discretion have been thoroughly considered by the working group and are appropriate to assess and manage marine farming with supplementary feeding. As noted above, we have made some recommendations to refine the text of the matters so that they appropriately assess and manage those effects. These are included in the recommended tracked changes to the indicative NES provisions in Appendix One of this submission.

8. *Should the extent of an acceptable overlap of existing marine farms with outstanding areas due to margins of error in mapping be defined?*

There are already margins of error that have not been provided for in the consultation such as the mapping errors in the proposed Marlborough Environment Plan. We submit that the margins of error should be increased to ensure that all mapping errors are taken account of, as for farmers that are inaccurately included in the schedule there is a resulting level of anxiety over the proposal.

We submit also that rather than specifying all farms in proposed and operative plans a better approach would be for the Minister to determine which farms should be subject to assessment under policy 13 and 15 using the best available information. Consequently, the Minister could identify those farms which need to be further assessed under Policies 13 and 15. The starting point for the Minister's choice as to which farms to further assess are the farms listed in Appendix H.

We refer to examples where decisions have already been made regarding the impact of existing aquaculture on outstanding values. In the Auckland Unitary Plan all farms in outstanding areas have been identified as not compromising landscape values – specifically that *'their presence does not cause adverse effects'*<sup>10</sup> and this should preclude the need for further assessment. Correspondingly, the Bay of Plenty Regional Coastal Environment Plan also recognises that existing oyster farms in the Ohiwa Harbour do not detract from its outstanding values. These region-specific examples should be taken into consideration in the Minister's decision.

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<sup>10</sup> Auckland Unitary Plan Independent Hearings Panel (2016). Report to Auckland Council Hearing Topic 019 - Natural Features, Landscape and Character

Added to this, many existing farms have already undergone an assessment of their impact on outstanding values through consent or Environment Court decisions and this should be taken into account in the revision of the schedule. There are a number of examples of such farms in Banks Peninsula.

Furthermore, we submit that as each region completes its second-generation plan, then each community will have had the opportunity to identify which farms in outstanding areas are still appropriate and which are not. Therefore, once this planning is completed the additional category for existing farms in outstanding areas with the additional matter of discretion will become unnecessary. As outlined above, it would be appropriate to include a sunset clause in the NES that recognises this. The appended legal advice discusses this proposal further.

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, there are no other areas/values that require site specific matters of discretion. The effects on indigenous biological diversity (NZCPS Policy 11) are more appropriately assessed and managed at a broader scale than a single consent. Communities and experts, through regional planning, can assess and manage the relative risks and opportunities for conservation at that broader scale. Any site-specific issues which can appropriately be assessed at consent level, such as the presence of sensitive benthic habitats, are already included in the matters of discretion and can be managed accordingly.

We note that aquaculture is among a small group of activities that is required to assess its impact on significant species and significant habitats. That occurs because it requires a resource consent for its activity. Consequently, periodic assessment is made of existing farms. However, on a site-by-site basis this approach fails to recognise the relative threats of all activities in and on the coastal environment. We refer also to our legal advice on this matter (and others) appended to this submission.

We refer particularly to NIWA's findings<sup>11</sup> that by far the greatest threat to New Zealand's marine indigenous biodiversity is ocean acidification. Two manageable effects which are significantly greater than that of aquaculture are bottom trawling and increased sediment loading from rivers. Aquaculture is first mentioned at 19th equal (benthic accumulation of shell, food and faeces) below a number of others, including fishing, pollution, engineering and effects of invasive species. Our Marine Environment 2016<sup>12</sup> reiterates this view. Consequently, NZCPS Policy 11 matters need to be managed on a broader scale and through strategic regional planning rather than through individual consents.

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?*

<sup>11</sup> MacDiarmid et al (2012). *Assessment of anthropogenic threats to New Zealand marine habitats*. NIWA.

<sup>12</sup> Ministry for the Environment & Statistics New Zealand (2016). *New Zealand's Environmental Reporting Series: Our Marine Environment 2016*.



As above this question is not applicable. We note that existing aquaculture activities have operated in the coastal environment for many years, have effects that are generally well-understood and contribute to the characteristics and qualities of the existing environment. Broad-scale changes to uses of the environment need to be addressed at a plan level rather than consent by consent.

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, it is appropriate that their effects on the values that make those areas outstanding are considered as a matter of discretion if this has not already been considered, although we do suggest a sunset clause on this provision to recognise the timeframe for all regions to complete their second-generation plans. There is no evidence to support a provision that assumes that effects on outstanding values are adverse across the board through a different activity status. We refer to the examples in Auckland and Bay of Plenty above and also note that farming and forestry activities onshore of a marine farm remain outside of these considerations despite potentially greater and less reversible impacts on landscape and natural character. We refer also to our legal advice on this matter (and others) appended to this submission.

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

No, this would dilute the effectiveness of the proposed NES and unnecessarily reduce its ability to meet the overarching objectives of consistency and efficiency. The proposed NES appropriately provides for site specific assessment and management of site specific effects. We refer also to our legal advice on this matter (and others) appended to this submission.

We note the reference in clauses 16 and 38 to 'statutory exception'. Our understanding is the intent of this reference is to provide for notification to iwi when a statutory acknowledgement applies and we support this intent.

13. *Are there advantages or disadvantages to allowing councils to take a more lenient approach that you would like us to be aware of?*

AQNZ supports communities proactively and positively planning for aquaculture on a regional level. This includes a whole-of-community approach to identifying areas that are appropriate for aquaculture and those that aren't. It is good that the NES encourages proactive planning and allows for more enabling provisions where existing aquaculture has been deemed to be appropriate. This gives even more certainty to industry and communities and encourages proactive planning.

The NES also appropriately allows for a less lenient activity status where that proactive planning identifies that existing aquaculture is not in an appropriate location. There is no need for the NES to prescribe less lenient provisions such as non-complying or prohibited as

these can be incorporated for new aquaculture where it is deemed by the community, through planning, that new aquaculture is inappropriate.

We understand that the intent is that more lenient rules in current plans (such as the Bay of Plenty Regional Coastal Plan) can remain without councils needing to specify this. However, we submit that it will be important through drafting to realise this intent. The Bay of Plenty example may need particular attention as the current plan allows 10% extensions to existing farms as a controlled activity. Our understanding is that, as this would be new space, it would rightly fall outside the NES, however we request that this be incorporated as appropriate in the drafting.

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. Both of these areas have already undergone substantial planning and community input and it is appropriate that the NES recognises this by exempting them from its provisions. As above, this is an example of proactive community planning being encouraged and enabled. We do note that the maps on the MPI website do not incorporate all of the Golden/Tasman AMAs as provided in the Tasman Resource Management Plan and submit that the final mapping should do so.

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. The seven Wainui Bay spat farms in Golden Bay are of national significance for mussel spat catching, as they have provided a consistent and reliable source of mussel spat since first being farmed around 1980. This site provides about half of the spat that is used for mussel farming in the Top of the South. Mussels grown from that spat source account for around 530 jobs in the combined Golden/Tasman Bays, Nelson and Marlborough region, and in the order of 1300 FTEs in total directly and indirectly in New Zealand. Wainui Bay spat goes on to grow mussels which account for an estimated \$126 million in annual revenue from domestic and export sales<sup>13</sup>.

Over the years, a number of alternative sites have been tested, however due to its unique topographical attributes, including the westerly wind streams blowing offshore and the related upwelling, Wainui Bay is outstanding in respect of the quantity of spat, the quality of spat and the consistency of spat fall.

The Wainui Spat Farms are within the *Golden Bay – Mohua Coastal Marine Outstanding Natural Marine Landscape* in the *Golden Bay Outstanding Natural Features and Landscapes*

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<sup>13</sup> RD Sutherland (2016). Assessment of Environmental Effects for the Private Plan Change Request by the Wainui Bay Spat Catching Group

## *Draft Plan Change<sup>14</sup>.*

The *Golden Bay/Mohua Landscape Project – Final Report of the Small Working Group<sup>15</sup>* that informed the draft plan change identified 'existing mussel spat farming at Wainui Bay' in a suite of appropriate activities.

The draft plan change notes that 'Golden Bay is a working landscape, with aquaculture, boating and fishing forming an integral part of Golden Bay's landscape.' It proposes the continuation of existing structures and occupations to occur with a controlled status resource consent, with control reserved over:

- (1) The location and visibility of the proposed activity;
- (2) The effects of the proposed activity on landscape characteristics;
- (3) The effects of the proposed activity on topography and landforms.

Accordingly, the NES should specify the Wainui Bay spat farms' status and matters of control as set out in the draft plan change.

In a similar manner, the spat farms in Aotea Harbour have become increasingly significant to the mussel industry in Coromandel but are potentially vulnerable due to their location in an area of outstanding natural character. The effective catch rate has improved significantly over time showing a healthy biological natural wild spawn in the region. The developed water space now effectively seeds up to 29% of the entire Coromandel production – equating to around 7,200 harvested tonnes, export revenue in the order of \$20 million and a direct contribution of around 230 jobs<sup>16</sup>.

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

As outlined above we submit that it is very important to follow the NES with an NZCPS-Aquaculture in order to recognise council's future planning processes and encourage collaborative and strategic planning for new aquaculture in appropriate areas. AQNZ has commissioned a first draft of a set of policies and would like to work with Government on progressing this important initiative.

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

The size restriction is appropriate as it provides for realignment of 95% of existing farms and will enable improved productivity and environmental outcomes. Generally, farms that are larger than 10 hectares were sited appropriately at the time and do not need to be realigned.

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<sup>14</sup> Tasman District Council (2016). Consultation on Golden Bay Outstanding Natural Features and Landscapes Draft Plan Change

<sup>15</sup> Tasman District Council (2016). Golden Bay/Mohua Landscape Project – Final Report of the Small Working Groups

<sup>16</sup> Pambudi, D. and Clough, P. (2017) *The Economic Impact of Aquaculture in the Thames Coromandel District*. NZIER.

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

Policy guidance could support realignment where specific productivity and/or environmental outcomes could be achieved and/or where proactive regional planning supports/provides for that. AQNZ would like to work with Government and councils on drafting such further guidance.

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 are appropriate. However, the additional matter of discretion which seeks to assess adverse effects on marine mammals and seabirds currently only considers adverse effects on marine mammals and seabirds relating to that new water space without also taking account of the benefits of the water space that is being relinquished. There may in fact be no net effect or indeed a net benefit when the proposal is considered as a whole.

Therefore, we suggest the following amendment with additions underlined.

- 15(d) In the newly occupied space, net adverse effects on marine mammals and seabirds taking into account benefits from the space relinquished from the existing authorised area.

20. *Should the proposed NES address change in farmed species?*

Yes, enabling change in farmed species supports a productive, innovative and sustainable industry.

21. *Should the proposed NES limit the species it relates to?*

No, change in farmed species should be managed by effects, not on the specific species, in order not to preclude future technologies, innovations, environmental conditions and market opportunities.

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. We support that all changes should be restricted discretionary and the matters of discretion should measure and manage the effects. For categories 3 and 4 we note that the matters of discretion are as broad as if the activity was discretionary so have included some suggested amendments to ensure they are appropriately refined. These are included in the recommended tracked changes to the indicative NES provisions in Appendix One of this submission.

Another suggested amendment in the drafting across a number of clauses is to better recognise that many resource consents already include a number of species that are not

currently farmed. This would be to refer to consented species rather than farmed species.

Two examples are:

- 23. A change in ~~farmed~~ consented species as part of an application for a replacement consent...
- 26. A change in the form of subsurface structure to provide for a change in ~~farmed~~ consented species as part of an application for a replacement consent...

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

No.

24. *Should herbivorous finfish be treated differently from carnivorous finfish?*

No

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

Yes

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

No, the matters of discretion in categories 3 and 4 could appropriately assess and manage any effects of changing species on a spat catching farm.

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

No, the matters of discretion cover any potential effects of any changes appropriately.

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

As above, the matters of discretion are very broad for categories 3 and 4. It will be important to ensure that these categories all remain non-notified so that the decisions can be evidence based.

29. *Should change of species involving finfish require additional matters of discretion?*

No, there are no additional matters of discretion required to assess and manage effects.

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, as per 9 and 10 above.

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, as per 11 above.

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

No, public notification would discourage innovation in this regard.

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?*

It is appropriate that marine farms have BioMPs in place by end January 2026 (rather than 2025). Our concerns are:

- Other activities that could have a biosecurity impact in the CMA should be required to be as responsible as the marine farming industry in developing BioMPs or contributing towards national marine biosecurity e.g. non-aquaculture vessels that are not removed from the water in between discrete uses. A suitable hull management programme could be accepted as a BioMP. Other groups moving aquatic animals should be required to develop BioMPs over the same time period e.g. salmonid restocking programmes.
- The indicative NES provisions outline proposed guidance for BioMPs which limits operationalisation of changes to biosecurity measures until the amended BioMP has been assessed. This means that effectively changes to increase or change biosecurity measures in response to a changed risk profile cannot be immediately implemented. To mitigate this issue, the BioMP should be written in a way that specifies objectives and the standard to which that objective is reached, but cannot contain absolute specifics of day to day operations, otherwise it is too inflexible.
- There also needs to be recognition that, whilst the aquaculture industry recognises single year class and area management to be ideal best practice, the reality of water space availability and consenting decisions is that industry cannot put these measures into place and they should not be penalised for that.

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

The deadline should be 31 January 2026 as there are a significant number of existing farms that expire on 31 December 2025.

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?*

BioMPs are targeted at the individual farm level and therefore if they address the main risk pathways to an individual operation the primary categories of risk needing addressed will be

consistent even across regions. Where differences in broad approaches to risk management can be expected are between species or farming systems rather than regions. Individual farms will almost certainly have different specific measures.

AQNZ supports building regional differences (e.g. where species groups in different parts of New Zealand wish to build any larger scale measures into regional or zone biosecurity agreements) into industry agreements that may be rolled into the A+ programme. These could be equivalent to the 'global BioMPs' suggested in the consultation document. Such regional standards or global BioMPs could only be made with the agreement of all parties in the area concerned, otherwise the BioMPs should restrict themselves to farm specific measures.

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?*

The plan template illustrated in Appendix K is not specific for marine aquaculture and includes many guidelines and example policies that are not applicable in marine farms. However, the general matters addressed on page 41 of the consultation document are appropriate and AQNZ does not suggest additional matters to be addressed. The important driver of efficacy of BioMPs is not necessarily detail, but appropriate identification of risks (which will be different between species, areas and farming systems and will change over time), identification of practical measures to reduce those risks and the implementation via staff training to further develop the culture of biosecurity, rather than the most extreme level of detail in a document.

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

Biosecurity measures are already a requirement of many new resource consents. However, requirements may vary between consent authorities. Consistency between consent authorities would be of benefit, particularly for those companies operating farms in multiple consent jurisdictions.

Individuals operating farms in mixed areas also have an expectation that the actions of others in those areas does not jeopardise their activities. This applies not only to other farms but to any activity in the coastal marine area that could influence biosecurity risk. A consent based approach is valid to provide consistency, customisation to individual enterprises' requirements and routine reassessment.

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

The use of external professionals to examine and comment on every individual BioMP would be an impractical, slow and expensive option given the number of consents and availability of appropriate external independent expertise.

AQNZ suggests that the template and a detailed guidance document (including detailed instructions on assessing validity of individual BioMPs – akin to an audit manual) be drawn up for each species sector utilising industry expertise, MPI input and external advice. These ‘manuals’ could be peer reviewed by independent external experts with experience in applied aquaculture biosecurity and subsequently approved by consent authorities.

Once agreed AQNZ would incorporate the BioMP requirements into the A+ programme. Consent authorities could make A+ membership a consent requirement. The advantage of this is that member farms are assessed by independent third parties on a regular basis and this assessment would include adherence to the BioMP. There should be sufficient information in the guidance material to permit consent authorities to assess the BioMPs directly and only refer questions of interpretation to an external expert if and when required.

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?*

For farm level BioMPs to be fully effective in protecting all farmers in a given area, all farms need to be covered. Therefore, it is appropriate that all farms develop a BioMP if there is a general requirement for BioMPs to be developed for renewed or new consents.

40. *Is marine farm monitoring and reporting as well as external auditing and enforcement of BioMP implementation and effectiveness justified? If not why not?*

The inclusion of a report on the operation of the BioMP as part of routine reporting on consent conditions is appropriate (self-audit). If incorporated in the A+ programme, with membership of A+ being a consent condition, both internal self-reporting and external independent auditing would be included. This would have the advantage of cost efficiencies as the farms would be audited on a routine basis regardless and the BioMP could be included for little extra cost. In addition, the majority of these audits would involve performance against the BioMP targets for that farm, something that auditors are well placed to do.

Audit of the performance against the BioMP for a particular facility is different to re-assessment of the BioMP against any changed risks. In this regard enterprises should re-assess their own risks regularly and that could form part of the self-reporting against consent conditions. In any regard, a BioMP requirement could be a thorough review of the BioMP against risk profile every 5 years, with justification for either changes or no changes detailed in that year's report against consent conditions. The consent authority could assess the suitability of that review against the guidance documents and seek external advice if necessary.

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?*



The economic analysis contains some peculiar assumptions ie that the increased weight given to the language in the NZCPS is 'perception' and 'apparent'; that when considering 'environmental and other impacts' the only other impact is 'loss of autonomy' (table 4); also, section 3.2 innovation and R&D is unclear in its scope. However, it does correctly find that the benefits of progressing the NES outweigh the costs to a sufficient order of magnitude to make it worthwhile.

In terms of the consultation paper itself the costs and benefits are well articulated except further detail could be provided/explored regarding the social and community benefits of the industry. See the range of reports referred to (above).

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. We also echo the statement made by the Marine Farming Association in their submission that there are broader, and likely understated, benefits to New Zealand in general from reducing the '*wasted time, wasted earnings, court cases and lost investment opportunities*'.

## 6.0 SPECIFIC LEGAL ADVICE

- 6.1 AQNZ sought specific legal advice from Gascoigne Wicks on a number of specific elements of the proposal.

- 6.2 The advice is appended to our submission. The specific questions were as follows:
- Is it unreasonable/unlawful to preclude public participation in decisions in ONFLCs?
  - Is it unreasonable/unlawful to preclude effected party participation (limited notification) in decisions in ONFLCs?
  - Is there a need to include an additional matter of discretion to address cumulative effects of an activity on the water column and to provide for adaptive management where necessary?
  - Can the NES in its detail support the MEP planning process?
  - Will the Bay of Plenty be able to retain its controlled activity to extend a farm by 10% on renewal?
  - Can the NES offer increased certainty for Banks Peninsula farms being re consenting, given that all of these farms are within an outstanding natural landscape?
  - Why is the NES justified in not dealing with policy 11 of the New Zealand Coastal Policy Statement 2010 (NZCPS) in the same way as policies 13 and 15?
  - Why is the NES justified in not providing additional discretion where a marine farm is adjacent to an ONFLC?
  - Should 'adverse effects on fisheries resources' be added as a matter for discretion when considering consents for existing marine farms, realignments, and species changes for categories 2,3 or 4?

- 6.3 For the most part their advice has reinforced the appropriateness of the proposal in the context of good planning and good policy making for aquaculture in the coastal marine environment. Some recommendations are also included for the Minister's consideration.

## 7.0 DECISIONS REQUESTED

- 7.1 Primarily, we request that the NES is enacted as a matter of priority, with no more restrictive provisions than are currently proposed and retaining the provisions for renewing existing farms as restricted discretionary with no public or limited notification.
- 7.2 We request that the suggested amendments included as tracked changes in Appendix One of our submission are incorporated.
- 7.3 We request that, prior to enactment, the Minister review the schedule of farms which are subject to assessment under policy 13 and 15 using the best available information, including:
- The most up-to-date mapping of outstanding areas and best available information regarding the scale and impacts of existing farms within the context of those areas.
  - Whether the region in which the farms are has completed its second-generation plan, and, if so, whether the existing farms have been found in that plan to detract from any outstanding values.
  - By correcting any technical mapping errors that have led to farms being included that are actually outside mapped areas of value.
  - Whether there has already been landscape and natural character analysis undertaken for existing farms in consent and/or Environment Court decisions such as many of those in the Banks Peninsula region.
- 7.4 We request that the NES include a sunset clause on the additional matter of discretion for outstanding values to allow for regional councils to comply with their s55 and s67 obligations by 1 January 2023.
- 7.5 We request that the guidance be progressed in tandem with the NES as a matter of priority to bring consistency and clarity to implementation of the NES
- 7.6 We request that an NZCPS – Aquaculture be progressed as a matter of priority to support the strategic planning for, and management of, aquaculture into the future.
- 7.7 We request that the NES requires that more lenient rules in current plans will remain as a default.
- 7.8 We request that the spat farms at Wainui Bay in the Tasman region and at Aotea Harbour in the Waikato region are recognised specifically for their strategic importance to aquaculture and to the communities that benefit from aquaculture.

7.9 We request that the industry be involved in the design and implementation of Biosecurity Management Plans in order to ensure they are pragmatic and responsive and that they address the particular issues and suggestions we have identified in our submission.

## 8.0 SUMMARY STATEMENT

Good policy making can enable the industry's substantial growth trajectory while recognising the importance of our marine environment. Making this happen now will finally allow the industry to develop new products and markets, streamline its environmental credentials and biosecurity programmes, and focus on developing real opportunities for New Zealand. The proposed NES is an essential and welcome initiative that will bring a better future for the industry and our communities.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rebecca Clarkson', with a long horizontal flourish extending to the right.

Rebecca Clarkson  
**Environment Manager**

## Appendix F: Indicative NES provisions

The purpose of this appendix is to provide an indication of what regulations contained in an NES: Marine Aquaculture could look like. Should the proposal proceed a final NES will be prepared by the Parliamentary Counsel Office in accordance with that office's requirements and drafting guidelines.

### Proposed provisions for replacement consents for existing marine farms and for realignment for the National Environmental Standard: Marine Aquaculture

**Note: the provisions relating to biosecurity management plans also have effect for any application covered by these provisions**

1. a) Regulations 2-19 apply to existing marine farms where the same species as authorised by a current coastal permit is to be farmed.
- b) Where an application for a replacement consent for an existing marine farm includes a proposal to change the consented species-being-farmed, regulations 20 to 44 apply. As outlined in those regulations, matters of discretion outlined in regulations 12 – 15 will also apply.

Replacement consents for existing marine farms within outstanding natural features, outstanding natural landscapes, and/or areas of outstanding natural character in either a regional policy statement or regional coastal plan

2. Existing marine farms<sup>26</sup> located within<sup>27</sup> outstanding natural features, outstanding natural landscapes and/ or areas of outstanding natural character that have been identified<sup>28</sup> in proposed or operative regional policy statements or regional coastal plans are a restricted discretionary activity<sup>29</sup> if the requirements under 3 are met.
3. Requirements:
  - a) At the time of application under 2, the marine farm holds a current coastal permit<sup>30</sup> for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
  - b) The application is for a marine farm in the same location as authorised by the current coastal permit; and
  - c) The consented area to be occupied is the same or less than that which is authorised by the current coastal permit; and
  - d) The structures and anchoring systems are materially the same as those authorised by the current coastal permit;<sup>31</sup> and
  - e) The species to be farmed are only those authorised by the current coastal permit; and
  - f) For aquaculture requiring supplementary feeding, feed limits shall not exceed those contained in conditions on the current coastal permit.
4. a) Where an application for consent for an existing marine farm cannot meet the requirements of 3(a) or (c), the application is classified as an application for new space and is not covered by these provisions.
- b) Where an application for consent for an existing marine farm cannot meet requirement 3(b) and it is not proposed as a realignment under 9, the application is classified as an application for new space and is not covered by these provisions.

Replacement consents for existing marine farms in areas identified as inappropriate for existing aquaculture in regional coastal plans

5. Where, following the gazetting of this national environmental standard, a regional council determines through a regional coastal plan that an area of the coastal marine area is inappropriate for existing aquaculture, existing marine farms located within that area are a discretionary activity.

Replacement consents for existing marine farms in all other areas

6. Existing marine farms located in areas other than those defined in 2 or 5 above are a restricted discretionary activity if the requirements under 7 are met.
7. Requirements:
  - a) At the time of application under 6, the marine farm holds a current coastal permit for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
  - b) The application is for a marine farm in the same location as authorised by the current coastal permit; and

- c) The consented area to be occupied is the same or less than that which is authorised by the current coastal permit; and
  - d) The structures and anchoring systems are materially the same as those authorised by the current coastal permit; and
  - e) The species to be farmed are only those authorised by the current coastal permit; and
  - f) For aquaculture requiring supplementary feeding, feed limits shall not exceed those contained in conditions on the current coastal permit.
8. a) Where an application for consent for an existing marine farm cannot meet the requirements of 7(a) or (c), the application is classified as an application for new space and is not covered by these provisions.
- b) Where an application for consent for an existing marine farm cannot meet requirement 7(b) and it is not proposed as a realignment under 9, the application is classified as an application for new space and is not covered by these provisions.

#### Realignment of existing marine farms (excluding fed aquaculture) in all other areas

9. Realignment of existing marine farms (excluding marine farms for aquaculture requiring supplementary feeding) that are located in areas other than those defined in 5 above is a restricted discretionary activity if the requirements under 10 are met.
10. Requirements:
- a) At the time of application under 9, the marine farm holds a current coastal permit for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
  - b) The existing marine farm shall not exceed 10 hectares in size; and
  - c) The application is for the realignment of an existing marine farm, provided:
    - i) No part of the existing authorised area has been realigned in the last ten years, and
    - ii) A minimum of two-thirds (2/3) of the existing authorised area remains, and
    - iii) The new area is no more than one-third (1/3) of the existing authorised area, and
    - iv) The new area is contiguous to the existing authorised area, and
    - v) The new area will not be located within an area identified as non-complying or prohibited for new aquaculture in an operative or proposed regional coastal plan, and
    - vi) The new area will not be located within outstanding natural features<sup>32</sup>, outstanding natural landscapes, areas of outstanding natural character, and/or significant ecological areas that have been identified in an operative or proposed regional policy statement or regional coastal plan; and
  - d) The consented area to be occupied is the same or less than that which is authorised by the current coastal permit; and
  - e) The structures are materially the same as those authorised by the current coastal permit (with the necessary modifications in location as required by the realignment); and
  - f) The species to be farmed are only those authorised by the current coastal permit.
11. a) Where an application for consent for an existing marine farm cannot meet the requirements of 10(a) or (d), the application is classified as an application for new space and is not covered by these provisions.

#### Matters of discretion for restricted discretionary activities under this regulation

12. Discretion is restricted to the following matters in relation to all restricted discretionary activities under this regulation (for replacement consents for existing marine farms/realignment):
- a) The duration and lapsing of the consent, and review conditions, and conditions restricting public access where that is reasonably necessary for safety, security or biosecurity reasons
  - b) Timing of occupation in relation to seasonal activities such as spat catching where such conditions have been imposed on an aquaculture consent for the site and are in force on the date when the NES is Gazetted
  - 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 in accordance with the Maritime Transport act 1994 and any successor legislation

- d) Integrity and security of the structures, including the anchoring systems
  - e) *[tangata whenua values, such as effects on waahi tapu, taonga] – note that this is a placeholder matter that needs further discussion with iwi authorities as part of the consultation process for the proposed NES: Marine Aquaculture*  
*[Possible wording: Any significant cultural values that are identified in an operative coastal plan and which relate specifically to the site]*
  - f) Significant adverse effects on reefs and/or biogenic habitat underneath and within 20 metres of the marine farm
  - g) Management practices to minimise marine mammal and seabird interactions with the marine farm, including entanglement
  - h) Adverse effects of offshore farms<sup>33</sup> on marine mammals
  - i) Management of biosecurity risks *[The authorship, form, content and implementation of a Biosecurity Management Plan, which is to be consistent with any relevant biosecurity regulation]*
  - j) Management of noise, rubbish and debris
  - k) Information, monitoring and reporting requirements *relevant to the specified matters of discretion*
  - l) *Administrative charges, coastal occupation charges, financial contributions and bonds (or alternative mechanisms to recover the cost of the repair or removal of abandoned or derelict farms and reinstatement of the environment)*
  - m) *Management of effects on water quality where necessary to comply with any Water Quality Management Plan relevant to the area.*
  - ~~l)n) Where a regional coastal plan contains a Management Plan in accordance with 15A, management practices to address matters specified in that Management Plan. :~~
13. In addition to those matters listed in 12, the following are additional matters of discretion in relation to a restricted discretionary activity for all aquaculture requiring supplementary feeding under this regulation:
- a) Management of effects on water quality and benthic values
  - b) Significant adverse effects on reefs and/or biogenic habitat
  - c) Use of antibiotics, therapeutants and antifouling
  - ~~e) Fallowing and rotation~~ *[addressed by 13(a)]*
  - ~~e)d) Management of underwater lighting to reasonably minimise effects on amenity~~
  - ~~f)e) Any other Management of lighting of structures to reasonably minimise effects on amenity~~
  - ~~g)f) Management Discharges of odour to reasonably minimise effects on amenity.~~
14. This provision applies to applications made prior to 1 January 2023. In addition to those matters listed in 12 (and 13, if applicable), the following additional matter of discretion in relation to a restricted discretionary activity for an application made under 2:
- a) Effects of the aquaculture activity on the values and characteristics that make the area, feature or landscape outstanding.
15. In addition to those matters listed in 12 (and 13, if applicable), the following additional matters of discretion in relation to a restricted discretionary activity for an application made under 9:
- a) Effects on historic heritage
  - b) Effects on benthic values and the seabed underneath the marine farm associated with the proposed anchoring system
  - c) Requirements to surrender consent for space no longer occupied as a result of realignment
  - d) In the newly occupied space, net adverse effects on marine mammals and seabirds taking into account benefits from the space relinquished from the existing authorised area:
- 15A Regional coastal plans may incorporate, or incorporate by reference Management Plan(s) to address adverse effects of activities, including aquaculture, in relation to the following matters:
- a) The physical and biological properties of coastal waters
  - b) Significant habitat of indigenous flora and fauna
  - c) Significant effects on fisheries resources.

#### Notification

- 16. Applications for a coastal permit under 2 or 6 will not be publicly or limited notified, unless a statutory exception applies.
- 17. Applications for a coastal permit under 5 or 9 will not be precluded from public or limited notification so councils will follow the normal statutory tests under the RMA in determining whether or not to notify an application.

## Ability for plans to have more stringent or lenient activity classification

18. Councils may, through their regional coastal plans, retain and set activity classifications for consent applications for existing marine farms that are more lenient than those contained in 2 and 6.

## Certain marine farms are exempt from this regulation

19. The National Environmental Standard (with regard to replacement consents for existing marine farms) will not apply to existing farms in Tasman Aquaculture Management Areas and Waikato Wilsons Bay.

## Proposed change of species provisions of the National Environmental Standard: Marine Aquaculture

20. Regulations 21 – 44 apply to existing marine farms where:

- a) a different species from that authorised by a current coastal permit is to be farmed;
- b) different species from those authorised by a current coastal permit are to be farmed.

21. Categories 1, 2 and 3 do not apply to the farming of finfish. Category 4 does apply to finfish.

22. Categories 1 and 2 do not apply to the farming of paua or sponges.

### Category 1

23. A change in consented farmed species<sup>34</sup> as part of an application for a replacement consent for an existing marine farm is a restricted discretionary activity if the requirements under 24 are met.

24. Requirements:

- a) At the time of application under 23, the marine farm is subject to a current coastal permit<sup>35</sup> for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
- b) The location of the marine farm is the same as authorised by the current coastal permit; and
- c) The location, method and form of all structures, including anchoring systems, buoys, surface and sub-surface structures and navigational lighting remains materially the same as authorised by the current coastal permit.

25. In addition to the matters of discretion under 12, discretion is restricted to the following matters in relation to all restricted discretionary activities under 23:

- a) Management of biosecurity risks arising from the farming of the new species; and
- b) The genetic effects of escapees on wild populations; and
- c) Cultural effects from the translocation of taonga species.

### Category 2

26. A change in the form of subsurface structure to provide for a change in consented farmed species as part of an application for a replacement consent for an existing marine farm is a restricted discretionary activity if the requirements under 27 are met.

27. Requirements:

- a) At the time of application under 26, the marine farm is subject to a current coastal permit for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
- b) The location of the marine farm is the same as authorised by the current coastal permit; and
- c) The consented area to be occupied is the same or less than that which is authorised by the current coastal permit; and
- d) The location and method of anchoring systems, buoys, surface structures and navigational lighting remain materially the same as authorised by the current coastal permit.

28. In addition to the matters of discretion under 12, discretion is restricted to the following matters relating to the new species and new or altered sub-surface structures in relation to all restricted discretionary activities under 26:

- a) Management of biosecurity risks; and
- b) The genetic effects of escapees on wild populations; and
- c) Cultural effects from the translocation of taonga species; and
- d) Hydrodynamic effects.

### Category 3

29. A change in consented farmed species by the addition of one or more non-fed species or paua as part of an application for a replacement consent for an existing marine farm, where a change in the structures (other than

just the subsurface structures) is required, is a restricted discretionary activity if the requirements under 30 are met.

30. Requirements:

- a) At the time of application under 29, the marine farm is subject to a current coastal permit for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
- b) The location of the marine farm is the same as authorised by the current coastal permit; and
- c) The consented area to be occupied is the same or less than that which is authorised by the current coastal permit.

31. Where an application cannot meet the requirements under 30, it is classified as new space and is not covered by these provisions.

32. Discretion is restricted to the following matters for all restricted discretionary activities under 29:

- a) The duration and lapsing of the consent and review conditions;
- b) Location, extent, type, scale, anchoring systems and integrity of marine farm structures, including the layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site in relation to:
  - i) ensuring continued reasonable public access (including recreational access) in the vicinity of the marine farm; and
  - ii) navigational safety, including the provision of navigation warning devices and signs in accordance with the Maritime Transport Act 1994 or any successor legislation; and
- c) Timing of occupation; and
- d) *[Tangata whenua values such as effects on waahi tapu and taonga] – note that this is a placeholder matter that needs further discussion with iwi authorities as part of the consultation process for the proposed NES: Marine Aquaculture*
- e) Management practices to minimise marine mammal and seabird interactions with the marine farm, including entanglement; and
- f) Adverse effects of offshore farms on marine mammals; and
- g) Management of biosecurity risks; and
- h) The genetic effects of escapees on wild populations; and
- i) Cultural effects from the translocation of taonga species; and
- j) Conditions to manage noise; and
- k) Measures to avoid, remedy or mitigate adverse effects on benthic values and the seabed underneath and within 20m of the marine farm; and
- l) Measures to avoid, remedy or mitigate adverse effects on water quality in terms of organic enrichment; and
- m) Effects of seabed disturbance; and
- n) Information, monitoring and reporting requirements; and
- o) Administrative charges, bonds or alternative mechanisms to recover the cost of the repair or removal of abandoned or derelict farms and reinstatement of the environment.

Category 4

33. A change in consented farmed species by the addition of one or more species to a finfish farm, including a change to another finfish species, as part of an application for a replacement consent for an existing marine farm, is a restricted discretionary activity if the requirements under 34 are met.<sup>36</sup>

34. Requirements:

- a) At the time of application under 33, the marine farm holds a current coastal permit for occupation of the coastal marine area (pursuant to the Resource Management Act 1991); and
- b) The location of the marine farm is the same as authorised by the current coastal permit; and
- c) The consented area to be occupied is the same or less than that which is authorised by the current coastal permit.

35. Where an application cannot meet the requirements under 34, it is classified as new space and is not covered by these provisions.

36. Discretion is restricted to the following matters for all restricted discretionary activities under 33<sup>38</sup>:

- a) The duration and lapsing of the consent, and review conditions, and conditions restricting public access where that is reasonably necessary for safety, security or biosecurity reasons; and



- b) Location, extent, type, scale, anchoring systems and integrity of marine farm structures, including the layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site in relation to:
  - i) ensuring continued reasonable public access (including recreational access) in the vicinity of the marine farm; and
  - ii) navigational safety, including the provision of navigation warning devices and signs in accordance with the Maritime Transport act 1994 and any successor legislation; and
- c) Timing of occupation; and
- d) *[Tangata whenua values such as effects on waahi tapu and taonga] – note that this is a placeholder matter that needs further discussion with iwi authorities as part of the consultation process for the proposed NES: Marine Aquaculture*
- e) Management practices to minimise marine mammal and seabird interactions with the marine farm, including entanglement; and
- f) Management of biosecurity risks; and
- g) The genetic effects of escapees on wild populations; and
- h) Cultural effects from the translocation of taonga species; and
- i) Conditions to manage noise; and
- j) Measures to avoid, remedy or mitigate adverse effects on benthic values and the seabed; and
- k) Measures to avoid, remedy or mitigate adverse effects on water quality in terms of organic enrichment; and
- l) Effects of seabed disturbance; and
- m) Use of antibiotics, therapeutants and antifouling; and
- n) ~~Fallowing and rotation~~; and [addressed by 36(j)]
- o) ~~Management of underwater lighting to reasonably minimise effects on amenity~~; and
- p) ~~Any other Management of lighting of structures to reasonably minimise effects on amenity~~; and
- q) ~~Discharges Management of odour to reasonably minimise effects on amenity~~; and
- r) Information, monitoring and reporting requirements; and
- s) Administrative charges, bonds or alternative mechanisms to recover the cost of the repair or removal of abandoned or derelict farms and reinstatement of the environment.

37. For an application to add one or more species under 23, 26, 29 or 33 on a marine farm located within outstanding natural features, outstanding natural landscapes and/or areas of outstanding natural character that have been identified<sup>39</sup> in operative or proposed regional policy statements or regional coastal plans, the following additional matter of discretion shall apply:

- a) Effects of the aquaculture activity on the values and characteristics that make the area outstanding.

#### Notification

- 38. Applications for a coastal permit under 23 or 26 will not be publicly or limited notified, unless a statutory exception applies.
- 39. Applications for a coastal permit under 29 or 33 will not be precluded from public or limited notification so councils will follow the normal statutory tests under the RMA in determining whether or not to notify an application.

#### Ability for plans to have more stringent or lenient activity classification

- 40. Councils may, through their regional coastal plans, retain and set activity classifications for consent applications for existing marine farms that are more lenient than those contained in 23, 26, 29 and 33.

#### Certain marine farms are exempt from this regulation

- 41. All regulations in this National Environmental Standard (with regard to change of species) will not apply to existing farms in Tasman AMAs and Waikato Wilsons Bay.
- 42. All regulations in this National Environmental Standard (with regard to change of species) will not apply to the farming of spat<sup>40</sup>

43. This regulation applies only to marine farms granted consent prior to the date of the gazettal of this regulation.

#### Other activities not captured by the Categories and to be managed by the relevant regional coastal plan

- 44. The following activities are not covered by this regulation:

- a) A complete change in consented farmed species to non-fed species or paua where a change in all structures is required; and
- b) A complete change in consented farmed species from finfish to a non-fed species or paua; and
- c) A complete change in consented farmed species from a non-fed species to finfish; and
- d) The addition of, or complete change in consented farmed species to scampi, crayfish or crabs.

### **Proposed on-farm biosecurity management plan provisions of the National Environmental Standard: Marine Aquaculture**

#### **New and replacement coastal permits for marine farms:**

45. A regional council may grant a coastal permit for a marine farm only where a Biosecurity Management Plan has been lodged and assessed by the regional council as meeting the criteria specified in [the externally referenced document] to avoid or mitigate the associated biosecurity risks.

#### **Coastal permits expiring after 31 January 2026~~5~~**

46. Review of consent conditions to implement biosecurity management plans:

- a) By 31 January 2026~~5~~ consent authorities with regional council responsibilities must, under section 128(1) of the RMA, have completed a review of coastal permits associated with aquaculture activities in the coastal marine area of that region for any coastal permit that was granted prior to the NES being Gazetted, and which does not have a consent condition which requires the preparation and implementation of a Biosecurity Management Plan for the purposes of effective on-farm biosecurity.
- b) The purpose of the review is to ensure that those coastal permits require the consent holder to supply a Biosecurity Management Plan which meets the criteria specified in [the externally referenced document] and that the Biosecurity Management Plan is kept up to date and implemented.

It is also proposed that guidance to accompany the above NES clause will suggest model requirements as follows

Where a review undertaken in accordance with clause 46(a) of the NES: Marine Aquaculture identifies an existing coastal permit that does not include a condition requiring a Biosecurity Management Plan to be prepared, implemented and kept up to date, the consent authority will need to impose a condition requiring that:

- a) A Biosecurity Management Plan which addresses, but is not limited to the matters set out in [the externally referenced document] will need to be prepared and submitted to the consent authority within six months of the completion of the review under s128(1) of the RMA, for assessment against<sup>41</sup> the criteria specified in [the externally referenced document] and other such matters as necessary to ensure that implementing the Biosecurity Management Plan will achieve effective biosecurity; and
- b) All certified Biosecurity Management Plans are implemented and kept up to date for the duration of the marine farm activity, and are regularly monitored, with the monitoring results reported annually to the consent authority. The implementation of each Biosecurity Management Plan will be externally audited from time to time, as directed by the consent authority; and
- c) Changes and updates to Biosecurity Management Plans can be undertaken at any time for the purpose of improving the effectiveness of biosecurity measures, including adopting new technology, methods and practices, or in response to improved understanding of biosecurity risks and responses. Any changes to a Biosecurity Management Plan will need to be submitted to the consent authority for confirmation that the Biosecurity Management Plan remains consistent with the criteria specified in [the externally referenced document] and will effectively avoid or mitigate biosecurity risks associated with that marine farm. Any changes resulting from the updates should not be implemented prior to certification of the updated Biosecurity Management Plan.





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### Legal Advice to Accompany AQNZ Submission on NES for Marine Aquaculture

1. Aquaculture New Zealand Limited (AQNZ) has asked us for legal advice on specific matters relating to the proposed National Environment Standard (NES) for Marine Aquaculture in an e-mail dated 11 July 2017. We address the substantive legal issues regarding the function of the NES and notification below, and respond to other specific questions a Schedule.
2. In short:
  - a. The purpose of the NES ought to be to divide functions between the “big picture” planning matters and the “technical” resource consent matters. This minimised duplication;
  - b. Plans should provide for the continuation of existing aquaculture, but in exceptional circumstances may determine that farms are inappropriate. Plans may provide for additional technical matters to be addressed at the resource consent stage. Plans must<sup>17</sup> and presumably do<sup>18</sup> give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS);
  - c. The NES should complement, rather than replicate the NZCPS; and
  - d. The resource consent process should be limited to imposing technical conditions on consents.<sup>19</sup> There is no need for public input at this stage,<sup>20</sup> because the plans have set up the parameters within which consents would be issued.
3. We support the implementation of an effective and efficient<sup>21</sup> NES that is able to withstand judicial review. To achieve this, the philosophy underpinning the regulation<sup>22</sup> must ideally be clear, and the contents of the NES must be consistent with that philosophy. In our view,

<sup>17</sup> Resource Management Act 1991, s 67(3)(b).

<sup>18</sup> Resource Management Act 1991, s 55(2B). We elaborate on this in footnote 40.

<sup>19</sup> This suggests that controlled activity status is appropriate. It may be necessary for restricted discretionary activity to be retained for the exceptional case.

<sup>20</sup> The situation may be different in respect of the Treaty of Waitangi, iwi and Māori.

<sup>21</sup> Resource Management Act 1991, s18A.

<sup>22</sup> As set out in section 3.8 of the Discussion Document, at p 16.

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the overarching philosophy of the reform is to regulate the location of marine farms in regional coastal plans and not in resource consents.

4. For example, it might be argued that including landscape and natural character in the matters of discretion is inconsistent with the purpose (and function) of the NES, because it invites reconsideration of whether a marine farm is appropriately located at the resource consent stage. The resource consent process should not replicate a function required to be undertaken at the planning stage. A solution to this is to have a transitional period which gives regional councils additional time to comply with their s55 and s67 obligations.

### **The Importance of a Clear Division in Functions**

5. It is highly desirable that the NES recommended by the Minister clearly articulates what should be dealt with at the resource consent stage:
  - a. The resource consent stage should be focused on site-specific matters that cannot be easily anticipated as part of a broad brush planning regime; and
  - b. A planning regime should comprehensively address all environmental effects, but may defer technical matters to be addressed at the consent stage.
6. It is inefficient:
  - a. To do the same task at the plan and the resource consent stage;
  - b. To wait up to 35 years before addressing environmental concerns;
  - c. To address complex problems in a piece-meal way. Where environmental concerns are cumulative with other aquaculture, land uses or marine activities, it makes no sense to address what might be a small component of a wider problem in isolation. The planning framework is the most strategic tool we have to address these issues;
  - d. To impose the costs of resolving complex problems on the next marine farmer due for renewal; and
  - e. To address similar issues 1147 times.<sup>23</sup>
7. It needs to be remembered that the resource consent process is not the only tool to address environmental effects. Other options include:
  - a. An Enforcement Order;<sup>24</sup>
  - b. Recalling resource consents in an area and reviewing conditions;<sup>25</sup>
  - c. A Schedule 1 Plan Change;
  - d. A collaborative planning approach;<sup>26</sup> and
  - e. Negotiation or regulation outside the Act.
8. All of these processes are likely to be more responsive than waiting for renewals of single resource consents. All of those processes could address situations where there are multiple activities that contribute to issues which arise.

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<sup>23</sup> Discussion Document at 8.

<sup>24</sup> Sections 314 and 319, noting that an enforcement order can be made even though a resource consent permits an activity, unless the adverse effects in respect of which the order is sought were expressly recognised: s 319(2)(b)

<sup>25</sup> Section 128.

<sup>26</sup> Section 66 Resource Legislation Amendment Act 2017 (inserting new sections 80A – 80C into the principal Act).

9. Under this approach it is easy to demonstrate how the NZCPS will be given effect to. Plans are required to give effect to the NZCPS.<sup>27</sup> By contrast, there is nothing in sections 43-44A that requires a NES to be consistent with the NZCPS. The only case which addresses the two documents says they sit alongside each other.<sup>28</sup> The NES compliments the NZCPS. It does not need to compete with the NZCPS. It does not need to repeat what the NZCPS says. The NES divides the functions of regulating aquaculture between:
  - a. Regional Coastal Plans, which must give effect to the NZCPS; and
  - b. Resource consents, which tidy up the technical details.
10. Put another way, the resource management framework as a whole gives effect to the NZCPS. The resource consent does not need to address what has already been addressed in the plan.
11. To underline the point, we disagree with the stance taken in the Discussion Document<sup>29</sup> that the provisions of the NZCPS govern what should go into the NES. We disagree that landscape and natural character need or should be dealt with at the consent stage. Plans must address the effects of marine farming on landscape and natural character.<sup>30</sup> Resource consent decisions ought to be able to be made on the assumption that the plans do so.<sup>31</sup>

#### Proactively dealing with the unknown

12. Some of the foreshadowed challenges to the proposed NES relate to how regulators would respond to new evidence of an environmental effect not adequately addressed as a matter of discretion in the NES. Examples are effects on indigenous biodiversity, cumulative effects on water quality or organisms in the water column, and effects on fisheries resources.
13. We favour:
  - a. Emphasising that if a farm is inappropriate it can be identified as such in a planning document; and
  - b. Allowing coastal plans to identify additional conditions that might be imposed on consents where a plan contains a Management Plan<sup>32</sup> that requires a consideration of such conditions. If there is no relevant Management Plan, then a condition cannot be imposed.
14. We hasten to note that enforcement orders, reviews of consent conditions and other options are available,<sup>33</sup> many of which will be more cost effective and timely.
15. Not providing the ability for plans to identify additional conditions which might be imposed risks decision makers being faced with extreme choices: either declaring a farm as being inappropriate or not regulating. Often the NZCPS would preclude the latter option.

<sup>27</sup> S 67(3)(b) Resource Management Act 1991.

<sup>28</sup> *Royal Forest & Bird Protection Society New Zealand Incorporated v Buller Coal Limited* [2012] NZHC 2156 at [23] ("National Policy Statements are also produced by the Minister and sit alongside National Environmental Standards in the hierarchy of control"). That decision was appealed directly from the High Court to the Supreme Court and reported as *West Coast ENT Incorporated v Buller Coal Limited* [2013] NZSC 87. The appeal was dismissed. This precise point was not considered in the Supreme Court.

<sup>29</sup> For example at page 29.

<sup>30</sup> Refer NZCPS, Policies 7, 8, 13, 15 and *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 (17 April 2014) at [125] and [153].

<sup>31</sup> Resource Management Act 1991, s 55(2B).

<sup>32</sup> Examples might be a Water Quality Management Plan, an Indigenous Biodiversity Management Plan, or a Fisheries Resources Management Plan.

<sup>33</sup> See paragraph 7 above.

16. What we have proposed would be preferable to adding a general discretion to the NES now, because:
- a. Any new regulation would need to go through a plan making process, including a s 32 analysis;
  - b. Consequently, the justification for any additional regulation would need to be robust; and
  - c. The industry would have notice of any proposed change and could respond with a non-regulatory method if that would provide a more effective outcome.

#### Conclusion

17. A division of functions analysis is a reasonable response to the challenge that the proposed NES is inconsistent with the NZCPS. In any delineation exercise, there are always matters on the margins which cause potential difficulties. However, in our view the analysis on pages 29-30 of the Discussion Document, which suggests that because of policies 13 and 15 of the NZCPS, outstanding natural landscapes and outstanding natural character areas need to be dealt with as a separate matter of discretion, is flawed. There is no such requirement.
18. The NES and the NZCPS are better seen as complementary. The NZCPS sets out (broadly) what should occur. The NES divides functions between various planning tools. The best place to make decisions about where marine farming should occur is in a regional coastal plan. The NES should then support those planning documents.
19. If necessary, temporary provisions might be included in the NES to aid the transition. This could apply in relation to landscape and natural character. Some Councils (such as Auckland) already comply with their obligations. We suggest that all Councils ought to be able to comply with their existing obligations by 1 January 2023.

Yours faithfully  
**GASCOIGNE WICKS**



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## SCHEDULE 1: RESPONSE TO SPECIFIC QUESTIONS

### Is it unreasonable/unlawful to preclude public participation in decisions in ONLFCs?

1. Section 43A(7) of the Act enables the NES to preclude public or limited notification. That provision is supported by s 95A(3)(a), which precludes notification of a resource consent if required by a rule in a NES. Irrespective of what is contained in the NES, notification must occur to groups who have claims or who have recognised rights either in settlement legislation or in the Marine and Coastal area (Takutai Moana) Act 2011.
2. It would be wrong to assume that because there is no apparent constraint in s 43A(7), there is in fact no constraint. In recommending that the regulations be made, the Minister "must act within the scope of the authority conferred by Parliament and for the purposes for which those powers are conferred."<sup>34</sup>
3. We conclude that it is not unlawful or unreasonable to preclude public notification at the resource consent stage.
4. In order to reach that conclusion we will:
  - a. Review the provisions of s 43A itself;
  - b. Consider those provisions in the context of sections 43 – s 43A, which enable the creation of National Environmental Standards;
  - c. Consider the broader scheme of the Act and, in particular, the purpose set out in s 5 and the specific matters identified in Part 2;
  - d. Consider, despite not being identified in Part 2 with the exception of (arguably) the ethic of stewardship and in respect of Māori, whether public participation is nevertheless a principle under the Act;
  - e. Consider whether the (extremely limited) case law on National Environmental Standards assists; and
  - f. Review extraneous material to interpretation, such as the relevant Select Committee Report and, from that, derive the conclusions set out above.

#### *The provisions of s 43A*

5. I annex a copy of s 43A. Activities may be prohibited, or allowed, or regulated in any number of ways. Indeed, the only constraint can be found in s 43A(3), that is, if an activity has significant adverse effects on the environment the NES cannot enable the activity as a permitted activity. With that exception, s 43A does not suggest any particular constraint on the power to make regulations.

#### *The immediate context of s 43A*

6. Section 43 empowers the Governor General to make regulations to be known as NES. Again there is a considerable breadth as to what may be done. NES are to be "technical standards, methods or requirements."<sup>35</sup> There may be standards for the matters referred to in s 12 (Restrictions on Use of Coastal Marine Area). There is a list of matters that the regulations may include, but that list is not exhaustive.<sup>36</sup>

<sup>34</sup> *Unison Networks Limited v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [50] per McGrath J. *West Coast ENT Incorporated v Buller Coal Limited* [2013] NZSC 87 per the minority judgment of Elias J at [87].

<sup>35</sup> Section 43(1).

<sup>36</sup> Section 43(2).



7. While a NES can allow plans to vary from it, the default position is that the NES will override a plan rule<sup>37</sup>, a water conservation order,<sup>38</sup> a designation<sup>39</sup> and a bylaw,<sup>40</sup> If the Act establishes a hierarchy, then a NES is above all of those things in the hierarchy.<sup>41</sup>
8. The method by which NES are made is set out in s 44(1). Briefly, the Minister must:
  - a. Go through a consultation process prescribed by s 46A(3);
  - b. Prepare an evaluation report in accordance with s 32;
  - c. Have particular regard to that report when deciding to recommend the making of a Standard; and
  - d. Publicly notify the report and recommendation.
9. The only constraint in that provision is in the s 32 evaluation to which the Minister must have particular regard. That phrase has been interpreted in other contexts as providing guidance rather than direction.<sup>42</sup> That evaluation examines the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act and then examines whether the provisions of the proposal are the most appropriate way to achieve the objectives.

#### *The Purpose of the Act*

10. The purpose of the Act is specifically referred to in s 32.<sup>43</sup> That purpose, set out in s 5, has been described by the Supreme Court as “open textured”.<sup>44</sup> The Court also referred to the “openness” of the language.<sup>45</sup> The definition of “sustainable management” is broadly framed, general and flexible.<sup>46</sup>
11. Public participation is not one of the purposes of the Act. Section s 5 does not directly refer to public participation. The most that might be said is that it is difficult to enable people and communities to provide for their social, economic and cultural wellbeing if you do not ask them what they want. Under the proposed NES, public participation is available at the plan making stage.
12. Similarly, s 6 which requires all persons exercising functions and powers under the Act to have regard to a list of matters of national importance, does not refer to public participation with the exception that the relationship of Māori and their cultural traditions with their ancestral lands, water, sights, waahi tapu and other taonga is unlikely to be able to be ascertained if they are not notified of an application.
13. Section 7, which lists matters to which particular regard must be had by the Minister, does not directly address public participation, although it might be argued that kaitiakitanga and the ethic of stewardship both contain elements of public participation. Finally, it is unarguable that s 8, which requires the Minister to take into account the principles of the

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<sup>37</sup> Section 43B.

<sup>38</sup> Section 43C.

<sup>39</sup> Section 43D but not in all circumstances.

<sup>40</sup> Section 43E.

<sup>41</sup> *Environmental Defence Society v The New Zealand King Salmon Co Limited* [2014] NZSC 38 at [76].

<sup>42</sup> *Environmental Defence Society v The New Zealand King Salmon Co Limited* [2014] NZSC 38 at [26].

<sup>43</sup> Consequently *Hawke's Bay Regional Investment Company Limited v Royal Forest & Bird Protection Society New Zealand Incorporated* [2017] NZSC 106 at [110] can be distinguished. There is little in the immediate context which provides assistance and there is direct reference in s 32 to s 5.

<sup>44</sup> At [151].

<sup>45</sup> At [142] after citing “*New Zealand Rail*”.

<sup>46</sup> At [24(a)].

Treaty of Waitangi, will require the participation of Māori in decision-making. Principles such as partnership, reciprocity and autonomy will require iwi participation.

14. These concerns can in large part be put to one side. Even if the NES precludes public or limited notification, s 95A will be amended to shortly require notification to all affected protected customary rights groups, customary marine title groups and groups to whom a statutory acknowledgement has been made.<sup>47</sup>
15. It would be prudent for the Minister to specifically consider s 6(e), s 7(a) and (aa) and s 8 when forming a view on whether public notification is or is not appropriate in circumstances where the relevant iwi does not have that designated status. There may need to be some provision made, especially where the representative iwi have not yet reached a settlement with the Crown.
16. From 19 April 2017 the following provision has been introduced into the Act:

#### **18A Procedural principles**

Every person exercising powers and performing functions under this Act must take all practicable steps to—

- (a) use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised; and
  - (b) ensure that policy statements and plans—
    - (i) include only those matters relevant to the purpose of this Act; and
    - (ii) are worded in a way that is clear and concise; and
  - (c) promote collaboration between or among local authorities on their common resource management issues.
17. It remains to be seen what effect s 18A, and the other changes brought in by the Resource Legislation Amendment Act 2017, will have on the policy in this area.

*Public participation has formerly been held to be part of the policy of the Act*

18. Parties wishing to constrain the ability to limit public participation under an NES may well refer to decisions such as *Westfield (NZ) Limited v North Shore City Council*.<sup>48</sup> In that case the Chief Justice recorded “the decision not to notify an application is an exception to the general policy of the Act that better substantive decision-making results from public participation.”<sup>49</sup>
19. Keith J stated:
 

The Resource Management Act and its predecessors have long recognised that members of the general public may be able to participate in a planning process in certain circumstances ... the purpose of those public participatory processes are twofold – first, to recognise and protect as appropriate the particular rights and interests of those affected and more general public interests and, second, to enhance the quality of the decisionmaking.<sup>50</sup>
20. Justice Blanchard stated:

<sup>47</sup> Resource Legislation Amendment Act 2017, s 137.

<sup>48</sup> *Westfield (NZ) Limited v North Shore City Council* [2005] NZSC 17, [2005] 2 NZLR 597 (SC).

<sup>49</sup> At [25].

<sup>50</sup> At [45] – [46].

The leading case in the Court of Appeal on s 94 is *Bailey v Manukau City Council* whose general approach was not challenged by any part of this appeal. In *Bailey* the Court said there was policy evidence upon the reading of VI of the Act, dealing with the grant of resource consents that the process is to be public and participatory...<sup>51</sup>

21. However, as the Supreme Court noted last week in *Auckland Council v Wendco (NZ) Limited*,<sup>52</sup> subsequent changes to the Act have meant that it is now arguable that the approach to non-notification decisions should now be less exacting.<sup>53</sup>
22. It is certainly arguable that public participation cuts across timely and cost-effective processes. While efficiency is subject to differing interpretations, it is certainly arguable that efficiency can be achieved by dividing functions between the planning stage and the resource consent stage. Duplicating those functions is inefficient.

#### *Case Law on National Environmental Standards*

23. Moreover, we are not here dealing with a notification decision under Part 6. We are dealing with a higher order policy instrument under Part 5. There is in fact only one case which concerned the implications of (the absence) of a NES. The issue in *Royal Forest & Bird Protection Society of New Zealand Incorporated v Buller Coal Limited*<sup>54</sup> was whether the climate change effects of the burning of coal was a matter that could be considered by a consent authority in the course of processing applications for new coal mines. The Court at [23] sets out the hierarchy of National, Regional and District planning documents and notes:

National Policy Statements are also produced by the Minister and sit alongside National Environmental Standards in the hierarchy of control.

24. The decision was appealed directly from the High Court to the Supreme Court<sup>55</sup> but no relevant comment was made on this point.

#### *Other material supporting an interpretation*

25. For completeness we have reviewed the Select Committee Report that introduced the change to s 43A that enabled the NES to direct whether notification occurs or not. There is nothing in the Select Committee Reports or the later Hansard that provides any further assistance.

#### *Conclusion on precluding public notification in ONFCLs*

26. From all this we distil as follows:
  - a. The power to limit notification must still be used in a way that is consistent with the purpose of the Act. That purpose is open-textured, is broadly framed, general and flexible.
  - b. Guidance as to how far the Minister's discretion can be taken could be gleaned from s 43A(3): an activity with a significant adverse effect cannot be made a permitted activity. However, that says nothing about making such an activity controlled nor about limiting its notification.
  - c. While there is some support for the proposition that the NZCPS and NES are on the same level of the hierarchy and, consequently, need not be consistent with each other, we prefer the approach that it is appropriate for a NES to signal a division in functions. Not every element of the decision-making process needs to deal with

<sup>51</sup> At [105].

<sup>52</sup> *Auckland Council v Wendco (NZ) Limited* [2017] NZSC 113.

<sup>53</sup> At [47] and [70] at footnote 25.

<sup>54</sup> *Royal Forest & Bird Protection Society of New Zealand Incorporated v Buller Coal Limited* [2012] NZHC 2156.

<sup>55</sup> *West Coast ENT Incorporated v Buller Coal Limited* [2013] NZSC 87

every element of the NZCPS. The Act requires plans to give effect to the NZCPS. The NES can support plans on the assumption that they will do so.<sup>56</sup>

27. Here we consider there is a convincing argument to be made for non-notification:
- a. The overarching philosophy of the reform is to regulate the location of farms in plans and not in resource consents;
  - b. The public have a full right of participation in (most) plan making processes;<sup>57</sup> and
  - c. The Minister would be wise to specifically address the special position of the Crown's obligations to iwi and under the Treaty of Waitangi and the legislation. In certain circumstances this will be an exception to the rule.
28. As a consequence of a merits assessment of the location of farms being restricted to the planning process, all that is required from the resource management process is to address site-specific and essentially technical matters. The Government here has determined that the benefits of public involvement are outweighed by the additional costs which that public involvement will necessarily incur.
29. In our view, so long as that underlying philosophy is clearly expressed then there is only a low risk of a successful judicial review.

**Is it unreasonable/unlawful to preclude effected party participation (limited notification) in decisions in ONFLC's?**

30. There is specific provision in the Act for a NES to specify the activities for which a consent authority is precluded from giving limited notification of an application for a resource consent.<sup>58</sup> The Act states that a consent authority must limited notify an application to an affected party, **unless** a rule in an NES precludes it.<sup>59</sup>
31. As above, concerns around the effects of marine farming in outstanding areas can be addressed at the planning stage. On this basis, arguably this additional matter of discretion should be removed from the NES altogether.

**Is there a need to include an additional matter of discretion to address cumulative effects of an activity on the water column and to provide for adaptive management where necessary?**

32. If the evidence held by the Minister suggests that the NES does need to address this point, then we would propose the following solution:
- a. Councils have the ability to create water quality management plans. Such plans would either be part of or incorporated by reference in Regional Coastal Plans;
  - b. Those plans would be prepared in response to evidence that it was necessary to address cumulative effects of activities on the water column. Such plans would not be necessary in all instances;<sup>60</sup> and
  - c. Where a water quality management plan exists, compliance with that plan would be a relevant matter of discretion in the NES.

<sup>56</sup> Councils had an obligation pursuant to s 55 to make amendments to their plans 'as soon as practicable' (s 55(2D)(a)). If that has not occurred, Councils are vulnerable to a declaration in the Environment Court as in *Royal Forest & Bird Protection Society New Zealand Incorporated v New Plymouth District Council* [2015] NZ EnvC 219.

<sup>57</sup> Noting that the Resource Legislation Amendment Act 2017 introduced collaborative and streamlined planning processes, both of which can limit public participation.

<sup>58</sup> Section 43A(7)(c).

<sup>59</sup> Section 95B(2).

<sup>60</sup> See, for example policy 21 NZCPS and s 55 Resource Management Act 1991.

33. We have considered and rejected other alternatives, the reason for that is set out below:
- a. Attempting to address any potential cumulative effects at the consenting stage is likely to be inequitable, inefficient and ineffective. The first marine farm to come up for renewal in an area would bear the cost of proving lack of cumulative effects. In the event that there were known effects, it would be unreasonable to remove that farm purely because it was the first to come up for renewal. It may well be that farms that come up for renewal first were some of the first to be established in a bay.
  - b. Alternatively, if it is determined that a portion of every farm needs to be removed to address cumulative effects, then it would take 20 years to remove the relevant portion from all farms as they go through the consenting process. This underlines why the consenting process is an inefficient way to respond to problems of this nature.
34. There are other ways to address concerns that an individual or group of marine farms may be having cumulative effects:
- a. An Enforcement Order;<sup>61</sup>
  - b. Recalling resource consents in an area and reviewing conditions;<sup>62</sup>
  - c. A Schedule 1 Plan Change, bearing in mind policy 21 of the NZCPS and s 55 of the Act requires some form of response; and
  - d. A collaborative planning approach<sup>63</sup> (or some form of mediation).
35. Where the Council does not respond appropriately, a declaration may be able to be brought to force the Council to act.<sup>64</sup>
36. It needs to be underlined here that if there was to be a cumulative effect on water quality, the causes are likely to be more than just aquaculture. This underlines why planning for, rather than reacting to, cumulative effects is the only reasonable approach.
37. We propose to include as a new matter of discretion at Appendix F 12(m) "Management of effects on water quality where necessary to comply with any Water Quality Management Plan relevant to the area."
38. A Water Quality Management Plan may be prepared by a council to manage any identified cumulative effects arising from land and marine based activities on water quality in specific areas in the CMA. Ideally this would be prepared through a science-lead collaborative process, which allows for industry input. Specific management responses or monitoring requirements might be imposed on aquaculture and other activities occurring within an identified area. Any requirements would need to be proportionate to the relative risk posed by aquaculture.
39. We would envisage that such a strategy is either included in the planning document or incorporated by reference into the planning document. In that way, there is a full opportunity for public participation and a direct route by which the plan would be incorporated in consent conditions. Having said that, waiting for consents to come up for

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<sup>61</sup> Sections 314 and 319.

<sup>62</sup> Section 128.

<sup>63</sup> Section 66 Resource Legislation Amendment Act 2017 (inserting new sections 80A – 80C into the principal Act).

<sup>64</sup> *The Royal Forest & Bird Protection Society of New Zealand Incorporated v New Plymouth District Council* [2015] NZEnvC 219.

renewal might be an inefficient method of regulation. The proposed wording of the NES would not remove the ability of councils to take other steps where appropriate.

**Can the NES in its detail support the MEP planning process?**

40. As you point out, given that the MEP aquaculture provisions will take legal effect at notification, they may well be in place before the NES. The content and future implementation of the NES is not certain. The Marlborough Aquaculture Review Working Group should continue planning in the meantime.
41. This problem is not unique to Marlborough. Each Council will be required to review their Plan Provisions in light of an NES once it is gazetted.
42. Councils with provisions more lenient than the NES will be entitled to keep those. However, we assume that even those Councils will need to review their Coastal Plan provision by provision to ensure compliance.
43. At this point in time, the approach which we advocate for under the NES and the approach being taken by Marlborough under the MEP appears to be complementary. In my view that position would be improved if our recommendations were adopted.

**Will the Bay of Plenty be able to retain its controlled activity to extend a farm by 10% on renewal?**

44. We agree with your reasoning set out in your e-mail dated 11 July 2017.

**Can the NES offer increased certainty for Banks Peninsula farms being re-consented, given that all of these farms are within an outstanding natural landscape?**

45. In our view, the discretion in respect of landscape and natural character should be removed from the NES. Were that not to happen, then the following steps (or a combination of them) might be taken:
  - a. Extensive landscape and natural character analysis has been undertaken for many of the Banks Peninsula farms, including several Environment Court decisions. You might create a dossier of relevant consents and/or Environment Court decisions showing how each area was dealt with. There would then be no need to undertake that exercise again in the context of re-consenting. Alison Undorf-Lay may be well-placed to gather together the relevant consents and decisions;
  - b. Our previous approach was to encourage the Minister to exercise judgment as to whether or not a further assessment of landscape or natural character was required. That approach could be pursued with the Minister, attempting to encourage him to delete the Canterbury Farms from the schedule of farms which require an ONL assessment;
  - c. Canterbury Regional Council could promote a Plan Change to recognise the existing farms as being appropriate. That argument should, undoubtedly, be pursued at the next Plan Review; and/or
  - d. Changes to the NZCPS or a new NZCPS for Aquaculture would doubtlessly address this issue as well.
46. A transitional period to 1 January 2023 would resolve issues.

**Why is the NES justified in not dealing with policy 11 of the New Zealand Coastal Policy Statement 2010 (NZCPS) in the same way as policies 13 and 15?**

47. We have already addressed the modification we would make to address effects that at present are unknown.

48. Beyond that there should be a clear division of functions between “big picture” matters, which are dealt with at the plan making stage, and “technical” matters which are dealt with at the resource consent stage. We disagree with the approach taken in the Discussion Document which suggests that because of the provisions in the NZCPS, the NES needs to address landscape and natural character. We see these provisions as being anomalous.
49. The NES has attempted to capture situations where an individual marine farm will have a site-specific impact on indigenous flora and/or fauna. There are a range of other tools that can be used in circumstances where there is a broader issue. These include:
- a. An enforcement order;
  - b. Recalling resource consents and reviewing consent conditions;
  - c. A schedule 1 Plan Change process;
  - d. New variants of the schedule 1 process (a streamlined planning process or a collaborative planning process); or
  - e. Some form of regulation outside the current framework.
50. It is inefficient to wait up to 35 years to address an issue, which, for the sake of the affected environment, needs to be addressed sooner. It is also inefficient to attempt to address an effect caused by a number of land-based and marine activities through a single resource consent. Any suggestion that these matters ought to be dealt with at a resource consent stage is contrary to s 18A and undermines the purpose of the NES.

**Why the NES is justified in not providing additional discretion where a marine farm is adjacent to an ONFL, area of outstanding natural character, area of very high natural character, or area of high natural character?**

51. Our primary answer to this question is that these matters should not be listed as matters of discretion at all.
52. Natural character and landscape are nevertheless included in the NES. In our submission, the approach taken in the Discussion Document is not justified in terms of policy 15(d) of the NZCPS.<sup>65</sup> Policy 15(d) states that features and landscapes should be protected by:
- “Ensuring that Regional Policy Statements, and Plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and
53. Policy 15(e) continues “including the objectives, policies and rules required by (d) in plans.”
54. The NZCPS requires Plans to identify the areas to which landscape protection rules apply. The policy requires mapping not only of the relevant landscape or feature, but also of the area around those landscapes or features where rules are required. It ought to be assumed that Plans give effect to the NZCPS.<sup>66</sup> As a consequence, the mapping in the Plan should identify areas that need to be protected. Protection is not otherwise required.
55. In respect of natural character, the same wording can be found in policy 13(1)(d) of the NZCPS.
56. Failing to allow an additional matter of discretion for farms adjacent to high value or very high value natural character areas is consistent with the NZCPS. It is only necessary to avoid

<sup>65</sup> Noting my strong objection to the logic that the NZCPS dictates what ought to be in the NES.

<sup>66</sup> Section 67(3)(b).

significant adverse effects on those areas.<sup>67</sup> It is fair for the NES to assume that existing farms do not have a significant effect on natural character.

**Should “adverse effects on fisheries resources” be added as a matter for discretion when considering consents for existing marine farms, realignments, and species changes for categories 2, 3 or 4?**

57. Adverse effects on fisheries resources should not be added automatically as a matter of discretion for consents for existing farms. They could be added in the case of realignments, and species changes for categories 2, 3 or 4. However, in the case of realignment, an aquaculture decision will be required, and effects on fishing and fisheries<sup>68</sup> will be considered at that stage.
58. The NES only applies to existing aquaculture. All existing consents for aquaculture have addressed the effects on fishing:
  - a. Marine farming leases and licences were not granted where they would interfere unduly with commercial fishing: Marine Farming Act 1971, s 7;
  - b. All resource consents applied for prior to 31 March 2004 required a marine farming permit which could not be granted unless the Director-General was satisfied there was no undue adverse effect on fishing or the sustainability of any fisheries resource: Fisheries Act 1983, s 67J(8);<sup>69</sup>
  - c. All applications for new space made after 1 April 2004 required an aquaculture decision under Part 9A Fisheries Act 1996, which assesses effects on fishing and (in practice) fisheries;<sup>70</sup> and
  - d. From time to time these issues have had to be addressed under the RMA as well.<sup>71</sup>

We are unaware of any evidence that existing aquaculture is causing an effect on fishing, fisheries or fisheries resources (as the case may be).

59. Adverse effects on fisheries resources might be a matter which a council determines in a plan needs to be considered (and, if appropriate, conditions imposed) at the consent stage. That would occur where a specific management plan has been included in, or referred to in, a coastal plan.

<sup>67</sup> Policy 13(1)(b).

<sup>68</sup> Fisheries Act 1996, s 186GB(1)(b)

<sup>69</sup> There may be an issue with the period between 1 October 1991 and 7 July 1993 when Part 4A (ss 67I to 67S) was inserted into the Fisheries Act 1983, by s 6 Fisheries Amendment Act 1993 (1993 No 67).

<sup>70</sup> S186GB(1)(b) states “In making an aquaculture decision, the chief executive must have regard only to the following matters : ... the likely effect of the aquaculture activities in the area that the coastal permit relates to on fishing of any fishery, including the proportion of any fishery likely to become affected:” (emphasis added). This can be assessed by considering the effects on fish stocks which in turn is defined as a fisheries resource. “Fishery” is not defined either in section 186 or elsewhere in the Fisheries Act. However, “stock” is defined in section 2 to mean any fish, aquatic life, or seaweed of one or more species that are treated as a unit for the purposes of fisheries management. Parts (3) and (4) of the Fisheries Act focus on “stocks” for the purpose of setting and allocating Total Allowable Catches and managing species within the quota management system (QMS). Sections 186GB(1)(f) and (2) also refer to “stock” with specific regard to adverse effects on commercial fishing. Consequently a commercial fishery is a fish stock delineated by a fisheries management area (FMA) or quota management area (QMA). Fisheries Act 1996 s 2 defines “fisheries resources” as meaning “any 1 or more stocks or species of fish, aquatic life, or seaweed”

<sup>71</sup> *Challenger Scallop Enhancement Co Ltd v Marlborough DC* [1998] NZRMA 342 (EnvC), *Golden Bay Marine Farmers v Tasman DC* EnvC W042/01, *Chief Executive of Ministry of Fisheries v NZ Marine Farming Assn Inc* [2004] 1 NZLR 449; (2004) 10 ELRNZ 1; [2004] NZRMA 10 (CA) (upheld on appeal by the Privy Council in *Marlborough Aquaculture Ltd v Chief Executive, Ministry of Fisheries* (2005) 12 ELRNZ 1



60. Regional councils are able to regulate aquaculture for the purpose of managing the effects on fishing and fisheries resources. Section 30(3) states:
- (3) However, a regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control aquaculture activities for the purpose of avoiding, remedying, or mitigating the effects of aquaculture activities on fishing and fisheries resources.
61. The effects caused by aquaculture should be managed alongside the effects of land use and all marine activities. Once a comprehensive response has been devised to an effect on fisheries resources, then aquaculture's part can be enforced through conditions on coastal permits.



7 August 2017

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

Dear Sir/Madam,

**Auckland Council's Submission on the Proposed National Environment Standard: Marine Aquaculture**

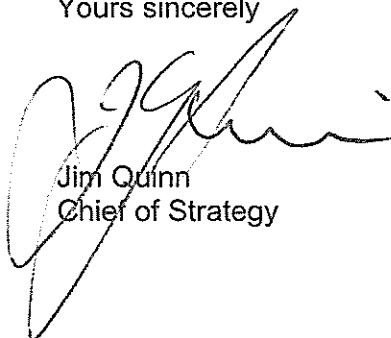
Auckland Council appreciates the opportunity to comment on the Proposed National Environmental Standard: Marine Aquaculture (NES).

The attached submission prepared by Auckland Council staff was approved by the Planning Committee at their 1 August 2017 meeting.

In principle, Auckland Council supports the overall intent and approach taken in the NES for re-consenting, re-alignment, change of species for existing farms and supports the key biosecurity objectives. However, Auckland Council staff have some concerns particularly around non-notification for re-consenting, limited matters of discretion and the role of council in approving and ensuring compliance with on-farm Biosecurity Management Plans and the timeframe for implementing these.

If you require any clarification or assistance in regard to this submission please contact Sietse Bouma, Team Leader – Natural Environment Strategy Unit by e-mail at [REDACTED]

Yours sincerely



Jim Quinn  
Chief of Strategy

Submission No:0065



Submission from Auckland Council to the Ministry for Primary  
Industries

Proposed National Environmental Standard for Marine  
Aquaculture

7 August 2017

## Foreword

This is the Auckland Council's submission on central government's '*Proposed National Environmental Standard for Marine Aquaculture*' released June 2017.

Planning Committee members considered this submission at its meeting held on 1 August 2017. Under resolution, approval of the final submission was delegated to Councillor Penny Hulse, Chair of the Environment and Community Committee, and Councillor Chris Darby, Chair of the Planning Committee, and their respective deputies.

Please direct any enquiries to Sietse Bouma, Team Leader Natural Environment Strategy – phone [REDACTED] or email [REDACTED].

Auckland Council is the unitary authority for Auckland, a region containing a third of New Zealand's population. Auckland Council is responsible, under the Resource Management Act 1991 (RMA), for managing the region's coastal marine area.

Auckland Council's decision-making is carried out by a governing body, which considers regional matters and is made up of the mayor and 20 councillors, and 21 local boards made up of 149 members who consider local community matters.

All local boards were provided a brief opportunity to provide their views on the Proposed National Environmental Standard for Marine Aquaculture prior to this submission being considered and approved by the council's Planning Committee. Council staff received no formal feedback.

Auckland Council also provided mana whenua of the region an opportunity to provide their thoughts for consideration in preparation of this submission. Council staff received no formal feedback.

## Introduction

1. Auckland Council appreciates the opportunity to comment on the proposed National Environment Standard for Marine Aquaculture (the Standard) released for public consultation on 14 June 2017 by the Minister for Primary Industries and the Minister for the Environment.
2. The proposed Standard seeks to provide a more efficient and certain consent process for managing existing marine farms within environmental limits and seeks to implement a nationally consistent framework for biosecurity management on all farms.
3. In preparing its submission, Auckland Council considered the provisions for aquaculture in the recently developed Auckland Unitary Plan, the strategic direction set in the Auckland Plan, views of subject matter experts and the alignment with key council strategy documents, and a recently completed non-statutory marine spatial planning initiative for the Hauraki Gulf – Sea Change – Tai Timu Tai Pari (Sea Change).
4. The submission is structured around the key provisions proposed in the Standard, rather than the detailed questions in the proposal, for brevity and relevance. The submission addresses the topics below:
  - a) Replacement consents for existing farms with no change in species;
    - i) Activity status
    - ii) Matters of discretion
  - b) Re-alignment of farm boundaries;
  - c) Replacement consents for existing farms where there is also a change of species;
    - i) Activity status
    - ii) Matters of discretion
  - d) On-farm biosecurity management plan provisions.
5. Auckland Council agrees with the intent of the proposed Standard and believes it is an appropriate tool to provide national consistency in achieving the objective as stated above.

## Auckland context

6. Auckland has 1.1 million hectares of coastal marine area, extending 12 nautical miles from the 1,800km coastline of the region's west and east coasts. Included within this coastal marine area is the Hauraki Gulf – an area recognised in the Hauraki Gulf Marine Park Act 2000 as nationally significant in sustaining the life-supporting capacity of the environment of the Gulf and its islands. Of this coastal marine area, 320ha is used for marine aquaculture farming.
7. There are a total of 80 active marine farms in Auckland that are distributed across the Firth of Thames (19% of total number), Great Barrier Island (10%), Kaipara Harbour (5%), Mahurangi Harbour (55%) and Waiheke Island (11%). The number of active marine farms corresponds to the number of consented marine aquaculture areas within the region. The bulk of the consents for the active marine farms expire on 31 December 2024.
8. Green-lipped mussel and Pacific oyster farming currently prevail in the Auckland region. Of the 320 ha used for marine aquaculture farming, 60% is for used for Pacific oyster farming, 29% is used for green-lipped mussel farming and 11% is used for marine farms which contain both species. Auckland has no finfish farms in the coastal marine area.
9. The Auckland region is not the largest regional aquaculture producer in New Zealand, but produces around a third of the total production of New Zealand Pacific oysters and a minor portion of the total production of New Zealand green-lipped mussels.
10. Based on most recent data available, the aquaculture industry contributed \$72 million of output to Auckland's economy in 2009. This figure includes aquaculture farming and processing<sup>1</sup>.
11. The Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan<sup>2</sup> (Sea Change) promotes and anticipates a significant increase in the level and range of aquaculture in the Auckland region in particular areas. One challenge

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<sup>1</sup> Murray, C., McDonald, G. (2010) Aquaculture: Economic Impact in the Auckland Region, Jointly prepared by the Auckland Regional Council and Market Economics Ltd for the Auckland Regional Council, Auckland Regional Council Technical Report No 009, February 2010. Retrieved from <http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/planspoliciespublications/technicalpublications/tr2010009aquacultureeconomicimpactintheaucklandregion.pdf>

<sup>2</sup> As at May 2017 Auckland Council's Planning Committee has acknowledged the high level vision of SeaChange and the shared aspirations it has for the Hauraki Gulf.

highlighted in Sea Change which relates to the proposed Standard is that there is a lack of long-term certainty for existing consent holders as their resource consents have time limits.

## **Approach to Aquaculture within the Auckland Unitary Plan**

12. The issues addressed by the proposed Standard were also considered in the development of the Auckland Unitary Plan. The Unitary Plan is a combined plan that comprises a regional policy statement, regional coastal plan, regional plan and district plan for Auckland. It was developed in accordance with the unique statutory process set out in Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010. It notified for submissions in 2013. The Independent Hearing Panel's recommendations and the council's decisions were released in 2016. The appeals to the regional coastal plan component of the Unitary Plan have recently been resolved and the plan will soon be sent to the Minister of Conservation for approval.
13. The Auckland Unitary Plan policy framework (chapter F2.15) requires that new aquaculture be located and designed to avoid adverse effects on various listed values, and provides for the continued operation of established aquaculture where the adverse effects can be avoided, remedied or mitigated. The Plan does not include zones or areas for aquaculture.
14. The policy approach is directive in terms of avoiding adverse effects on the values of identified areas (mapped as 'overlays'), for both new aquaculture and for re-consenting established aquaculture areas. The values identified by the overlays reflect the matters of national importance in section 6 of the Resource Management Act (RMA), and give effect to policies 2, 11, 13, 15 and 17 of the New Zealand Coastal Policy Statement (NZCPS). The overlays are identified as follows:
  - a) D9 Significant Ecological Areas Overlay – Marine 1 and 2;
  - b) D17 Historic Heritage Overlay;
  - c) D21 Sites and Places of Significance to Mana Whenua Overlay;
  - d) D11 Outstanding Natural Character and High Natural Character overlays; and
  - e) D10 Outstanding Natural Features Overlay; and Outstanding Natural Landscapes Overlay.
15. The rules relating to aquaculture are primarily within Table F2.19.19 of the Auckland Unitary Plan. Generally, the council's approach to aquaculture is to



have a more restrictive activity status within the overlays than other areas. For re-consenting an established aquaculture activity, the activity status is restricted discretionary both within overlays and in other areas.

16. All aquaculture activities in the Unitary Plan are subject to the standard RMA test for notification.

### **Overview of submission points**

17. Auckland Council agrees with the overall intent and approach taken in the Standard for re-consenting, re-alignment and change of species for existing marine farms. Notwithstanding, Auckland Council has concerns about aspects of the proposed Standard. These relate to:

- a) non-notification for re-consenting of existing farms, realignment and some changes of species;
- b) the limited matters of discretion, particularly the exclusions of 'high natural character areas', 'Significant Ecological Areas', water quality; mana whenua values and ecology of the wider area; and
- c) the role of council in approving and ensuring compliance with on-farm Biosecurity Management Plans.

18. Auckland Council supports the proposal that a discretionary activity rule be included in the Standard for existing marine farms that may, through future planning processes, be determined to be in inappropriate locations. This measure, along with a council's ability to set the duration of a replacement consent would be an appropriate way to grandfather out existing consents if a more appropriate use of marine space or surrounding land was identified in the future.

### **Replacement consents for existing farms with no change in species (Re-consenting)**

19. Auckland Council agrees with the overall intent and approach taken in the Standard for re-consenting existing marine farms. The approach is similar to that in the Auckland Unitary Plan which also has a restricted discretionary activity status for re-consenting. However, Auckland Council disagrees with re-consenting being non-notified and the narrow framing of the matters of discretion.

20. Auckland Council submits that:

- a) the restricted discretionary activity status should be retained for re-consenting of existing farms;
- b) all re-consenting applications should have the standard RMA test for notification applied (as a second preference, the standard test should be required at least for larger farms (for example, those over 10 ha)); and
- c) the matters of discretion should be expanded to include:
  - i) the consideration of high character areas and significant ecological areas;
  - ii) ecological values of the bay and wider region;
  - iii) explicit consideration of mana whenua values; and
  - iv) water quality.

#### Activity status

21. The Unitary Plan classifies re-consenting for aquaculture activities as restricted discretionary across its General Coastal Marine Zone provisions and for all overlays. This is consistent with the restricted discretionary activity classification proposed in the Standard, and council supports the use of this activity status.

#### Notification

22. Non-notification is proposed in the Standard for re-consenting whereas the Auckland Unitary Plan applies the standard RMA test for notification. There are only a limited number of activities specified as non-notified in the Unitary Plan. Notification provides the public the opportunity to provide information and evidence on effects that may have occurred over the life of the farm that councils may not otherwise be aware of. Additional information on the impacts on other users of the coastal marine area can be gleaned through notification and is particularly helpful in considering matters such as navigational safety.
23. The council's preference is that the standard RMA tests for notification be applied to all re-consenting of marine farms. At the least, the standard notification tests should be applied to re-consenting larger farms. A possible size limit would be 10 ha as is proposed for the realignment proposal. Auckland Council believes that for larger farms the cumulative effects over time and their interaction with other users in the marine space may be more significant and additional information from the public would be useful in assessing applications for re-consent.

## Definition

24. The Unitary Plan defines existing farms as those established prior to September 2013, which is the date the Proposed Unitary Plan was notified. Auckland Council supports the definition of existing farms as drafted in Appendix F of the proposed Standard.

## Matters of discretion

25. The matters of discretion that apply in the Unitary Plan differ from those in the proposed Standard. The proposed Standard has very specific matters of discretion depending on whether the existing farm is in an 'outstanding area' and whether supplementary feeding is used. The Unitary Plan matters of discretion relating to re-consenting are broader in their consideration.
26. The areas of concern that council has with the matters of discretion proposed in the Standard include the lack of consideration of recognition of other overlays in the Unitary Plan, and of the impacts on ecological function, water quality, mana whenua values, and cumulative effects that farms may have. These are important considerations within the Unitary Plan's matters of discretion relating to re-consenting marine farms.
27. Most marine farms in Auckland were established under the Marine Farming Act 1971 that preceded the RMA. This means that marine farms would have faced different consideration of environmental effects than would be assessed today. There may have also been changes in the environment over time for other reasons and changes with other marine or land-based activities. This means that the relative impact of a marine farm may also change over time. For these reasons it is important to be able to consider the range of impacts a marine farm may have in the context of its wider environment.
28. The matters of discretion also determines what conditions, including monitoring requirements, can be set on restricted discretionary activity consents. For some potential impacts, such as water quality and benthic ecology, collecting monitoring data over time will enable more adaptive management of any effects and better inform any future planning decisions on aquaculture in an area.
29. For these reasons Auckland Council strongly recommends a wider range of matters of discretion are included as described below.

## High Natural Character Areas and Significant Ecological Areas

30. Auckland Council is concerned with the narrow framing of the matter of discretion pertaining to outstanding areas. The wording used in the Unitary Plan is 'where the activity is within an overlay, effects on the characteristics and qualities of the overlay'. The relevant overlays are listed above. The overlays of particular concern which are not covered by the proposed Standard are the overlays for areas of 'high natural character' and 'significant ecological areas'. (We are not aware of any existing farms which are in the Historic Heritage overlay or the Sites and Places of Significance to the Mana Whenua overlay.) As currently proposed in the Standard, the matter of discretion would exclude consideration of key overlays in the Unitary Plan which currently have several marine farms within them.
31. The Standard (Appendix I) defines outstanding areas as those identified as areas of outstanding natural character, outstanding natural landscapes and outstanding natural features. These reflect RMA section 6(a) and (b), and NZCPS policies 13 and 15. The Unitary Plan includes mapped overlays for areas with these values. However, the Unitary Plan also includes areas of 'High Natural Character' in response to NZCPS policy 13(1)(c). The council considers that the Standard definition of 'outstanding areas' should be expanded to include areas identified as having 'high natural character'. Although the NZCPS has a more restrictive policy approach for areas of outstanding natural character, it specifically requires the identification of areas of 'high natural character'. Where such values are identified, they should be considered in a consent process. This would not require that a restrictive 'avoid adverse effects' approach be taken but would give appropriate consideration to how any adverse effects should be managed.
32. Auckland Council believes that the approach taken in the matters of discretion for areas identified as 'outstanding areas' should also be applied for areas identified as having ecological or biodiversity significance in terms of RMA section 6(c) and Policy 11 of the NZCPS. These areas are important to the on-going biological diversity and ecological health of our coastal habitats and can be adversely affected by marine farming activities.
33. The Unitary Plan applies similar approaches to the management of natural character, landscapes, features and biodiversity. The Unitary Plan sets criteria to use in identifying these areas and ensures appropriate protection through applying overlays and associated rules. Auckland Council notes that the national planning standards currently being developed by the Ministry for the

Environment are proposed to include the use of overlays as a way of identifying and responding to the matters of national importance.

#### Ecological values

34. Auckland Council believes ecological values are insufficiently considered in the matters of discretion proposed. Auckland Council proposes that:

- a) the adverse impacts on seabed features and biogenic habitats should be expanded to include adverse impacts on the role of those features and habitat in supporting ecology in the wider bay or region; and
- b) ecological values are included as a matter of discretion to allow for consideration of the interaction between marine farming and the surrounding ecology and healthy functioning of those ecosystems.

#### Water quality

35. Including water quality as a matter of discretion means that impacts of marine farms on water quality can be better monitored over time.

36. In addition there may be changes in water quality over time that makes an area unsuitable for aquaculture. Having the ability to set consent conditions requiring collection of water quality data means that future planning decisions can be better informed.

#### Mana whenua values

37. There is no mention in the body of the discussion document on how mana whenua values will be considered. Auckland Council notes that Appendix F states that tangata whenua values are being developed in further consultation with iwi. Auckland Council believes it is important to consider mana whenua values in granting a consent. In the Unitary Plan this is addressed by having effects on mana whenua values as a matter of discretion. Such values can be identified by iwi and may not be limited to sites identified in a plan as being of particular significance.

#### **Realignment**

38. Auckland Council supports the criteria proposed for the scale of realignment of existing marine farms to be provided for as a restricted discretionary

activity. The approach is similar to that in the Unitary Plan except that there is no size limit specified in the Unitary Plan. However, most marine farms in Auckland are under the 10ha size limit proposed so the proposal is practicable for the Auckland region.

39. Auckland Council agrees that it is appropriate for small realignments as proposed to be restricted discretionary and for the normal RMA tests for notification to apply.
40. Auckland Council supports that the realignment provisions would not apply where the realigned portion of the farm would be in areas identified as outstanding area, or areas with significant ecological values or where new aquaculture is classified as non-complying or prohibited. As noted earlier, the same approach should be taken to areas identified as 'high natural character'. The Unitary Plan's current approach is a discretionary activity status for small re-alignments within all overlays, given the high or outstanding values associated with these areas, in comparison with the General Coastal Marine Zone.
41. If, however, a restricted discretionary activity status prevails within the Standard for high natural character areas, Auckland Council suggests an additional matter of discretion be applied with respect to identified overlay areas, as discussed in the re-consenting matters of discretion above.
42. Not having these matters of discretion runs the risk that marine farm permits could technically be granted with no consideration of the marine farms effects on surrounding ecological values. This could cause a number of negative impacts; such as reducing a species range which is dependent on a particular habitat type.

### **Replacement consents for existing farms where there is also a change of species**

43. Auckland Council understands that the change of species categories are organised primarily by change of structure with the effects of the change in species being secondary.
44. The categorisation of changes, along with the associated matters of discretion and notification is a more refined and nuanced treatment of likely species changes than is provided for in the Unitary Plan. Auckland Council supports this approach as it provides for marine farmers to apply for changes in

species which fit within the existing marine farm and would have the least impact.

45. A change in species is not specifically provided for in the Unitary Plan. It would generally be processed under the provisions for a new consent (rather than for 're-consenting'). A small-scale change in species may fall within the Plan's provisions for experimental aquaculture (limited to 1 ha).
46. Auckland Council supports the restricted discretionary activity status being applied to Categories 1-4 as proposed.
47. Auckland Council disagrees with the proposals regarding notification and believes all categories should have the standard RMA test for notification applied to them. This gives the opportunity, if the test requires notification, for additional information from the public relating to the matters of discretion to be considered.

#### Matters of discretion

48. Auckland Council believes the matters of discretion proposed are too limited in their consideration. Auckland Council submits that the following matters of discretion should be included for all categories of species change, similar to those discussed above in relation to re-consenting:
- a) high natural character and significant ecological areas – these should be considered in addition to the outstanding areas;
  - b) ecological values – consideration of the interaction between marine farming and the surrounding ecology and healthy functioning of those ecosystems; and
  - c) hydrodynamics – consideration of hydrodynamic effects for all the proposed categories as there is the potential for effects for all categories, not just category 2.

#### **On-farm biosecurity management plan provisions**

##### Using on-farm Biosecurity Management plans to address biosecurity risks.

49. Auckland Council supports the key objective in the proposed Standard of achieving consistent and effective biosecurity practices in marine farming nationally and at each marine farm.

50. Marine farms are a potential vector for the movement and transfer of marine pests and diseases within a region and between regions which can have a negative impact on the environment.
51. Auckland Council, currently through consent conditions, requires a number of consented marine farms to have up to date Biosecurity Management Plans (BioMPs).
52. Auckland Council is concerned that BioMPs do not address the risk of inter-regional vector movements, and strongly advocates for a Domestic Marine Pathway Management Plan to address these risks.
53. Pest species may arrive via vectors relating to other marine activities, such as commercial shipping and recreational boating and fishing, and then establish themselves within a marine farm and further spread from there.
54. A comprehensive and integrated approach is required to fully manage biosecurity risks both to marine farms and from marine farms on the surrounding environment. Having both BioMPs and a complete Domestic Marine Pathway Management Plan is the only way to achieve this.
55. Auckland Council supports the provision that existing coastal permits can be reviewed and required to prepare BioMPs. Not doing so runs the risk of 36% of marine farms, whose coastal permits only expire post-2025, to operate for many years without any biosecurity management measures. However, Auckland Council believes that these reviews should be either subsidised or cost recoverable. One benefit of this approach is it provides an incentive for smaller councils with fewer resources than larger councils to undertake these reviews.

#### Implementation of Biosecurity Management Plans

56. Auckland Council supports marine farm monitoring and reporting as well as external auditing and enforcement of BioMP implementation. Auckland Council also supports the 'incentive approach' – whereby farms which have track records of maintaining high standard BioMPs are audited less frequently than those who do not. Auckland Council currently performs compliance monitoring.
57. Auckland Council staff note that there is the added bonus of monitoring marine farms in that early warning detection becomes improved given that these structures and the associated activities are considered high-risk.



Auckland Council recommends that species records be required to be reported, and compiled into one central database (e.g. MPI's marine biosecurity portal).

58. Auckland Council has a number of concerns with the implementation of the biosecurity provisions. These are:

- a) the risk in delaying until 2025 the requirement to have BioMPs; and
- b) the capability and capacity within both industry and councils to comply with BioMPs.

## Timeframe

59. Auckland Council disagrees with the 1 January 2025 timeframe and suggests an earlier date. Under section 43A(1)(f) of the RMA, local authorities can require consent reviews at any time during a consent period. Therefore, a BioMP could be required through this process when the Standard is approved. Under this approach, it would be critical for MPI to ensure that guidance for BioMPs is available at the same time as the Standard is gazetted.

60. Auckland Council believe it is unnecessary to allow seven years to prepare BioMPs, considering this has been a consent condition in place for a number of them already. This distant timeline may undermine the current conditions that are already in place, as marine farmers can argue that BioMPs are not required until 1 January 2025.

61. For local authorities that do not conduct reviews under section 43A(1)(f) (for various reasons i.e. lack of resourcing) this may result in some marine farms around the country having no biosecurity management measures for seven years – threatening environmental, social, cultural and economic risks. We seek to reduce biosecurity threats and see this as a current risk to successful marine biosecurity outcomes. There is nothing stopping local authorities from undertaking reviews as soon as MPI and MFE formally release the Standard and guidance material.

## Capacity and capability

62. The requirement on councils to approve and monitor the compliance of BioMPs will most likely be a significant resourcing burden. Councils can only cost recover for actual time spent inspecting farms. This does not adequately cover the staff time required to gain knowledge, stay up to date and the administrative operation of BioMPs. This is an existing challenge for Auckland

Council and for other councils. The recent disease outbreak in Southland demonstrates that having a BioMP on its own is not adequate – regular monitoring and auditing of compliance is required and needs to be done by appropriately qualified people.

63. Much of the biosecurity risk falls on marine farmers. For this reason Auckland Council believes the following would be required for BioMPs to be effective in managing biosecurity risks:

- a) Templates – providing a BioMP template, along with the guidance handbook, would provide consistency across regions and make the process easier for applicants, regional councils and any third party assessor;
- b) Regionally significant marine pests – management measures for pests that are regionally significant to the industry and marine environment should be detailed in the BioMP, even if the pest is not identified in a Regional Pest Management Plan;
- c) Pest identification training - Auckland Council strongly recommends that marine pest identification training workshops be developed and delivered regularly to capture staff turn-over appropriately. These workshops should be offered to any person who is expected to be able to identify marine pests, including auditing personnel and aquaculture farm workers; and
- d) External professionals - engaged with to assist in certifying, auditing and enforcing BioMP due to major resourcing constraints.

### **Costs and benefits arising from the Standard**

64. Auckland Council is concerned that the costs of implementing the Standard have not been adequately considered. There is an initial cost to councils of inserting the rules and provisions of the Standard into their plans. For Auckland Council the changes to plan rules would potentially be medium impact.

65. The greater issue is the on-going cost to council of reviewing, approving and auditing on-farm biosecurity management plans. Regional councils do not have the capacity or capability to do this at present. The ability to cost recover for staff time in doing this work is limited so this requirement would place an on-going burden on councils.

66. A broader consideration of the costs to councils and relative benefit of council implementing biosecurity management regime for marine farms should be included in any section 32 report for the Standard.
67. Auckland Council strongly recommends that further thought be given to biosecurity management being supported through Aquaculture New Zealand or similar national organisations which serve their members in preparing plans and to cost recover the services of a third party to carry out audits of on-farm biosecurity management plans.



# Submission No:0059

Auckland Regional Public Health Service

Rātonga Hauora & Iwi o Tamaki Makaurau



8 August 2017

Ministry of Primary Industries

Online submission

[aquaculture@mpi.govt.nz](mailto:aquaculture@mpi.govt.nz)

## Submission on the Proposed National Environmental Standard for Marine Aquaculture

Thank you for giving Auckland Regional Public Health Service (ARPHS) this opportunity to provide a submission on the proposed National Environmental Standard for Marine Aquaculture.

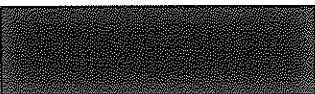
The following submission represents the views of ARPHS and does not necessarily reflect the views of the three district health boards it serves. Please refer to Appendix 1 for more information on ARPHS.

The primary contact point for this submission is:

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Senior Policy Analyst

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Yours sincerely,

Jane McEntee

General Manager

Auckland Regional Public Health Service

Dr David Sinclair

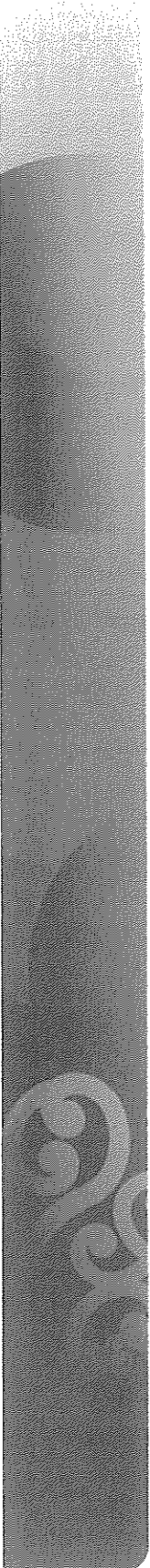
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## Scope of submission and recommendations

1. The Auckland Regional Public Health Service (ARPHS) has been involved in aspects of marine farm sanitary assessment and investigation of outbreaks of human disease caused by shellfish contamination. Marine aquaculture is an important contributor to the local economy in several parts of the Auckland region, including the Mahurangi Harbour, Waiheke Island, Great Barrier Island, and Hauraki Gulf. While ARPHS supports the aim of the proposed National Environmental Standard for Marine Aquaculture (NES) to ensure continuation of aquaculture when consents expire, we wish to ensure that marine aquaculture is not adversely affected by deteriorating water quality caused by land-based activity such as urbanisation, on-site sewage treatment system discharge, land use changes and other catchment contamination, through the RMA process.
2. A number of serious shellfish contamination incidents have occurred where there has been inadequate protection of marine farms from land-based activities. In the Auckland and Northland regions these incidents have affected shellfish farms in the Waikare Inlet (Northland), Mahurangi Harbour and Clevedon.
3. Good water quality is essential for the viability of marine aquaculture. The existing marine farms in and around the Auckland region grow and harvest bivalve shellfish (i.e. mussels and oysters), which are capable of concentrating, pathogenic micro-organisms and other contaminants.
4. Human consumption of contaminated shellfish can be associated with a number of illnesses, with the more common of these including norovirus, and toxic shellfish poisoning, which includes neurotoxic, amnesic, paralytic, and diarrhoeic shellfish poisoning.
5. Contamination of commercial shellfish beds with norovirus (which causes severe gastroenteritis) is well known. Several norovirus outbreaks caused by contaminated commercially grown shellfish have been documented in New Zealand in the last twenty years; some likely caused by discharge of untreated sewage from vessels, others from failure of land-based sewage reticulation and treatment systems.
6. Several biological and environmental factors make norovirus contamination a high risk for commercial shellfish operations as well as for cultural and recreational shellfish gathering. These factors include that:
  - The infective dose of norovirus is low, under 100 viral particles.
  - Norovirus particles are excreted in very high numbers during illness – upwards of  $10^9$  viral particles per millilitre of faecal material. Severe episodes could involve some litres of diarrhoea and vomiting, resulting in around  $10^{12}$  viral particles excreted. Excretion can persist for some weeks after the illness.

- Norovirus persists in seawater for some days to weeks, unlike most of the microbiological indicator organisms used for assessment and monitoring.
  - Bivalve molluscs are very effective at concentrating norovirus particles in their gut, with some research finding more than 100 viral particles per gram of shellfish flesh. The viral particles persist in oysters for several weeks, while bacterial indicators may return to acceptable limits.
  - Depending on location, dispersal and currents, a single episode of norovirus gastroenteritis could in theory contaminate several thousand cubic metres of seawater sufficiently to contaminate shellfish and cause further episodes or outbreaks of gastroenteritis.
7. As MPI are aware, an outbreak of norovirus in January this year was linked to the consumption of raw oysters from the Mahurangi/Matakana region. Between 24 January and 1 February 2017 ARPHS and MPI responded to reports of several clusters of gastroenteritis cases implicating raw oysters sourced from this region. ARPHS understands that MPI closed the Mahurangi Harbour for harvesting and further investigation, including a shoreline survey.
8. ARPHS is concerned that as urban expansion and agricultural intensification occur the risk of contamination will increase unless there is active catchment management and contaminant control. As such, ARPHS does not support any regulatory settings that preclude an assessment of the public health risk when undertaking consent renewals for existing marine farms located in marine environments which are either currently degraded, or likely to become degraded.
9. ARPHS therefore recommends the following changes be included in any proposed NES (illustrated through amendments to the Indicative NES provisions outlined in Appendix F of the discussion document):

*Amend Indicative provision 5 to consider:*

- Where, following the gazetting of this national environmental standard, a regional council determines through a regional coastal plan that an area of the coastal marine area is inappropriate for existing aquaculture, *or is likely to become inappropriate for existing aquaculture during the term of the consent because of deterioration of water quality caused by activities allowed in a relevant Regional or District Plan*, existing marine farms located within that area are a discretionary activity.

*Add the following matter of discretion to Indicative provision 12:*



- Monitoring of sea water quality – (this proposed matter of discretion aligns with policy 8: Aquaculture in the New Zealand Coastal Policy Statement 2010 (NZCPS), which recognises the need for high water quality for aquaculture activities.)

10. Inclusion of these provisions is our preferred approach as it will guarantee the opportunity to consider any potential/actual public health risks associated with existing marine farms.

## **Notification**

11. ARPHS considers public health units should have the opportunity to comment on a replacement consent application for an existing marine farm if there has been a previous history of disease outbreaks from shellfish contamination in the previous 10 years.

## **Protecting shellfish farms from sewage discharge from vessels**

12. Given shellfish are water quality sensitive receivers, the proposed NES development process may provide a good opportunity to review and amend the current standard for the distance a ship or offshore installation can discharge sewage from a marine farm. The Resource Management (Marine Pollution) Regulations 1998 currently state that no person may discharge sewage in the coastal marine area from a ship or offshore installation unless that discharge occurs more than 500m from a marine farm. This standard sits uncomfortably with policy 23 of the NZCPS.

13. During the Proposed Auckland Unitary Plan hearings process, ARPHS advocated that this 500m distance standard appears minimal, and is likely to be inadequate to prevent shellfish farm contamination. We also noted that currents, tides and dispersal are highly dependent on local situations.

14. We would support any future review of the Marine Pollution Regulations that considers the requirement for new vessels, including most small vessels, to be fitted with effluent holding tanks, as well as any initiatives that support the provision of on-shore collection and treatment facilities.

## **Conclusion**

15. Thank you for the opportunity to submit on the proposed National Environmental Standard for Marine Aquaculture.

## Appendix 1 - Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Counties Manukau Health and Auckland and Waitemata district health boards).

ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS' primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects on population health.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.