



**New Zealand King Salmon Plan Change and  
Resource Consent Applications:  
Key Issues Report**

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Prepared for the Environmental Protection Authority

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## INTRODUCTION

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The New Zealand King Salmon Company lodged requests for plan changes to the Marlborough Sounds Resource Management Plan and for nine resource consents for the activity of marine farming for salmon, with the Environmental Protection Authority on the 3<sup>rd</sup> of October 2011. The requests for plan changes are twofold:

- The substantive plan change is for the creation of a Coastal Marine Zone 3 with policies and rules for the Zone, in which marine farms for salmon are proposed to be a controlled activity. The Zone is to be created at eight sites in the Marlborough Sounds – Waitata Reach, Pelorus Sound (Waitata, Kaitira, Tapi, Richmond), Port Gore (Papatua), Queen Charlotte Sound (Kaitapeha, Ruaomoko) and Tory Channel (Ngamahau).
- What is referred to as an ancillary plan change by New Zealand King Salmon Company (NZKS), to change provisions of the Marlborough Sounds Resource Management Plan (Plan) that were introduced through Plan Change 16. Plan Change 16 was a private plan change lodged by New Zealand King Salmon Limited in response to the Aquaculture Reform Act 2004. The plan change was notified in March 2009 and became operative in August 2011. It introduced provisions for the allocation of authorisations, or the right to apply for resource consent for marine farming within a newly created aquaculture management area under the Resource Management Act 1991 (RMA). NZKS consider changes to these provisions are necessary in light of the most recent legislative reforms introduced on the 1<sup>st</sup> of October 2011.

Resource consents have been sought concurrently for the eight sites listed above. The ninth application for a resource consent at White Horse Rock does not need a plan change as it is located in a zone (Coastal Marine Zone 2) within which marine farming can occur through the granting of a resource consent.

The Minister for Conservation directed, on the 3<sup>rd</sup> of November 2011, that a Board of Inquiry determine the plan change requests and resource consent applications.

Under section 149G(3) of the RMA the Environmental Protection Authority (EPA) is required to commission the local authority to prepare a report on the key issues in relation to the proposal. The report must include:

- (a) *any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan; and*
- (b) *a statement on whether all required resource consents in relation to the proposal to which the matter relates have been applied for; and*
- (c) *if applicable, the activity status of all proposed activities in relation to the matter.*

In the agreement the Marlborough District Council (Council) has with the EPA to provide services to the EPA in respect of the NZKS proposal, a further matter was included and this was:

*'(d) any other matters that the Local Authority considers to be appropriate in respect of assisting the Board of Inquiry to understand the existing regional policy statement and plan provisions and the relationship between these provisions and the proposal'.*

The services agreement also stated that in addition to the above matters, the EPA may request  
5 information from the local authority on some particular issues that the EPA considers need to be  
addressed in the section 149G report. At the time of preparing this report the only matter that the EPA  
had requested the Council to include was a consideration of the permitted baseline and the existing  
environment.

In preparing the issues report regard has been had to:

- 10       ▪ The application documentation lodged by NZKS with the EPA;
- Files from the former planning authorities for the Marlborough Sounds, including the Marlborough  
          Sounds Maritime Planning Authority, the Marlborough Harbour Board and the Nelson-  
          Marlborough Regional Council;
- Current and historical planning documents; and
- 15       ▪ Discussions held with NZKS prior to the lodging of their application with the EPA.

A visit to all nine locations where the Coastal Marine Zone 3 and subsequent marine farms are proposed  
was made on Tuesday the 24<sup>th</sup> of February 2012.

This report does not contain a recommendation to the Board about the plan change or resource consents  
and does not include an assessment of the merits of the plan change requests or the applications for  
20 resource consents. Where it has been possible the report refers to the relevant provisions of the planning  
documents and the NZKS application rather than repeating them. (Note that any reference in the issues  
report to a 'Tab' is to the Tab number in the application documentation of NZKS). In some instances  
however, it has been necessary to quote from these documents to provide context for the information  
provided in this report.

25 In summary the key issues identified and described in this report include:

- Notification of the NZKS plan change.
- Is the plan change adopting an integrated approach to the management of natural and physical  
          resources of the Marlborough Sounds?
- The implications of allowing marine farms in areas of the Marlborough Sounds where marine  
30 farming is currently a prohibited activity.
- Integration of NZKS proposed plan change into the current plan framework.

- What are the community views (within Marlborough and beyond) on marine farming in the Marlborough Sounds?
- The proposed controlled activity status for marine farms in the proposed Coastal Marine Zone 3.
- 5     ▪ Introduction of new definition for 'marine farms and marine farming' in the proposed Coastal Marine Zone 3.
- Depositional effects from salmon farming beyond the Coastal Marine Zone 3 boundary.
- Discharge of greywater from the accommodation barges to the coastal marine area.
- Lapse period for resource consents.
- 35 year duration for resource consents at each of the nine sites.
- 10    ▪ The status of the proposed marine farm at White Horse Rock.
- Should the proposed plan change include specific provision to enable the imposition of coastal occupancy charges?
- Whether changes to the Plan referred to as the 'ancillary plan change' are necessary.

15    Because a local authority may choose to make its own submission on an application before the EPA, the key issues identified above may also be issues for the Marlborough District Council in the event it chooses to make a submission. Additionally, because the content of the issues report is limited by the services agreement, there may be other matters raised by the Council in a submission when the proposals are publicly notified, which are not covered in this report.

## **Key issues**

20    The key issues are described below. The first issue identified is an administrative one and will not have an ongoing impact on the substantive decision of the Board after notification.

### **Notification of the NZKS plan change.**

25    Section 149O of the RMA sets out the process for notification of plan changes before the EPA. There is an issue around the notification provisions and this is the parties on whom notification of the plan change/resource consents is served. This matter may be the responsibility of the EPA in terms of the legislation but in the context of historic community involvement in planning for the Marlborough Sounds, the extent of notification is an issue that the Board should be aware of.

30    Section 149O(6) appears limiting in terms of parties to serve notice on, particularly in the context of activities in the coastal marine area and that this area is regarded as public space. This section of the RMA states:

- (6) When the EPA gives public notice under subsection (2), it must also serve a copy of the notice on—
- (a) each owner and occupier (other than an applicant) of any land to which the matter relates; and
  - (b) each owner and occupier of any land adjoining any land to which the matter relates.

The Council's practice has been to serve notice on all ratepayers within a Plan area when notifying plan changes (or variations to proposed plans). This is particularly so when the subject of a plan change/variation has the potential to significantly change the existing policy approach within a plan. The nature of the plan change proposed by NZKS does have the potential to significantly change the approach to marine farming within the Marlborough Sounds.

The Council is aware through its Sounds Advisory Group<sup>1</sup> that there is concern within the Marlborough Sounds community regarding NZKS's proposals. If there had been widespread consultation by NZKS on the plan change and the individual sites proposed, then the issues around who to notify, in terms of the RMA provisions relating to the Board of Inquiry process, may not be of such a concern. If the Council itself had been undertaking a plan change of this extent and scope, it would have undertaken extensive consultation given the requirements of the First Schedule of the RMA. The community would then be in an informed position to be able to make a decision about whether to submit and the nature of any submission.

More importantly the plan change and resource consent applications have been determined by the Minister of Conservation to be a matter of national significance. When looking at the 'relevant factors in section 142(3)' from the Ministers direction (dated 3 November 2011) there are several statements highlighting the importance of the Marlborough Sounds to New Zealand and that there is likely to be widespread public interest or concern with NZKS's proposals. These are set out in the direction under (b) 'affects or is likely to affect a structure, feature, place, or area of national significance s142(3)(a)(iii)' and under the second bullet point of (f) 'other relevant factors (s142(3)(a))'.

Given these factors and without appropriate consultation having occurred at the time of preparing this report, the Board may wish to consider taking a wide interpretation of the notification provision of s.149O(6) insofar as it relates to 'land to which the matter relates'.

### **Is the plan change adopting an integrated approach to the management of natural and physical resources of the Marlborough Sounds?**

NZKS's proposed plan change is specific to the expansion interests of the Company. This is evident from the approach adopted in creating a Coastal Marine Zone 3 (CMZ 3) specific to 8 locations around the Marlborough Sounds. The new zone has specific policy, standards, terms and matters over which control is reserved and conditions may be imposed. The following matters are relevant to the consideration of

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<sup>1</sup> The Sounds Advisory Group (SAG) is comprised of people who represent communities in different parts of the Sounds as well as elected Councillors from Picton and Sounds wards. The SAG acts as one of the links between the Council and the Sounds' community; brings current Sounds' issues to the attention of the Council; supports and comments on Council projects; and identifies issues and makes policy suggestions to the Council, for policy and plan review.

whether this approach is achieving the integrated management of the natural and physical resources of the Sounds.

- Other existing NZKS salmon farms will not be subject to the CMZ 3 approach.
- The White Horse Rock site for which consent is sought from the EPA has not been proposed to be made CMZ 3.
- The specific provisions for salmon farms to be introduced through the new CMZ 3 will not be applied to the farming of salmon elsewhere in the Sounds.
- There is an inconsistency in approach in terms of the controlled activity status of salmon farms proposed through the CMZ 3 provisions compared with other new farms in Coastal Marine Zone 2 (CMZ 2) where new farms are a discretionary activity, regardless of species. This includes the proposed NZKS salmon farm at White Horse Rock.

If the plan change is successful in its current form there will be an inconsistent approach to how the resources of the Sounds are managed for salmon farming specifically and marine farming generally.

### **Implications of allowing marine farms in areas of the Marlborough Sounds where marine farming is currently a prohibited activity.**

In simple terms the current approach to planning for marine farming in the Marlborough Sounds is twofold: a zone where application can be made for resource consent; and a zone where no application can be made for resource consent. At eight of the nine sites that NZKS seeks to establish a new coastal marine zone (CMZ 3) and concurrent resource consents for a salmon farm, there is currently a zone where application cannot be made for a new marine farm. The only exception is the White Horse Rock site in Waitata Reach. To enable marine farming in this zone would be a significant shift in policy from the approach currently provided for in the Marlborough Sounds Resource Management Plan (Plan). This approach has been developed over a number of years building on the work of previous planning authorities along with input from Government agencies, marine farming interests, iwi, local and national interest groups and the wider community.

In the context of this significant policy shift, section 32 of the RMA will be extremely important for the Board in terms of whether the approach proposed by NZKS better meets the sustainable management purpose of the RMA than that provided for currently in the Plan.

### **Integration of NZKS proposed plan change into the current plan framework.**

The proposed plan change seeks to add an additional zone to the Plan to specifically provide for salmon farming in areas where marine farming is currently a prohibited activity. The new zone i.e. CMZ 3 would be stand alone and would not integrate with the current framework of the Plan, (or that which has been developed for the new regional policy statement/resource management plan). This matter of integration was discussed with NZKS prior to the lodging of the application who explained the Company favoured the

CMZ 3 approach, as they consider it gives them greater certainty of outcome and protection in planning terms for the sites that have been proposed. The issue for the Board is whether the CMZ 3 approach can be appropriately integrated into the current Plan framework.

### **What are the community views (within Marlborough and beyond) on marine farming in the Marlborough Sounds?**

The Council is currently in the midst of its review of the Marlborough Regional Policy Statement and both the Marlborough Sounds Resource Management Plan and Wairau/Awatere Resource Management Plan. Consultation has been undertaken for this review through a variety of means. This has included public meetings, interest groups, issues and options papers and since the drafting of policy has commenced, through a series of focus groups who meet to consider and debate the provisions drafted. This has included considering draft policy specifically for marine farming and for the various values of Marlborough's coastal environment (public access, natural character, biodiversity, water quality etc). The Council is also in the process of undertaking a perceptions survey to assist in the review process. Because this consultation is current and ongoing, the Board may wish to consider the views expressed through these processes in its decision making.

This is particularly so since NZKS has not undertaken and reported on any results of consultation undertaken for this process. It is acknowledged that the Company wanted to keep the specific sites 'under wraps' and therefore did not consult prior to the application being lodged on 1 October 2011 other than in a very general sense. The Council would have, if it had been undertaking a plan change of this extent and scope, undertaken the type of consultation that has been described in the preceding paragraph. This lack of consultation on a plan change is an issue for the Board to consider.

### **The proposed controlled activity status for marine farms in the proposed Coastal Marine Zone 3.**

The plan change proposes that a salmon farm in CMZ 3 would be a controlled activity subject to a set of standards and terms. A significant issue for the Board is whether a controlled activity status is appropriate for an activity that has such an extensive list of conditions that must be complied with on an ongoing basis. Of note is that no other activity in the Plan involving occupation of the coastal marine area has the same status as what is proposed through the NZKS plan change. By way of comparison jetties, boatsheds, and swing moorings are discretionary activities, including where a new consent is sought on the expiry of a previous consent.

### **Introduction of new definition for 'marine farms and marine farming' in Coastal Marine Zone 3.**

Through proposed change 18 (Tab 2, Volume One) NZKS have sought to include a specific meaning for marine farms and marine farming in the new CMZ 3. Currently the Plan has a definition for these terms within Chapter 25.0 Definitions (Volume Two of the Plan). There does not appear to be a clear reason for the need for an additional definition of these terms specifically for the CMZ 3. This raises an integration issue and there is also potential for confusion to arise in the administration of these provisions. The

Board will need to consider whether there is a need to have a separate definition and if so whether the manner in which NZKS have proposed is the most appropriate.

### Depositional effects from salmon farming beyond the Coastal Marine Zone 3 boundary.

Following on from the proposed inclusion of a definition for marine farming in the CMZ 3, there is a potential issue for the Board in terms of an aspect of that definition in relation to the effects of the salmon farming activity. The definition proposes that marine farms and marine farming shall include:

- a) *All structures, activities in the coastal marine area, occupation of the common marine and coastal area, disturbance of or damage to the foreshore or seabed, deposition on the foreshore or seabed, and other ancillary activities and structures, associated with marine farms and marine farming;*
- b) *All discharges to water or air associated with marine farms and marine farming, but excluding the discharge of human sewage;*
- c) *The taking and use of coastal water associated with marine farms and marine farming;*

It is unclear as to what the 'deposition' in a) refers to, especially as discharges are provided for in part b) of the proposed definition. It could be assumed that the deposition relates to the salmon feed and excrements that falls to the seabed.

The assessment of effects at Page 89, 6.3.2 describes the effects of salmon farming on the seabed. At page 90, Figure 6.3 shows the maximum modelled depositional loading as a blue ellipse for the Port Gore and Waitata sites. This blue ellipse exceeds the proposed CMZ 3 boundary, which is shown on the Figure as a red dotted line. (Appendix 4 to the NZKS application, which is the Seabed Report, has enlarged versions of the maps that make the boundaries easier to see). On page 92 of the assessment of effects, Figure 6.4 shows the Tory Channel and Queen Charlotte sites and these also show the predicted maximum levels as exceeding the proposed CMZ 3 boundary.

The potential issue for the Board is whether the deposition relates to the discharge of feed to the seabed as a consequence of the salmon farming activity or whether the deposition can be assessed separately from the 'wider activity' of salmon farming. If the discharge can be assessed separately from the 'wider activity' of salmon farming, the discharge outside the CMZ 3 would be classified as a non-complying activity pursuant to Rule 35.5 of the Plan. However, if the deposition cannot be assessed separately from the 'wider activity' of salmon farming, then this would be classified as a prohibited activity pursuant to Rule 35.6 of the Plan (being a marine farm in CMZ1).

### Discharge of greywater from the accommodation barges to the coastal marine area.

The application details that a barge containing a building for offices, feed and accommodation forms part of the marine farm operation. This is to be approximately 280m<sup>2</sup> in area. Greywater from the accommodation facilities is to be discharged to the coastal marine area - this is also the practice for existing salmon farms. An issue for the Board to consider is the effect of the Resource Management (Marine Pollution) Regulations 1998 on this discharge and whether in fact the consents sought for this discharge are necessary.

### Lapse period for resource consents.

The 2011 amendments to the aquaculture provisions of the RMA included a change to the provisions governing the lapsing of consents for aquaculture activities. Section 125(1)(b) of the RMA now provides: 'A resource consent lapses on the date specified in the consent or, if no date is specified, . . . 3 years after the date of commencement if the consent does authorise aquaculture activities to be undertaken in the coastal marine area.'

The purpose of reducing the period within which consents relating to aquaculture activities are to be given effect to (3 years compared to 5 years for non-aquaculture activities) was to ensure that consented aquaculture space was used in a timely manner.

There is a lack of clarity in the assessment of effects about the initial development of the proposed NZKS marine farms. It is acknowledged there is information about staging feed and production levels dependent on consent conditions. However, the statement in paragraph 5 of 2.0, Page 1, '*The farms are each to be progressively established over a period of 8 to 10 years in response to export and domestic sales*' could be interpreted in a way that suggests there is also a staging of the farms as well. This is an issue that the Board needs to consider as there is the potential for conflict between the recent amendments to section 125 of the RMA and NZKS's intentions for development.

### 35 year duration for resource consents at each of the nine sites.

NZKS have specifically sought a 35 year duration for each of the resource consents applied for<sup>2</sup>. Marine farms consents in the Marlborough Sounds have historically been granted for a period of 20 years. The Plan currently requires that for marine farms to be a controlled activity or restricted discretionary activity the coastal permit for occupancy shall not exceed 20 years. The discretionary activity provisions for marine farms also specify a 20 year duration for marine farm coastal permits. This length of duration has also been imposed by the Environment Court in marine farm appeals that have come before it. Of note for the Board is that the 2011 RMA reforms have provided that consent duration for marine farms should be a minimum of 20 years (unless there are exceptional circumstances why there should be a lesser duration).

### The status of the proposed marine farm at White Horse Rock.

There are two issues concerning the status of the proposed White Horse Rock site: the first is its status in terms of RMA classes of activity; and the second is in relation to an existing resource consent application for the site, which is as yet undetermined.

The resource consent form (Tab 30, page 3, first paragraph) and the assessment of effects (Tab 31, Page 2, paragraph 3), both state that the proposed farm site at White Horse Rock meets the Plan standards to be assessed as a discretionary activity. This is in terms of Rule 35.4.2.9 Standards a) and

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<sup>2</sup> Tab 30, Resource Consent Application form, Page 3, paragraph b.

b). The White Horse Rock site does meet these standards but does not meet the term specified in Rule 35.4.2.9.2. This rule specifies a term for consent that may be granted of up to 20 years. NZKS have sought a 35 year duration of consent for all of the nine proposed farms. Because the White Horse Rock will not be able to meet Rule 35.4.2.9.2, the Board needs to consider assessing this site as a non-complying activity – Rule 35.5, first bullet point.

The second issue relates to a resource consent application U081288 by NZKS to farm salmon at the White Horse Rock site i.e. the same site as applied for by NZKS to the EPA. In brief, resource consent U010272 was granted in 2002 at this site to T. Madden for the farming of green shell mussels, scallops, blue shell mussels, flat oysters and algae and a fisheries permit was granted in April 2008. Both the resource consent and fisheries permit were transferred to NZKS in September 2008. A resource consent application was received by the Council in December 2008 to farm salmon at this site. The Council granted consent to the application, which was subsequently appealed to the Environment Court and remains to be determined. Tab 31 of the NZKS application to the EPA (Assessment of Environmental Effects for the White Horse Rock site) sets out more background to the U081288 application. The issue for the Board is determining how to consider the EPA application when there is an existing application for the same activity at the same site before the Environment Court.

### **Should the proposed plan change include specific provision to enable the imposition of coastal occupancy charges?**

NZKS's proposal to introduce a new coastal marine zone in eight discrete locations in the Marlborough Sounds is specific to the interests of the Company. In this regard a key issue for the Board to consider is whether the plan change should include provisions for coastal occupancy charges in terms of the matters in section 64A(1) of the RMA concerning the extent to which:

- Public benefits from the coastal marine area are lost or gained; and
- Private benefit is obtained from the occupation of the coastal marine area.

Currently the Council does not have a charging regime in the Plan but does have a statement that says charging for occupation of coastal space is justified in principle in circumstances where the private benefit is greater than public benefit. The Plan does not include a charging regime partly because of equity issues, in that initially not all marine farms were subject to the provisions of the RMA, and partly because the Council's records of all coastal structures were incomplete. These matters are now resolved.

The proposed new CMZ 3 will be in locations where marine farming has not occurred previously, and new provisions are proposed to be introduced into the Plan through this application. This creates statutory responsibilities for the Council in terms of state of the environment monitoring and monitoring the efficiency and effectiveness of policies, rules or other methods in the Plan<sup>3</sup>. The monitoring described in

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<sup>3</sup> RMA, s35(2).

the application addresses the effects of the individual salmon farms<sup>4</sup> but not the wider effects and potential cumulative effects of implementing the plan change. In the absence of the ability to address these responsibilities through a charging regime, the ratepayers of Marlborough will have to fund the monitoring. This is an important issue for the Board to consider.

5 **Whether changes to the Plan referred to as the ‘ancillary plan change’ are necessary.**

The changes proposed by NZKS through the ‘ancillary plan change’ are to provisions that were introduced through Plan Change 16 to address allocation methods resulting from the Aquaculture Reform Act 2004. These provisions are already confusing as the reason for them has essentially been removed with regional coastal plans no longer having to have aquaculture management areas (AMA’s) under the 10 2011 amendments to the RMA.

The changes proposed by NZKS in this application perpetuate AMA’s, which will also create integration issues, similar to those for the main plan change. For example definitions of ‘aquaculture management areas’ are proposed to be introduced through the objectives and policies and the zone rules: definitions are usually contained in a stand alone Definitions chapter of the Plan – Chapter 25 of Volume Two.

15 The Board may wish to consider whether there is a need for the provisions introduced through Plan Change 16 to be amended at all given that NZKS have the right to apply (and have done so) for the sites concurrently with the plan change application as a consequence of the 2011 RMA changes. Currently the Plan Change 16 rules have no effect by virtue of current General Rule 35A.2, which states that “*General Rule 35A.2 shall have no effect until Plan Change 16 becomes operative and the reviewed objectives, 20 policies and methods for aquaculture in the Proposed Marlborough Regional Policy Statement have been notified.*” While Plan Change 16 has been made operative, objectives, policies and methods for marine farming in the reviewed RPS have not been notified. A review of these provisions is underway and the Plan Change 16 provisions are intended to be removed.

## **Scope of the report**

25 The scope of the issues report is set out as follows:

**Part One** – Covers the current planning framework for the Marlborough Sounds including consideration of the Marlborough Regional Policy Statement, Marlborough Sounds Resource Management Plan, and the New Zealand Coastal Policy Statement 2010.

30 **Part Two** – Provides the context for planning for marine farming in the Marlborough Sounds, from the early days of the establishment of the industry through to the Marlborough Sounds Resource Management Plan becoming operative. An overview of how the Plan has been administered since becoming operative is also included.

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<sup>4</sup> Tab 3, Assessment of Environmental Effects, 7.0 and Tab 2, Page 7, Rule 35.2.5A.3 b).

**Part Three** – Includes a statement about the matters in s149G(3)(b) and (c) of the RMA, consideration of the permitted baseline and the existing environment as requested by the EPA and information about gazetting coastal space for iwi settlement.

5 **Part Four** – Provides information to the Board on the review of Marlborough’s resource management documents.



## PART ONE – RELEVANT PLANNING PROVISIONS

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This part of the report describes the provisions considered to be relevant to the NZKS plan change and resource consent applications. NZKS has provided an assessment of the statutory instruments in respect of the plan change in the Section 32 report (Tab 4). In many instances the provisions referred to below are the same provisions referred to in the Section 32 report (s32).

The three operative documents considered are:

- The New Zealand Coastal Policy Statement (NZCPS);
- The Marlborough Regional Policy Statement (RPS); and
- The Marlborough Sounds Resource Management Plan (MSRMP or Plan).

### New Zealand Coastal Policy Statement

The s32 evaluation identifies 13 policies from the 2010 NZCPS that are relevant to the plan change application. Clarification for the Board is provided on a number of these policies. There are two other policies referred to below that have not been identified as being relevant by NZKS.

**Policy 2** – This policy is very important given the number of iwi that have historically had a presence in various parts of the Marlborough Sounds. With no direct consultation having occurred with Marlborough's tangata whenua iwi by NZKS at the time of the application being lodged with the EPA, and none intended to occur until post notification, there is an issue for the Board in terms of whether the plan change as it stands has been able to give effect to aspects of this policy, particularly 2(b).

**Policy 3** – Policy 3 regarding the precautionary approach has not been identified as being relevant to the plan change application in the s32 analysis. However, this policy may be relevant to consider if the Board considers the effects of the proposed salmon farms resulting from the plan change are '*uncertain, unknown, or little understood, but potentially significantly adverse*'.

**Policy 4** – The particular aspects of this integrated management policy relevant to the plan change application are found in subclause (c). Subclause (c)(ii) related to public use and enjoyment of public space in the coastal environment, is highly pertinent in the context of all sites. The importance of public use and recreational use and in terms of the importance of Queen Charlotte Sound is recognised in the current RPS and Plan<sup>5</sup>. There is also a link between this policy and Policy 18 of the NZCPS.

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<sup>5</sup> RPS Policy 7.2.10(a) and Method 7.2.11(c). MSRMP Volume One. Chapter 8.0 Policy 8.3.1.2 and 1.3, Chapter 9.0 Policy 9.2.1.1.1 and 1.6.

Subclause (c)(iii) may also be relevant in terms of what is occurring on land adjoining some of the proposed sites. In a number of cases there is considerable potential for restoration of terrestrial indigenous vegetation, something that is occurring in many areas of the Sounds. The Board may need to consider whether the potential for restoration would be viewed differently if a salmon farm were present. There is a link with this policy and Policy 14, which is concerned with the restoration of natural character of the coastal environment.

Subclause (c)(v) may be relevant if the Board decides that cumulative effects from the salmon farms, whether occurring over time or in combination with other effects, are likely to be significantly adverse, and whether the controlled activity status with its standards, terms and matters over which control is reserved are sufficient to address these effects.

**Policy 6** – The policy is split into activities in the coastal environment (subclause (1)) and activities in the coastal marine area (subclause (2)). For subclause (1), (h) and (j) are relevant. (1)(h) has importance because the Marlborough Sounds environment does have areas that are visually sensitive to development. The issue for the Board will be whether the NZKS sites are visually sensitive and can the visual impacts from the salmon farms be avoided in these areas. For subclause (j), the issue for the Board is whether for areas having significant indigenous biological diversity, there is a sufficient buffer area between them and the proposed salmon farms, to ensure the values of the significant sites are protected.

For that part of the policy specific to the coastal marine area, the s32 evaluation has discussed clauses (c) and (e). Whether or not the sites selected by NZKS are appropriate in terms of (c) will be an important matter for consideration by the Board. Clause (a) is also relevant as this seeks to recognise the social, economic and cultural wellbeing of people and communities from using and developing the coastal marine area. Clause (b), which requires recognition of the need to maintain and enhance public open space and recreation qualities and values of the coastal marine area, is also a relevant provision. There are links with this aspect of Policy 6 and Policies 4 and 18, which refer to the importance of *'public use and enjoyment of public space'* and *'the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation'*.

**Policy 7** – NZKS have identified this policy as having relevance because the work undertaken to prepare the plan change has strategically evaluated the appropriateness of various sites before selecting the proposed eight sites<sup>6</sup>. However, the plan change is specific to the eight sites identified by NZKS. Consequently the Board may need to decide whether Policy 7 is relevant in terms of 'strategic planning' as envisaged by the wording of this policy.

**Policy 8** – A specific policy on aquaculture is new to the NZCPS. This policy directs that the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people

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<sup>6</sup> Tab 4, Page 9, Policy 7 discussion.

and communities is recognised. The Plan currently has given recognition to these matters and the issue for the Board is, in terms of 8(a), to determine whether the sites identified by NZKS are in appropriate locations.

5 **Policy 11** – The policy on indigenous biodiversity is relevant for the Board's consideration as there are areas with significant indigenous marine biodiversity value in close proximity to some of the proposed salmon farm sites of NZKS. Some of these are already recognised by the current Plan while others have become apparent through the review work the Council is undertaking on Marlborough's resource management framework. In describing the effects on the seabed, the assessment of effects identifies that for a number of the sites the maximum depositional modelling of the maximum likely feed loading will  
10 extend beyond the proposed CMZ 3 boundary<sup>7</sup>. This will be important in the Board's consideration of whether the proposed salmon farm sites are appropriately located or not.

**Policy 12** – The establishment and relocation of equipment and stock required for or associated with aquaculture is an activity identified in Policy 12(2)(d) that may release or otherwise spread harmful aquatic organisms. The policy is therefore relevant to the Board's consideration of the plan change and  
15 resource consent applications. The s32 evaluation for this policy states that '*this is a matter over which the Council has reserved control when assessing controlled activity consents*'. This could be interpreted as an existing controlled activity standard in the Plan. However, this is not the case and the matter over which control is reserved in relation to biosecurity and disease risks is to be introduced through the NZKS plan change<sup>8</sup>.

20 **Policy 13** – Given the matter of national importance in s6 of the RMA concerning natural character, Policy 13 of the NZCPS is of obvious significance for the Board in determining whether the proposed salmon farms are an appropriate form of development in the locations identified. Through the Council's review work on the RPS and resource management plans, areas of high, very high and outstanding natural character have been mapped. Of the nine NZKS sites only the Tory Channel site (Ngamahau)  
25 has been classified lower than 'high' so the matters in Policy 13(1)(a) and (b) are highly relevant.

**Policy 14** – This policy on the restoration of natural character has not been identified in the s32 evaluation as having relevance, however it does have particular relevance at a number of the proposed NZKS sites. Many areas of the Sounds that were once farmed have been left to revert to a bush cover. This includes areas landward of a number of the NZKS proposed sites so Policy 14 is a relevant  
30 consideration for the Board. This is particular so given that NZKS have sought a consent duration of 35 years and in this time significant restoration of indigenous vegetation could be expected to occur.

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<sup>7</sup> Tab 3, Pages 89-96, 6.3.2. Sites at Waitata, Kaitira, Tapipi, Richmond, Ngamahau and Ruaomoko all have depositional footprints that extend beyond the proposed CMZ 3 boundary.

<sup>8</sup> Tab 2, Page 8, Proposed Rule 35.2.5A.3(j).

**Policy 15** – The impact of the plan change and resource consents on natural features and landscapes are relevant for the Board’s consideration in terms of Policy 15. The s32 evaluation has identified that adverse effects on outstanding natural features and outstanding natural landscapes in the coastal environment are to be avoided and that this has been a fundamental consideration in determining the appropriateness of each of the salmon farm sites<sup>9</sup>. Subsection (b) of Policy 15 also requires the avoidance of significant adverse effects and the avoidance, remediation, or mitigation of other adverse effects of activities on other natural features and natural landscapes in the coastal environment. The Council’s recent review work on landscapes has identified that all of the Sounds has landscape value, either as a visual amenity landscape (in terms of s7 of the RMA) or as an outstanding natural feature or landscape in terms of s6. Therefore Policy 15 has implications for both outstanding natural features and landscapes and ‘*other natural features and natural landscapes in the coastal environment*’ – Policy 15(b).

**Policy 17** – The full relevance of this policy may not be able to assessed without site specific consultation having been undertaken with Marlborough’s tangata whenua iwi. The author of the Heritage Report referred to in the s32 evaluation stated that ‘*a discussion of the possible impact of salmon farming on Maori cultural an spiritual values falls outside the terms of my brief*’<sup>10</sup>. Given the broad nature of historic heritage as defined in the RMA and the extensive historical occupation by Maori of the Marlborough Sounds<sup>11</sup>, it may be difficult for the Board to determine the relevance of Policy 17 without consultation between NZKS and Marlborough’s tangata whenua iwi taking place.

**Policy 18** – Given links with other policies about public open space and use of these areas in the NZCPS, along with the matter of national importance in s6 of the RMA regarding public access, Policy 18(a) and (b) in particular, are highly relevant for the Board’s consideration.

**Policy 23** – As there will be significant discharges into the coastal marine area from the proposed salmon farming operation, this policy is also very important in the Board’s consideration of the application.

## Marlborough Regional Policy Statement

The RPS became operative on 28 August 1995. Five regionally significant issues for Marlborough are identified in the RPS, which are:

- protection of water ecosystems;
- protection of land ecosystems;
- enabling community wellbeing;

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<sup>9</sup> Tab 4, Page 10.

<sup>10</sup> Tab 24, Page 55, Paragraph 100.

<sup>11</sup> See Tab 25 “Iwi Interests in the Marlborough Sounds”.

- protection of visual features; and
- control of waste.

## ***Protection of water ecosystems***

### **Water Quality**

5 Under the first issue, the protection of water ecosystems in the coastal marine area, can be found at 5.3. Policy 5.3.5, as indicated in the s32 evaluation seeks to “*Avoid, remedy or mitigate the reduction of coastal water quality by contaminants arising from activities occurring within the coastal marine area*”. Because salmon feed is regarded as a contaminant, this policy has relevance for the Board.

10 Policy 5.3.7(c) is also of relevance for the Board. This policy seeks to ensure in relation to point source discharges that new or additional point source discharges should not cause significant adverse effects in the receiving water, after reasonable mixing. This policy has relevance for the feed proposed to be discharged to the coastal marine area as part of the salmon farm operation.

### **Marine Habitat**

15 In explaining the objective (5.3.10) to maintain or enhance the natural species diversity and integrity of marine habitats, the RPS makes a link with the natural function of marine habitats relying on a high level of water quality. This is an important link with the previous policies on managing coastal water quality.

Policy 5.3.11 seeks to avoid, remedy or mitigate the effects of disrupting marine habitat that can arise through a range of activities. To achieve this policy a range of advocacy methods are identified as well as identifying and protecting areas of significant marine habitat in resource management plans.

20 The s32 evaluation<sup>12</sup> states that the balance of the CMZ 1 Zone will be able to be left free of marine farm development, which will avoid ad hoc development of salmon farming over time. The connection with this statement and the objective and policy for coastal marine habitats is unclear. Because the First Schedule process of the RMA allows any person to undertake a private plan change, the CMZ 1 Zone could be the subject of further consideration for salmon farming or other forms of marine farming.

### **Community wellbeing**

This part of the RPS provides for community wellbeing through five separate elements, which are:

- community;
- activities involving public resources;
- culture and heritage;

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<sup>12</sup> Tab 4, Page 11, Lines 1 and 2.

- natural hazards; and
- energy.

The first three of these have relevance for the plan change application.

## Community

5 To achieve Objective 7.1.2, to maintain and enhance the quality of life of the people of Marlborough, the explanation states it will be necessary to define the those things that make up quality of life and include provisions in resource management plans to take account of those things. The policy under this objective with most relevance for the NZKS plan change is 7.1.7 – Amenity Values, in which the enhancement of the amenity values provided by the unique character of Marlborough settlements and locations is to be  
10 promoted. Methods in 7.1.8 include defining the criteria that describe the function, nature and character of settlements and sites in Marlborough and including provisions in resource management plans to maintain or enhance amenity values.

Objective 7.1.9, enabling use, development and protection of resources is particularly relevant to the NZKS plan change. The explanation to the objective acknowledges that fundamental to the existence of  
15 communities is the “*ability to produce, process, manufacture, harvest, distribute and retail to extract economic benefit from natural and physical resources*”. This is tempered by requiring the basic principles of sustainability to guide all activities. The objective also recognises the social and economic consequences arising through resource use, and that this can strengthen communities and provide a range of opportunities, including employment.

20 Policy 7.1.10 enables appropriate type, scale and location of activities through amongst other things clustering activities with similar effects and ‘*ensuring activities reflect the character and facilities available in the communities in which they are located*’. Methods state that resource management plans will contain rules to control the type, scale and location of resource related effects for activities, including different rules in different locations.

25 The s32 evaluation highlights Policy 7.1.12 as having particular relevance. This policy is concerned with diversification and the wording of the policy refers to ‘*new activities (including new primary production species)*. Salmon farming is not a new activity nor is salmon a new primary production species, therefore the Board will need to determine whether this policy does have relevance for the application.

30 Policy 7.1.19 seeks to enable the safe and efficient operation of water transportation systems. This is supported by methods to enable the continuation and appropriate expansion of passenger and freight links between the North and South Islands and the operation of barges to transport freight, livestock and produce from those areas where no suitable land transport is available.<sup>13</sup>

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<sup>13</sup> RPS, Methods 7.1.20(a) and (d).

## Activities involving public resources

The RPS identifies two areas where the allocation of public resources is considered to be an issue.

These are the rights to take and use freshwater and the rights to occupy space in the coastal marine area. For the coastal marine area, the RPS states that occupation of coastal marine space may

effectively prevent other activities from occurring but also that from a user's perspective, certainty in the terms of occupancy for commercial and financial reasons is required.

Objective 7.2.7 is relevant as this seeks the '*subdivision use and development, of the coastal environment, in a sustainable way*', identifying that the coastal environment is used for a wide variety of

purposes to meet the commercial, economic, social, and recreational needs of the people who use the

area either on a permanent or casual basis. This includes the activity of marine farming. The two policies under this objective, 7.2.8 and 7.2.10 are both relevant to the NZKS proposed plan change.

Policy 7.2.8 is a general policy seeking appropriate subdivision, use and development and the reasons for the policy states that these will be encouraged in areas where the natural character of the coastal

environment has been compromised. Inappropriate subdivision, use and development is to be avoided

but the explanation also reiterates the point made in the explanation to the objective that economic, social and cultural wellbeing are enabled through appropriate subdivision, use and development of the coastal environment.

Methods in 7.2.9 to support the policy include the use of criteria to identify inappropriate/appropriate locations for various activities and rules to manage effects.

The four policies under 7.2.10 Allocation of Coastal Space are all relevant for the Board, although (a) and

(d) are particularly relevant. Policy (a) highlights the importance of public access and recreational use in assessing all development proposals in the coastal marine area. Explanation/reasons for this policy state

that allocation of rights to exclusively occupy an area or erect a structure, can limit the public's access to and enjoyment of the area. Policy (d), which is specific to aquaculture, states that allocating space for

aquaculture will be based on '*marine habitat sustainability, habitat protection, landscape protection, navigation and safety, and compatibility with other adjoining activities*'. The explanation states that it will be necessary to prohibit aquaculture in some areas for these reasons.

Method 7.2.11(c) identifies that within resource management plans, objectives, policies and controls will: ensure proponents of all developments in the coastal marine area consider public access and

recreational use; consider the degree to which developments provide for public use/benefit; and restrict aquaculture from Queen Charlotte Sound, significant habitat areas, and important navigational routes. A

further specific method regarding aquaculture is included in 7.2.11(d), which states that research into defining the effects of aquaculture on the sustainability of the marine habitat will be supported and be a co-operative venture between the industry and the community.

## Culture and heritage

The culture and heritage provisions deal with buildings, trees, structures and locations or areas with significant value for the community. The RPS also recognises in Objective 7.3.5 that there is a diversity of cultural values within the community that need to be recognised and accommodated. Policy 7.3.6, which supports this objective, is important as it signals that provision will be made for iwi consultation during the plan preparation and administration process. The explanation to the policy describes a partnership in resource management between government and iwi, which involves the Council and all local iwi.

### ***Protection of visual features***

The RPS states that Marlborough has a wide variety of visual features, ranging in importance from nationally significant, through distinctive, to those of less importance and that in many cases the landscape is characterised by change, imposed either by natural processes, or by the use of resources. The provisions identify that the visual character of Marlborough falls within indigenous, working and built landscape types and that the boundaries between these are not absolute and do overlap and also that landscapes are constantly changing. Objective 8.1.2 seeks to maintain and enhance the indigenous, working and built landscapes.

Policy 8.1.3 concerns outstanding landscape features and is a direct response to s6 matters of national importance. This policy is therefore relevant where these landscapes exist near the proposed NZKS marine farm sites. The method for this policy (8.1.4) is to identify the outstanding landscape features and use controls to protect the characteristics that are significant.

Policy 8.1.5 seeks to enhance the nature and character of the three types of landscapes referred to in Objective 8.1.2, while Policy 8.1.6 is important in giving effect to the natural character provisions of s6 of the RMA and the NZCPS. The explanation to Policy 8.1.6 notes that natural character needs to be retained without degradation from land and water based activities. Open space is also recognised as playing an important role in the natural character of Marlborough's coastal environment.

## **Marlborough Sounds Resource Management Plan**

The Marlborough Sounds Resource Management Plan is an operative combined district, regional and regional coastal plan for that part of the Marlborough district shown in Appendix A. The Plan comprises three volumes specific to the area in Appendix A as follows:

**Volume One** - Contains the introduction to the Plan which incorporates information requirements for resource consent applications, cross boundary matters and monitoring. Volume One contains the issues to be addressed by the Plan as a whole, the objectives, policies and methods to be used in promoting sustainable management of the natural and physical resources of the Marlborough Sounds and the environmental results anticipated from their implementation.

**Volume Two** - Sets out the rules to achieve the objectives, policies and methods including the assessment criteria for those activities subjected to resource consents. Volume Two also contains the interpretation section which defines the words, terms and phrases used in the Plan.

**Volume Three** - Contains the planning maps.

5 (A fourth volume for both the Marlborough Sounds Resource Management Plan and the Wairau/Awatere Resource Management Plan includes any national policy statement, national environmental standards and regulations.)

The Plan was made operative in part, in respect of the regional coastal plan in March 2003, as at that time there were several outstanding appeals arising from the originally notified Plan, and also arising from  
 10 variations to the Plan. On the settling of these appeals and other plan changes the regional coastal, regional and district plan became fully operative on the 25<sup>th</sup> of August 2011.

### **Natural Character – Chapter 2**

In addition to the evaluation provided in the NZKS s32 report, I note several other aspects of the Natural Character chapter of importance. These include:

- 15       ▪ Protecting the individual elements of natural character goes towards preserving natural character from inappropriate subdivision, use and development – 2<sup>nd</sup> paragraph of 2.1.5; and
- In addition to protecting the individual elements of natural character, it is important to address the cumulative effects of subdivision, use and development – 3<sup>rd</sup> paragraph of 2.1.5.

The Plan describes the framework for natural character at 2.1.6. Map 106 in Volume Three of the Plan  
 20 shows the natural character areas referred to in 2.1.6, which are then described in Appendix Two of Volume One of the Plan. To assist the Board the following table shows the actual number/letter reference from Appendix Two and Map 106 relevant to the NZKS sites. Note that the NZKS s32 evaluation refers to just the marine sites whereas the elements of natural character included in Policy 2.2.1.3 of the Plan also include terrestrial aspects in terms of their contribution to natural character.

<b>NZKS sites</b>	<b>Marine Ecosystems</b>	<b>Land Ecosystems</b>
Waitata Reach	E. Middle Pelorus Sound	4. Bulwer
Port Gore	B. d'Urville Island – Northern Cook Strait	3. Cook Strait
Ngamahau	G. Tory Channel	5. Arapawa
Kaitapeha and Ruaomoko	G. Tory Channel and H. Queen Charlotte Sound	5. Arapawa

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The explanation<sup>14</sup> to the policies in 2.2 is important as it makes a link with other sections of the Plan in terms of contributing to natural character and providing an integration mechanism for the management of natural character.

The Rules method for this chapter is particularly important stating that rules have been constructed to ensure that the elements contributing to natural character are protected from inappropriate subdivision, use and development. Reflecting the link made with other sections of the Plan described in the previous paragraph, this is an important method connected with the establishment of Coastal Marine Zone 1 – see Policy 9.2.1.1.1 and 9.2.2 Methods of Implementation Zoning (paragraph 4).

### ***Indigenous Vegetation and Habitats of Indigenous Fauna – Chapter 4***

The reference in the s.32 evaluation to the Council working with the Department of Conservation to identify ecologically important marine, freshwater, island and mainland areas is correct in part. Identification of significant sites has occurred and this is reflected in the first paragraph of the 'Schedule/Information database' method. (The relevant policy is Policy 4.3.1.1.) The mapped sites of significance are shown on Maps 68 – 72 in Volume Three of the Plan. The sites are then scheduled in Appendix B of Volume Two with a brief description of status (international, national or regional significance) and its ecological value. Of note is that the majority of the land based sites listed in Appendix B are on publicly owned land.

The following table taken from Appendix B shows the ecologically significant sites relevant to the NZKS sites.

Map Key	Site	Status	Ecological Value
<b>WAITATA SITES</b>			
1.	COASTAL AND MARINE (INTERTIDAL AND SUBTIDAL)		
1/10	Keep Clear Rock, Pelorus Sound	2	Offshore rock reefs, often remote, high degree of natural character. Often high species diversity and abundance of adult reef fish (red moki, tarakihi). Low turbidity. High diversity of filter feeders and algae.
1/11	Forsyth Bay, Pelorus Sound	2	King shag feeding habitat.
1/11	Richmond Bay, Pelorus Sound	2	As above
1/11	Ketu Bay, Pelorus Sound	2	As above
1/11	Waitata Bay, Pelorus Sound	2	As above
1/11	Waitata Reach, Pelorus Sound	2	As above
1/15	Boat Rock Point	2	Buffer zone for king shag breeding and roosting site

<sup>14</sup> MSRMP Volume One, Chapter 2, Page 4, First paragraph of explanation under Policy 2.2.1.8.

QUEEN CHARLOTTE SOUND/TORY CHANNEL SITES			
1.	COASTAL AND MARINE (INTERTIDAL AND SUBTIDAL)		
1/22	Blumine Island Water, Queen Charlotte Sound	2	<b>Hector's dolphin</b> (vulnerable) rare in Sounds.
3.	ISLANDS		
3/39	Arapawa Island Reserves, Queen Charlotte Sound	2	Original cliff vegetation (rare). <b>Native land snail</b> (threatened). <i>Megadromus</i> beetle (rare). Fierce lancewood, Taranua lacebark, Cook Strait kowhai, mistletoe, raukawa, large-leafed milktree (rare or uncommon). <b>Possum free</b> .
PORT GORE SITES			
4.	MAINLAND - PROTECTED NATURAL AREAS		
4/07	Cape Lambert, Outer Marlborough Sounds	3	Characteristic <b>headland vegetation</b> . Cook Strait kowhai (regionally uncommon). Cook Strait and coastal tree daisy. <i>Peripatus</i> species (rare invertebrate).

KEY:	
Status	Ecological Value
1 = International Significance	The principal ecological feature of the site is written in <b>bold type</b> .
2 = National Significance	The status of sites usually relates to principal features.
3 = Regional Significance	

The 'Schedule/Information database' method (paragraphs 4-6) also describes a further process that will take place to identify sites of significance in terms of section 6(c) of the RMA. This process, which involves working with the Department of Conservation and landowners, is in relation to identifying sites of significance on private land. Through the Council's Significant Natural Areas Project, which has been operating since 2000, extensive field surveys have been carried out on private land throughout large areas of Marlborough. These surveys have been carried out on a voluntary basis with a large number of property owners willingly allowing the Council access to their property to carry out ecological surveys. The information collected has provided a district wide overview of the extent and state of Marlborough's biodiversity resources as well as more detailed individual property assessments.

Although the explanation to the 'Schedule/Information database' method describes a plan change taking place to provide a management framework for significant sites once they have been identified, this has not occurred. The Council has instead opted to use a non-regulatory approach to management of significant sites through a landowner assistance programme operating alongside the field survey work and so these sites on private land have not been identified on the Plan's maps.

The district scale information has been compiled into two summary documents, one for South Marlborough, and one for north Marlborough<sup>15</sup>, which covers the Sounds. These reports do not identify specific sites but provide an overview of the survey work carried out. Although the sites have not been released in published form, the information gained through the surveys is used by the Council in determining resource consent/plan change applications.

The Council's Land Resources Environmental Scientist has advised that in looking at the NZKS sites against properties surveyed, the Waitata group of sites and the Papatua site in Port Gore are adjacent to areas that have been identified as having significant value. In many cases these areas are in the process of significant regeneration and the values associated with them vary. The NZKS sites in Queen Charlotte Sound and Tory Channel are not adjacent to identified sites although the Land Resource Scientist stated that Arapawa Island has not been extensively surveyed.

The relevance of this for the Board is that there are directives through the NZCPS policies regarding the significance of indigenous biodiversity and natural character (especially restoration of natural character). Additionally, other policies in the Plan highlight that indigenous flora and fauna, and their habitats are key components of natural character.

***Landscape – Chapter 5***

The explanation to the objective and policies in 5.3, notes that the presence of these provisions addresses s6 matters and the requirements of the NZCPS. Further, that the policies are intended to apply specifically to areas identified as having outstanding landscape value. However, the explanation also refers to the RPS provisions, which indicate the need to address the protection of visual or landscape values, and so the Plan states the policies are important to address visual effects even where the landscape is not considered to be outstanding.

One additional method of implementation not referred to in the s32 evaluation is the area identification method. This states that areas with outstanding value have been identified and are mapped in Volume Three of the Plan. Maps 74 to 78 in Volume Three show the areas of outstanding landscape value and the following table shows the NZKS sites in relation to mapped areas of outstanding landscape value.

<b>NZKS Site</b>	<b>Current MSRMP</b>	<b>Map No.</b>
Waitata	None	-
White Horse Rock	None	-
Kaitira	Outstanding natural landscape	Map 74
Taipipi	None	-
Richmond	None	-

<sup>15</sup> Marlborough District Council. June 2009. North Marlborough Significant Natural Areas Project: A Summary of Results from an Ecological Survey of Significant Natural Areas on Private Land in Marlborough, North of the Wairau River.

NZKS Site	Current MSRMP	Map No.
Papatua	Outstanding natural landscape for part of Pig Bay	Map 75
Kaitapeha	None	-
Ruaomoko	None	-
Ngamahau	None	-

### ***Tangata Whenua and Heritage – Chapter 6***

This chapter includes two issues: one for tangata whenua and one for heritage. The NZKS s32 report has highlighted the relevant tangata whenua provisions for the Board to consider. The ‘Prohibited Activity’ method of implementation is also particularly relevant: this method is specific to marine farming and states that by having prohibited areas for marine farming, this will ‘*facilitate Tangata Whenua access to traditional coastal resources*’. This method also includes a specific reference to Policy 9.2.1.1.1 as setting out the other reasons for prohibiting marine farming in some parts of the coastal marine area.

The heritage issue, which is retaining a sense of the cultural heritage that contributes to the character of the Sounds, is aimed at identified heritage resources included in the Plan. For completeness the planning maps and the list of heritage items contained in Appendix A of Volume Two of the Plan against each of the individual NZKS proposed farms sites has been checked. No heritage sites are recorded on the maps in the vicinity of the proposed sites so the heritage policies have little if any relevance for the Board. Policy 6.2.2.1.2, which is to research and assess additional items of heritage, is only triggered when new items are to be added to the Plan. Of note is that the Plan specifically precludes inclusion of known archaeological sites in Appendix A for reasons of cultural sensitivity. This information is available from the Council or the New Zealand Archaeological Association and is considered in resource consent applications.

### ***Public Access – Chapter 8***

The NZKS s32 report highlights the relevant public access provisions although two minor matters of clarification are as follows:

- In the second paragraph of the Public Access chapter assessment on page 15 of the s32 report, there is a reference to ‘*marine farms are identified as potentially impeding physical access*’. The Plan states however, that marine farms do physically impede access over water (Page 8-2, Volume One, paragraph 1 of 8.1). The reference to ‘potential’ is to the economic benefits that marine farming may bring to the district.
- The second matter of clarification is in relation to the wording of the objective (8.3.1): the s32 evaluation states the objective is to maintain public access, whereas the objective also seeks to enhance public access.

The other matter of significance for the Board's consideration is the link made in the second paragraph on Page 8-2 of the Plan between the approach advocated in the MRPS that '*the continued recreational use of marine resources is essential to the continued social wellbeing of the community*' and therefore it is appropriate the Council places a high priority on maintaining public access for recreational purposes.

## 5 **Coastal Marine – Chapter 9**

A matter needing clarification concerns a statement made in the s32 report: this states '*that the existing provisions (which are specific to mussel farming) will over time need to be readdressed for new types of marine farms*'<sup>16</sup>. While planning for marine farming has been focussed on mussel farming (and the history of planning for marine farming in the Sounds described in Part Two of this report reflects this), the provisions of the Plan currently have not stopped resource consent applications for other species of marine farming from being processed, assessed and decided upon. Marine farms typically list species such as mussels, oysters, scallops, seaweed, paua etc. It is therefore important the Board considers the context of the whole paragraph that has been summarised in the s32 report. This paragraph<sup>17</sup> states the following:

15 *"In addition, ongoing research is constantly occurring as to other means of aquaculture production involving species other than the present predominant species of mussels and it is possible that some other species may involve lesser effects on the environment through having less visible surface structures. The current Plan provisions are based on the predominant bi-valve marine farm structures. It may become necessary for those provisions to be re-addressed by plan change."*

20 Another matter the Board should be aware of is that a recent private plan change (Plan Change 21) concerned with marinas and moorings has proposed amending some parts of Chapter 9 as well as other parts of the Plan. While the nature of Plan Change 21 is specific to moorings and marinas, there are three amendments (shown below) that are more general. These changes are as follows:

- 3<sup>rd</sup> paragraph of 9.2, Page 9-3

25 For these reasons, it is necessary and appropriate that activities or 'uses' which require a coastal location and which consequently involve the occupation of coastal space, are provided for in the Plan. In providing for these uses which require access to areas of, or the resources of, the coastal marine area, adverse cumulative and other [environmental](#) effects must be addressed. Namely the wider context of enabling the community to provide for its social, economic and cultural wellbeing, and preserving the natural character of the coastal environment.

- Existing Policy 9.2.1.1.12, Page 9.6

To enable a range of activities in appropriate places in the waters of the Sounds including marine farming, tourism, ~~and~~ recreation and [cultural uses](#).

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<sup>16</sup> Tab 4, Page 15, [Coastal Marine](#), 3<sup>rd</sup> sentence of paragraph beginning "The value of the ..."

- First paragraph of explanation under 9.2.1 Objectives and Policies, page 9-6

By controlling the erection of structures and other activities (including marine farms) that use or occupy coastal space, the effects of these are able to be addressed. The extent of occupation and development needs to be controlled to [ensure water space is efficiently allocated and to](#) enable all users to obtain benefit from the coast and its waters.

The independent commissioners' decision on the plan change application proposed no changes to these provisions but as a whole the decision has been appealed to the Environment Court. No hearing has commenced on the appeal. If the Board wishes to have more information about the plan change this can be provided or can be accessed through the Council's website at <http://www.marlborough.govt.nz/Your-Council/RMA/Marlborough-Sounds-Resource-Management-Plan/Plan-Changes/PC21.aspx>.

There are a number of provisions in Chapter 9 specific to aquaculture activities. These were introduced through Plan Change 16 in response to the aquaculture reforms of 2004.

Public notification of the plan change described the reason for the changes as follows:

*"In 2005 legislation was introduced which substantively changed the way in which aquaculture is managed in New Zealand. All new marine farms are now required to be located in specifically created aquaculture management areas (AMA) or zones, with the right to apply for resource consent to undertake marine farming (authorisation) within the AMA allocated by various means set out in the Resource Management Act 1991.*

*Plan Change 16 (to the Marlborough Sounds Resource Management Plan) & Plan Change 53 (to the Wairau/Awatere Resource Management Plan) introduces the new chapter structure which will contain the revised aquaculture provisions in the future. The plan changes also introduce new policy and objectives regarding how authorisations, or the right to apply for resource consent for marine farming within a newly created AMA, will be allocated. The plan change specifically introduces new rules which deal with the allocation of authorisations when the AMA has arisen from a private plan change. These rules will not have effect until the plan change is made operative.*

*Plan Change 16 is a private plan change lodged by New Zealand King Salmon Limited and Plan Change 53 is a near identical plan change proposed by the Marlborough District Council. The plan changes are the first of a number of plan changes proposed to amend the aquaculture provisions in the Plans, in accordance with the new legislation. For the avoidance of doubt these plan changes do not create new areas for aquaculture, nor does it change the criteria in the Plans by which existing marine farms are managed." (Public Notice - 12 March 2009)*

After completing the First Schedule process, and with the approval of the Minister of Conservation, the provisions introduced through Plan Change 16 became operative on 25 August 2011. The relevance of

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<sup>17</sup> MSRMP, Chapter 9, Page 9-4, Paragraph 3.

the provisions<sup>18</sup> introduced through Plan Change 16 is an issue the Board needs to consider given the ancillary plan change of NZKS and the recent changes made in respect of aquaculture activities in terms of the legislative reforms of October 2011.

### ***Hazardous Substances and Facilities – Chapter 17***

5 The provisions of this chapter address an overall issue regarding the adverse effects on the environment that arise through the storage, use, transport and disposal of hazardous substances<sup>19</sup>. The regime in Volume One of the Plan has been set up around land based storage and use of hazardous substances and has a 'site' focus. There are associated permitted activity rules<sup>20</sup> for the CMZ 1 and 2 for hazardous substances but these do not appear to be particularly relevant to the coastal marine area.

### ***Water Transportation – Chapter 19***

10 Of importance in this chapter is the first paragraph of the Introduction at 19.1. The waters of the Marlborough Sounds are said to be of strategic importance, providing a very important link between the North and South Islands, particularly through the inter-island ferry operations. Therefore, in addition to the policies identified in the s.32 report, there is a further policy, 19.3.1.5, which is particularly significant  
15 in the context of the NZKS application. This policy contributes towards the establishment of a specific planning framework for shipping through Queen Charlotte Sound and Tory Channel (described previously under the Coastal Marine - Chapter 9 above) and supports the 'Area Identification' method of implementation. Map 107 in Volume Three of the Plan identifies a National Transportation Route to which specific rules apply.

20 The locations of two of NZKS's proposed sites fall completely within the National Transportation Route (Ruaomoko and Ngamahau) while the Kaitapeha site falls partially within the National Transportation Route. Appendix B to this report shows the location of the boundary of the National Transportation Route in Queen Charlotte Sound in relation to the Ruaomoko and Kaitapeha sites. The base map in Appendix  
25 B is an aerial photograph with the Ruaomoko and Kaitapeha sites and the northern line of the National Transportation Route shown. An inset map is an extract from Map 107 and shows the area of the National Transportation Route around the Ruaomoko and Kaitapeha sites.

### ***Outdoor Advertising – Chapter 21***

It is not clear from the application details (plan change or resource consent) as to whether or not there would be advertising signs erected at the proposed marine farm sites. Reference is made to signs in the  
30 application documentation in the following context:

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<sup>18</sup> The specific provisions in a policy context include: the 8<sup>th</sup> paragraph of 9.1 (Page 9-1); 9.1.2 (Pages 9-2A to 9-3); and 9.4A (Pages 9-18 to 9-18B).

<sup>19</sup> MSRMP, Volume Two, Chapter 17, Page 17-1, Issue 17.2.

<sup>20</sup> MSRMP, Volume Two, Chapter 35, Page 35-3, Rule 35.1.1.6.

- Proposed controlled activity standards to be introduced through the plan change – see Tab 2, Page 7, Proposed Rule 35.2.5A.3(h), first bullet point relating to navigational safety;
- Reference to other activities currently permitted in the Coastal Marine Zones, which would continue to be provided for within the new CMZ 3, including public information signs – see Tab 3, Page 9, paragraph starting ‘A range of other activities ...’; and
- Referencing existing standards for signs 35.1.2.12 (which is related to the permitted activity ‘erection and placement of public information signs’ listed in 35.1) – see Tab 3, Page 9, last paragraph starting ‘Existing standards for permitted activities ...’.

Because the permitted activity and standard is related to public information signs, if there is to be any advertising signs for NZKS located on the barges, there should be an assessment under the Outdoor Advertising provisions in Chapter 21. Note that there are Outdoor Advertising rules contained within the General Rules Chapter (26) of Volume Two, however, none of these rules are applicable in the Coastal Marine Zones.

The Plan acknowledges there is a need for signs to allow people to provide for their wellbeing but there is a need for some control to ensure adverse effects on amenity values and people’s health, safety and wellbeing. A strong emphasis comes through the policies and methods for outdoor advertising on avoiding adverse effects on traffic safety. However, Policy 21.3.1.1 has a focus on controlling advertising in recognition of the character and amenity of particular areas. The anticipated environment result from this is that any adverse effects on visual amenities are avoided.

## **Noise – Chapter 22**

The provisions identified in the NZKS s32 report are considered to be relevant for the Board, although a matter needing clarification is that the s. 32 report<sup>21</sup> states that the Plan ‘seeks to avoid unreasonable, excessive or unnecessary noise’ and footnotes this as a reference to Objective 22.3.1. However, the objective is not worded in this way but rather as follows:

*To avoid, remedy and mitigate the adverse effects of unreasonable noise, while allowing for reasonable noise associated with port activities.*

There is a reference to the phrase ‘unreasonable, excessive or unnecessary’ but this is in the Introduction to the Noise chapter (first paragraph of 22.1).

## **Rule framework**

There are five zones within the coastal marine area: Port Zone, Marina Zone, Coastal Marine Zones 1 and 2<sup>22</sup> and Aquaculture Management Area Zone<sup>23</sup>. The port and marina zones are not affected by the

<sup>21</sup> Tab 4, Page 17, Noise, 3<sup>rd</sup> sentence.

<sup>22</sup> MSRMP, Volume Two, Chapter 35.

NZKS plan change. Both coastal marine zones have the same rule framework for all activities except for marine farms. Coastal Marine Zone 1 is where marine farms are a prohibited activity through Rule 35.6 unless provided for by other rules. There are some exceptions with a number of existing marine farms being located within the zone. This zone is shown as purple on the planning maps.

5 Coastal Marine Zone 2 is a zone where marine farming may take place and is shown in light blue on the planning maps. A range of statuses for marine farms from controlled through to non-complying apply within the zone. Specific provisions apply to marine farms that are listed in Appendix D and D2. Marine farms in Appendix D have additional matters of control over which the Council may impose conditions – Rule 35.2.5.3 j) and k). Appendix D2 farms are excluded from the controlled activity provisions and are to  
10 be assessed as discretionary activities under Rule 35.4 and 35.4.2.9. The D2 listed farms are all located in Port Gore.

Appendix C to this report shows both coastal marine zones but does not show other zones used in the Plan.

There are also existing definitions within the Definitions chapter of the Plan<sup>24</sup> for ‘marine farm’ and  
15 ‘marine farming’. These definitions are non-specific to species or to area. The definitions proposed by NZKS are to be contained within the Zone rules, which is a departure from how activities are usually defined in the Plan.

Plan Change 16 introduced the rules in Chapter 35A on ‘Aquaculture Management Area Zone’ to change allocation methods for coastal space introduced through the 2004 legislative aquaculture reforms. As  
20 indicated earlier the relevance of these rules is an issue for the Board given NZKS’s ancillary plan change and the recent changes made in respect of aquaculture activities in terms of the legislative reforms of October 2011.

An issue raised for the Board in the Introduction of this issues report was the matter of the coastal permit sought for the discharge of greywater. In discussions with NZKS prior to the lodging of the application  
25 with the EPA, the Council had advised the Company it believed that consent was necessary to enable the discharge of greywater to the coastal marine area from the accommodation barges. NZKS advised that the Company had been operating the existing salmon farm accommodation barges as a permitted activity under current Rule 35.1.2.8. There seems to have been a reliance placed on the fact the rule does not specifically refer to coastal water although the heading to the rule does, as does the list of bulleted  
30 activities – see below.

### 35.1 Permitted Activities

The following activities shall be permitted without a resource consent where together with any relevant definition they conform to the conditions for Permitted Activities as well as the general rules:

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<sup>23</sup> MSRMP, Volume Two, Chapter 35A.

<sup>24</sup> MSRMP, Volume Two, Chapter 25, Page 9.

...

- Taking and discharge of coastal water;

5 ...

### 35.1.2.8 Taking and Discharge of Coastal Water

#### 35.1.2.8.1 General

The taking of and discharge into coastal water for any purpose not provided for elsewhere in the Plan is a Permitted Activity, subject to the following conditions:

- 10
- a) There is no adverse effect to coastal water as a result of either the take or discharge;
  - b) The quantity of water either taken or discharge shall not exceed 500 cubic metres per day.
  - c) This Rule only applies to discharges not dealt with under the Resource Management (Marine Pollution) Regulations 1998. (RMA 207/98)

15 On further consideration of this matter it has become evident that a coastal permit for the discharge is probably not necessary, but not in terms of NZKS's reliance on the permitted activity rule. Rather, it is the effect of the Resource Management (Marine Pollution) Regulations 1998 on the proposed discharge. The following points are noted:

- 20
- The accommodation barges proposed by NZKS can be regarded as 'ships' within the statutory definition provided in the RMA.
  - Clause 15 of the Regulations provides that: *'Any person may discharge, in the coastal marine area, a contaminant that is incidental to, or derived from, or generated during, the operations listed in Schedule 4 as the normal operations of a ship or offshore installation.'*
  - The operations listed in Schedule 4 of the Regulations include: *'The use of washing facilities in the accommodation areas producing greywater from showers, handbasins, baths, galleys, dishwashers, and laundries but does not include use of any dispensary, sick bay, or other medical premises.'*
- 25

Given this, the Board will need to decide, if the plan change is successful, as to whether the coastal permit sought for the discharge of greywater is necessary.



## **PART TWO – PLANNING FOR MARINE FARMING IN THE MARLBOROUGH SOUNDS**

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5 Planning for marine farming in the Marlborough Sounds is not new. There has been some 35 years of various forms of planning through strategies, gazetted areas, proposed maritime planning schemes and proposed and operative regional policy statements and resource management plans. There has also been government initiated strategies and moratoriums, which have had an impact on planning for marine farming. Each of these has directed to a greater or lesser extent where marine farms are and are not appropriate. The significance of the history is that the current planning framework for the Marlborough Sounds has resulted from the earlier planning for marine farming and with considerable input from a wide range of people and organisations with interests in the Sounds.

This part of the issues report sets out this history and is summarised in brief form in Appendix D. The history describes:

- Investigations into planning for land and water areas of the Sounds undertaken by central government in 1975;
- 15 ▪ The first prohibitions in 1979 on where marine farming was able to take place in the Sounds;
- The introduction of maritime planning through the Town and Country Planning Act 1977; and
- The development of the RPS and Plan under the RMA.

The Council's experience in administering the provisions of the Plan is also covered.

### **Crown Study**

20 From the time of its commencement in Marlborough in the early 1970s, marine farming was initially regulated by the provisions of the Marine Farming Act 1971. This Act was administered by the Ministry of Agriculture and Fisheries, which issued marine farm leases and licences in accordance with the provisions of that Act. Some of the earliest planning for identifying areas for marine farming in the Marlborough Sounds occurred in the mid 1970s, not long after the first marine farm licences were granted.

An approach was made in 1975 by the then Marlborough County Council to central government to assist in developing a framework for planning in the Sounds. Four government departments<sup>25</sup> combined to carry out studies of the interactions between activities in the Sounds, both on water and on land. This

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<sup>25</sup> Ministry of Agriculture and Fisheries, NZ Forest Service, Department of Lands and Survey, Ministry of Works and Development.

work led to the publication in 1976 of 'A Strategy for the Conservation and Development of the Marlborough Sounds'<sup>26</sup>.

The major competing land and water uses in the Sounds were studied: recreational activities, pastoral farming, exotic commercial forestry, residential activity and mussel farming. Commercial forestry and mussel farming were two fairly new activities at the time and were singled out for particular consideration. Information was gathered from a wide range of sources and a landscape study was also undertaken to help inform development of the Strategy.

An example of the type and detail of information gathered and mapped for the Strategy can be found in Figures 1 to 3 of Appendix E. These figures show the area from Port Gore to Beatrix Bay and south to encompass Queen Charlotte Sound (including Tory Channel) and Port Underwood. Figure 1 records information on land tenure, accommodation (e.g. guest houses, motels, and camping areas) and scientific areas (e.g. ecological, wildlife, archaeological and historic). Figure 2 shows vegetation type, services (e.g. public jetties, mooring areas, halls) and fishing information (e.g. anchorages, marine farming, scallop grounds, blue cod areas).

Figure 3 shows the results of the landscape study. A series of maps were prepared for each area showing basic landscape units, built aesthetics and natural aesthetics. The combined results from the series of maps were compiled into the 'Total Aesthetic Score' maps shown in Figure 3. The score is a ranking from unsightly through to spectacular, and this score was a rating of both natural and built factors combined, as well as a judgement on the relative importance of each in a particular location.

For each of the major land and water uses, an evaluation was undertaken to consider the suitability of the Sounds for that use, as well as the conflicts arising from that use. Included in this list of activities was marine farming. Section 4.6.1 of the Strategy identifies factors contributing to the conflict or compatibility of the major land and water uses and sets these out in a series of tables. This included consideration of natural and cultural values. Table XII from the Strategy, which relates to mussel farming, is also reproduced in Appendix E to this report. Many of the factors from this table are the same as, or similar to, those that have been considered by this Council in its assessment of marine farm applications under the RMA.

High level planning goals in the Strategy were:

- *Provide for the social and economic needs of the Sounds' population in accordance with local, regional and national needs. (5.2)*
- *Conserve the natural and cultural resources of the Sounds. (5.3)*
- *Retain and enhance the area's aesthetic and recreational character. (5.4)*

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<sup>26</sup> A copy of the Strategy is available if the Board wishes to see a copy.

- *Retain farmland of higher production value in pastoral use. (5.5)*
- *Provide for viable commercial forestry, commercial fishing and marine farming in association with the above four goals. (5.6)*

5 Policies were developed for all of these goals and for Goal 5.6, a specific set of policies for each of the activities identified. Those for marine farming are also included in Appendix E. On completing the evaluation work and taking into account the policies that had been developed, a conceptual land and water use plan was prepared. Figure 4 in Appendix E shows a portion from the Strategy Plan covering the northern part of the Marlborough Sounds. (The reduced scale and quality of the original plan makes reproduction difficult.) Figure 4 divides the land areas of the Sounds into scientific areas, critical  
10 landscape areas, recreation areas, pastoral farming areas, commercial forestry, mussel farm areas and alternative use areas.

Some discussion on the marine farm areas was provided at 6.8 of the Strategy, which states in part the following:

*“A series of general conclusions were arrived at:*

- 15 *i Mussel farms should not be located in the recreational/residential foci –*  
*Queen Charlotte Sound*  
*Tennyson Inlet*  
*Southern Kenepuru from Schnapper Point to Portage*
- 20 *ii Alongside the main transportation corridors – roads and waterways – mussel farms should be as unobtrusive visually as possible*
- iii Siting of mussel farms remote from recreational use areas is desirable because of fewer conflicts.*

*The sites which have been applied for and are currently under consideration were studied. Those which conflict with the policies and the above extension of these are undesirable. Some were viewed as particularly undesirable and therefore do not appear on the strategy plan.*

25 *Mussel farming in the Sounds should proceed on the basis of existing suitable applications to allow monitoring of effects on other uses and to see whether the industry will develop.”*

The Strategy also included an implementation framework based on a zoning approach but this was directed at district planning, which did not include the coastal marine area.

30 What is significant about the development of this Strategy, is that it was the first comprehensive planning exercise undertaken to consider both the land and water areas of the Sounds at the same time, even though at the time the planning legislation did not extend to water areas. It was also the first significant consideration of areas where marine farming was considered to be appropriate, taking into account the competition for water space for other water based activities, conflicts between other land based activities and with the various landscape, ecological and cultural values of the Sounds.

## Prohibited areas for marine farming gazetted in 1979

The Marine Farming Act 1971 provided for the Minister of Agriculture and Fisheries to determine areas that would not be made available for marine farming – s4(2). A plan was prepared for the Marlborough Sounds by the Ministry of Agriculture and Fisheries in the late 1970s showing areas where marine farm licences or leases would not be available. This was circulated for comment to a range of local authorities (Marlborough Harbour Board, Marlborough County Council, Marlborough Sounds Maritime Park Board, and Marlborough Catchment Board) and other interested parties. Once finalised the plan was formally gazetted (Page 2435 – 16 August 1979) and areas of the Sounds were declared not available for marine farming for a period of 5 years. (A copy of the gazette notice is included in Appendix F to this report.)

The schedule referred to in the gazette notice comprise a series of 59 maps covering the Marlborough Sounds and was available through the Ministry of Agriculture and Fisheries. I have requested a copy of the maps from the Ministry of Fisheries but they have been unable to find these in the Ministry's records. I have also searched the former Marlborough Sounds Maritime Planning Authority files and have similarly not been able to produce a copy of the maps. The information from these maps was copied across to maps produced by the Marlborough Sounds Maritime Planning Authority as a result of a marine farming planning study.

While initially the scheduled areas served to control where marine farming could go, the areas quickly became full and pressure mounted to vary the schedules to make more areas available. The scheduled areas also came under some criticism because the original plans produced by the Ministry did not cover all areas of the Sounds and some areas that were considered<sup>27</sup> at the time to be inappropriate for marine farming had been left off the schedules, e.g. the more remote areas of the Sounds. Some marine farm licence areas also ended up within the 'prohibited area' as they were granted prior to the introduction of the gazetted plan.

## The introduction of maritime planning

In 1977 the revised Town and Country Planning Act (TCPA) included a new Part V "*Maritime Planning*". This part of the TCPA provided for the setting up of maritime planning authorities that would have management responsibilities seaward of the mean high water mark. Part of the responsibility of a maritime planning authority was to prepare a maritime planning scheme to manage activities occurring within the authority boundaries and to consider a wide range of uses as well as natural, cultural and social values. The intention was that a more formalised and co-ordinated response could be made for areas around New Zealand's coastline where there were increasing conflicts between a range of uses.

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<sup>27</sup> Information sourced from historical Marlborough Sounds Maritime Planning Authority files and submissions on a marine farming study (File 8/6/2 series).

There were only four maritime planning areas gazetted around New Zealand under the TCPA: Wellington, Waitemata and Manakau Harbours and the Marlborough Sounds. On 28<sup>th</sup> of August 1980, by gazette notice, the Marlborough Sounds was established as a maritime planning area and the Marlborough Harbour Board was appointed the Marlborough Sounds Maritime Planning Authority (MSMPA). A copy of the gazette notice creating the MSMPA is shown in Appendix G.

The third schedule to the TCPA set out the matters that were to be dealt with in maritime planning schemes. The schedule was very expansive and included important values such as protecting habitats, public access, aesthetic considerations, preservation of views, natural hazard matters, water quality etc but also included an extensive list of individual activities (e.g. recreational boating) and facilities (e.g. ports).

Of note was that s102A of the TCPA (introduced in 1980) set out provisions for 'interim control' within the maritime planning area until such time as a maritime planning scheme became operative. This enabled the MSMPA to control activities such as jetties, boatsheds etc and require approvals for these. An important exception however, saw the consenting for establishing and operating a marine farm stay under the control of the Marine Farming Act, which continued to be administered by the Ministry of Agriculture and Fisheries. This meant the only 'planning' input to the appropriateness of an area for marine farming that was able to be made by the MSMPA was through a submission to the Ministry on a notified application for a marine farm licence.

Under the Marine Farming Act the rights of public participation were fairly limited, including for organisations such as the MSMPA. Other than an opportunity to lodge submissions when an application was publicly notified, there were no public hearings held where submitters could present their views and no general appeal rights on a decision made whether to grant a licence/lease or not. Additionally the information provided at the time of notification was a location plan and a description of the location – no assessment of the impacts of the farm itself formed part of the application that was publicly available. Appeal rights were limited to judicial reviews before the High Court.

During this period there were a substantial number of marine farm applications being considered by the Ministry of Agriculture and Fisheries, including within areas that had been prohibited in the Ministry's gazetted plan. Concern was also being expressed about the expansion of the marine farm industry to the MSMPA, Marlborough Harbour Board and the Maritime Park Board. The concern was expressed by Sounds landowners, commercial users and others of the Sounds. Some even called for a moratorium on further licences being granted. A combination of these factors and that the MSMPA had no interim control over where marine farming could go, saw marine farming as an activity receive priority in the MSMPA's work on preparing the maritime planning scheme.

One of the statutory requirements of the TCPA was that a maritime planning authority had to publish a 'preliminary statement' setting out the principal matters to be dealt with in the maritime planning scheme. A preliminary statement was notified by the MSMPA on the 1<sup>st</sup> of May 1981. It was very brief in content and called for the views of the general public, statutory bodies, organisations and those with interests in

the Sounds, about what they wanted provided for in the scheme and how they wanted the Sounds managed. (A copy of the preliminary statement is included in Appendix H. This includes a map showing the boundaries of the maritime planning area.) Just prior to notification of the preliminary statement the MSMPA also invited specific comment from the public on an upcoming marine farming study to be carried out.

The preliminary statement drew 407 responses from individuals, government departments and various organisations expressing a wide range of views on the Marlborough Sounds, with considerable numbers of submitters commenting on marine farming. 49 separate submissions were received on the proposed marine farming study.

In looking at the summaries<sup>28</sup> prepared of the submissions received on both the preliminary statement and the notification of the marine farming planning study, a wide range of views were expressed. Many of these are similar in nature to the types of comments the Council received on the Marlborough Sounds Resource Management Plan when it was notified in 1995 and has since received on individual marine farm applications and through the current RPS and plan review process. The summary highlighted the following:

- Views were expressed that areas should be identified where marine farming was appropriate as opposed to being inappropriate. This was considered to be a more positive approach to providing for the industry.
- Specific areas of the Sounds where marine farming was opposed were stated.
- New techniques, species and forms of marine farming were identified as needing to be considered, including the farming of salmon.
- Criteria were identified for determining where appropriate areas were, including amongst other things the proximity of dwellings, navigational matters, the proximity of commercial forestry plantations, anchorages, the presence of scenic and recreation reserves, conflicts with other Sounds users etc.

A copy of the summaries produced by the Authority in relation to marine farming is included in Appendix I.

### ***Marine farming planning study***

With the priority been given to planning for marine farming, the MSMPA established a group of technical officers from central and local government involved in the management of the Marlborough Sounds. This group took part in a comprehensive programme of work to consider appropriate areas for marine farming.

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<sup>28</sup> Marlborough Sounds Maritime Planning Authority. January 1982. Summary of Submissions on the Marlborough Sounds Maritime Planning Scheme Preliminary Statement. Prepared by P.T. Royle.

This included an extensive programme of consultation, seminars and discussion and a physical inspection of the entire Marlborough Sounds coastline.

The fieldwork was carried out between 1981 and 1984 and resulted in a list of 18 criteria being used to provide a consistent evaluation of the suitability of marine farming at locations around the Sounds shoreline. The Sounds were broken down into seven sub-areas for analysis and the evaluation was primarily based on mussel farming by the longline method, although the criteria used were not specific to that method of marine farming. The results of the fieldwork and other data were compiled onto A1 size aerial photographs as well as being written up in reports (by sub-area) that were presented to the Maritime Planning Authority Committee for formal ratification.

An example of how the information was shown on aerial photographs is included as Appendix J. This is Sheet K6, which shows the area around the site of NZKS's proposed salmon farm site at Papatua in Port Gore. Appendix J also contains the detailed 'key' to the various symbols used in compiling the data. However, I have described below what is mapped on this sheet.

- Two undeveloped 'marine farming zones' (if a marine farm had been licensed it was shown in pink)
- A transfer site – green diagonal line (a transfer site was a location where a marine farm could be temporarily relocated to if there was an activity such as harvesting of commercial forestry in the vicinity, which may have affected the operation of the licensed farm)
- Areas applied for marine farming – black dashed line
- Navigationally unsuitable areas for marine farming – blue diagonal line
- Sheltered anchorages – blue cross hatch
- Minor navigation route – dashed blue line
- Scallop dredging areas – solid brown line
- Recreational fishing and diving – solid brown line around the coastline
- Area of scenic value – horizontal green line
- Very good beach – yellow
- Identified access point to the very good beach and rocky headland for diving
- Archaeological sites (middens, pits) – brown cross

An example of a written report that accompanies the maps is included in Appendix K. This is the report for sub-area 1, which encompasses the outer Sounds area from Port Gore through to Forsyth Bay.

The sheets showing the information gathered for the other sites that are the subject of NZKS proposals are included in Appendix L. Sheet G5 covers the Kaitira site, G6 covers Tapipi and Richmond and F5 and G5 cover the White Horse Rock site. L9 covers the Ngamahau site in Tory Channel. Sheet J9, which covers the two Queen Charlotte sites (Ruaomoko and Kaitapeha) is unfortunately missing from the Council's records. Because of size, the reports for these areas have not been included as part of this report, but are available if the Board wishes to view them.

In an earlier section of this report on the 'Prohibited areas for marine farming gazetted in 1979', a reference was made to the Ministry of Agriculture and Fisheries gazetted marine farm plan being shown on the marine farming study maps. An example of this can be seen on Sheet G6 on the bottom right hand corner of the map. As indicated in the inventory of planning data or 'key' shown in Appendix J, the solid brown line extending around the shoreline is the gazetted plan boundary.

### ***Maritime planning scheme***

Although the original intent of the MSMPA had been to publish the marine farming work as a separate first section of a maritime planning scheme, this did not occur. Instead on the completion of the marine farming study the MSMPA realised that the conflicts identified through the study could not be resolved without looking more broadly at all activities occurring around the Sounds. A decision was made to continue working towards a planning scheme that would deal with all of the major maritime planning issues in the Sounds in an integrated manner. Further work on other issues was undertaken before the MSMPA notified its proposed maritime planning scheme in 1988.

In developing the objectives and policies for the maritime planning scheme the TCPA required the MSMPA to give effect to the provisions of any regional planning scheme that was in force for the maritime planning area<sup>29</sup>. The Marlborough United Council's Approved Section One Regional Planning Scheme became operative on the 30<sup>th</sup> of September 1982 and included high level objectives for marine farming. These were given effect to in the preparation of the maritime planning scheme.

The provisions of the proposed Maritime Planning Scheme for marine farming saw areas considered to be appropriate for marine farming being specifically identified on the planning maps – see Appendix M as an example. This is Sheet 12 from the notified planning maps, which shows the area around the site of NZKS's proposed salmon farm site at Papatua in Port Gore. Of note on this map are the following:

- Areas with stars in them are areas allocated for marine farming by the scheme (west of Taratara and south of Papatua)
- Area with 'T' is a transfer site (south of Papatua)
- Anchorage in Pig Bay

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<sup>29</sup> TCPA 1977, s112.

- 'Res.' – a Maritime Park Reserve

(Appendix M contains the detailed key to the various symbols used on the sheet.)

Marine farms that were comparable in visual and ecological effect to mussel farming by the long line method, and which were located within the areas identified for marine farming on the maps, were to be permitted as of right subject to some standards. Marine farming by other methods, or in other locations, or for different species, required consent. There were no prohibited areas for marine farming identified on the planning maps.

The standards were related to navigational safety matters and included:

- Maintaining an accessway of 50 metres between mean low water and the inshore boundary of the marine farm to provide for small craft navigation;
- A 50 metre separation between marine farm licence areas;
- A seaward limit of 200 metres from mean low water for the offshore boundary of the marine farm; and
- Provision for an accessway 50 metres in width for each 200 metre section of a marine farm to enable navigation to the shore through a marine farm.

The assessment criteria for marine farms proposed outside of the allocated areas was extensive, amounting to some 21 matters. The assessment criteria had a strong emphasis on navigational safety but also included matters on public access, landscape, ecology etc. The proposed Maritime Planning Scheme stated that the criteria used in the marine farming planning study were retained in the scheme along with additional criteria to assist in the evaluation of new forms of marine farming. Appendix M also contains the objectives, policies and requirements (assessment criteria) from the proposed Maritime Planning Scheme.

The proposed scheme attracted some 180 submissions, many with multiple submission points. Given that a large number of submissions were made in respect of marine farming and forestry matters, the MSMPA commenced a programme of hearing those submissions only.

## **Local body reform and the introduction of the Resource Management Act 1991**

The functions of the MSMPA were transferred to the Nelson-Marlborough Regional Council in late 1989 as a consequence of local government reorganisation. The Regional Council continued to hear submissions to the Maritime Planning Scheme through 1990 and made decisions on these, which resulted in a number of appeals.

At the same time as the hearings were being held, the Regional Council, in conjunction with the Ministry of Agriculture and Fisheries, initiated two planning initiatives for the Marlborough Sounds. The first of these was the Marlborough Sounds Coastal Resource Interest Study<sup>30</sup>, which had as its objective to identify coastal areas with high value to various user groups in the Sounds. The second was a reappraisal of the policies of the proposed Maritime Planning Scheme. Both of these exercises were undertaken in the knowledge that new planning legislation was being prepared and the preparation of regional coastal plans was to be a statutory requirement under the new legislation.

### Coastal Resources Interest Study

The background to the study identified that there was a lack of up to date information on the various uses of the Marlborough Sounds and also areas seen to have special significance. Local organisations and members of the public were asked to provide information on their activities and indicate areas that had special significance, such as important habitats, recreation, scenic and spiritual values or for other reasons. The information collected had no formal legal status but was intended to provide guidance for those with statutory responsibility for management and planning in the Sounds.

The Regional Council saw benefits of the study to assist in the following:

- Addressing the appeals to the proposed Maritime Planning Scheme;
- Reappraising the policies and rules of the proposed Maritime Planning Scheme concerning marine farming and related issues, as part of the process of developing a regional coastal plan; and
- Responding to applications for marine farming.

The Ministry of Agriculture and Fisheries intended to use the information from the study as a basis for making decisions on marine farm applications and for providing for the marine farming industry in general by minimising conflict with other users.

The product of the study was a series of 12 maps at a scale of 1:100,000 on which were plotted the various values and uses identified by the contributing groups and individuals. The maps indicate broad patterns of interest rather than very precise detail about uses or values. (The maps have not been digitised and so have not been included in this report but are available to view if the Board wishes to see them).

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<sup>30</sup> MAF Fisheries, Nelson Marlborough Regional Council and Marlborough Coastal Resource Interests Study Steering Committee. April 1991. Marlborough Sounds Coastal Resource Interest Study. Prepared by Royds Garden Ltd, DSIR Social Science - Christchurch, Geography Department - University of Canterbury with Michael Bradley.

## Reappraisal of proposed Maritime Planning Scheme

The second planning exercise reconsidered the policies and rules in the proposed Maritime Planning Scheme as these were based on information considered to be 'old'. Work was begun on defining issue areas needing research and analysis to assist in the review of the existing policy.

5 The introduction of the Resource Management Act in October 1991 saw the Regional Council reconsider its options for continuing with to deal with the proposed Maritime Planning Scheme. It was considered that as a minimum the marine farming and forestry provisions of the Scheme would provide important policy guidance until such time as new plans could be prepared. Therefore the Council opted to proceed towards making targeted provisions of the Scheme operative and deleting the remainder of the Scheme  
10 through a variation.

With the enactment of the RMA, the responsibility for deciding whether or not marine farms would be allowed fell to the Regional Council. Marine farmers were required to seek a coastal permit from the Regional Council to determine whether or not a new farm could be established. In conjunction with the resource consent process, a Ministry of Fisheries permit was required and focused on the impacts of the  
15 proposed marine farm on commercial fishing and the overall fisheries resource. For all those licences and leases granted prior to the RMA, the Ministry remained the licensing authority.

The Regional Council began preparing a regional policy statement as required by the RMA but a further round of local government reorganisation saw the abolishment of the Regional Council in July 1992. On inheriting the responsibilities of the Regional Council, the Marlborough District Council (now a unitary  
20 authority) decided that the proposed Maritime Planning Scheme, prepared under the provisions of the Town and Country Planning Act 1977, was inadequate to meet the new responsibilities prescribed in the RMA. The Council determined to proceed no further with making the Maritime Planning Scheme operative. Instead the Council commenced preparation of a combined regional and district plan for the Marlborough Sounds, a regional coastal plan for the entire district<sup>31</sup> and a regional policy statement.

## 25 **Development of the Marlborough Regional Policy Statement and Marlborough Sounds Resource Management Plan**

The Marlborough District Council (Council) prepared 11 issues and options papers and two summary documents to assist in the preparation of both the regional policy statement and the Marlborough Sounds Resource Management Plan. The individual issues and options papers were as follows:

Water Quality/Coastal Discharges	Residential Activities
Natural Processes/Hazards	Forestry and Farming

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<sup>31</sup> Initially the provisions of the RMA were such that only one coastal plan for a region was able to be prepared, unlike land areas for which a district plan could be prepared in parts. It wasn't until July 1993 that the RMA was amended to enable the preparation of a coastal plan in parts.

Natural and Historic Areas and Values	Coastal Developments
Iwi (Maori) Issues	Picton/Havelock
Recreation/Tourism	East Marlborough Coast
Marine Farming <sup>32</sup>	

In preparing the individual papers, regard was had to the policy of previous planning documents, and for the coastal marine area, the provisions of the proposed Marlborough Sounds Maritime Planning Scheme.

5 The summary document for the Marlborough Sounds Resource Management Plan and regional coastal plan was entitled 'Sounds Management'. This document summarised the issues and options from each of the 11 papers into brief form. ('Toward the best' was the summary document prepared specifically for the regional policy statement.)

10 One of the issues highlighted was the conflicts between marine farms and other activities especially where this involved occupation of coastal space. An option suggested was to identify areas where marine farms should not go because of values associated with that area e.g. scenic reserves, residential sites, waahi tapu etc and that marine farming should be a 'prohibited or restricted activity' in these areas. Other options included:

- identifying suitable sites and making them available by tender;
- in conjunction with making certain areas prohibited (or restricted) making other areas 'permitted';
- 15 ▪ requiring all marine farm applications to be subject to a notified resource consent; and
- doing nothing and accept that continuing and increasing conflict between users and space.

The marine farming issues and options paper did not identify geographic locations where marine farms should/should not go but set out an extensive range of objectives and policies that could guide decision making.

20 Consultation on these documents was undertaken with a wide variety of groups with interests in the Marlborough Sounds and the papers were also made available for public submission in December 1992. Submissions were analysed and summarised into a database for use in the development of provisions for marine farming in the regional policy statement and resource management plan for the Marlborough Sounds. (Copies of the issues and options papers produced and submissions received are available.)

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<sup>32</sup> Marlborough District Council. December 1992. Issues and options for Aquaculture in the Marlborough Sounds. Prepared by Ruth Marsh - Resource Management Consultant, New Zealand Technology Development Limited.

Like many of the submission processes (both formal and informal) that have been undertaken by various planning agencies over the years there were divergent views about the appropriateness of marine farming within the Marlborough Sounds.

### Processing marine farm applications

5 From the time the Council became a unitary authority in 1992, it processed applications for marine farms. Until such time as the Marlborough Sounds Resource Management Plan was publicly notified, the Council considered the applications against the provisions of the proposed Maritime Planning Scheme. Once the Plan was notified, the provisions of the proposed Maritime Planning Scheme were no longer considered.

### 10 **Marlborough Regional Policy Statement**

The detail of the operative provisions of RPS in relation to the NZKS plan change and resource consent applications have been covered in Part One of this report but there is an important point about the policies and methods that were developed for marine farming through the notification process.

When the Proposed Marlborough Regional Policy Statement was notified on 28 October 1993, policies on  
15 the allocation of coastal space were included at 7.2.6. These policies included a strong direction about protecting public access in coastal areas as well as recreational use being a major activity within Marlborough (Policy 7.2.6a). Specific policy for aquaculture (Policy 7.2.6d) stated the following:

Allocation of space for aquaculture in the coastal marine area will be based on marine habitat sustainability, habitat protection, landscape protection, navigation and safety, and compatibility with other activities.

20 *There is a need to protect representative and significant areas of marine habitats from the effects of aquaculture developments. There are also some areas of the Sounds where aquaculture could create a hazard to the safe navigation of vessels. For these reasons it will be necessary to prohibit aquaculture in some areas.*

25 *There is a limit to the nutrients available from marine water for aquaculture. Naturally occurring stocks compete with farmed stocks for nutrients. There is a need to balance the removal of nutrients by farmed stocks with the nutrients remaining for natural stocks.*

*Structures required for aquaculture can introduce new elements into the landscape, such as rafts, jetties, and sheds, or break the lines between major landscape elements. These changes can alter the character of the landscape by conflicting with the harmony between elements in the landscape.*

30 *It is acknowledged that there is little information to assess the effects of aquaculture on the sustainability of the marine habitat. The allocation of space for aquaculture requires research into the effects of aquaculture on the nutrient availability for marine habitats. It could be many years before meaningful research is completed. In the interim the allocation of marine space will be undertaken in a conservative manner. This will place an onus on applicants to provide a more detailed assessment of the effects of their proposal.*

35 *(Policy 7.2.6(d))*

This was then supported by methods that stated:

Incorporate within resource management plans objectives, policies and rules that:

- ensure proponents of all developments in the coastal marine area consider public access and recreational use;
- 40 ▪ consider the degree to which such developments provide for public use/benefit; and

- restrict aquaculture from Queen Charlotte Sound, significant habitat areas, and important navigational routes.

*This Regional Policy Statement gives a strong lead to the future direction of Marlborough in terms of recreation. The resource management plans will provide for recreational use as well as ensuring that public access in the coastal marine area is carefully considered by proponents of all developments.*

*(Method 7.2.7(b))*

These provisions have, with very minor modification, been retained in the operative Marlborough Regional Policy Statement. The comparable policy and method in the operative document are 7.2.10(d) and 7.2.11(c). What can be seen is that through the submission and decision making process these notified provisions remained intact and helped form the basis for the more detailed marine farming provisions, incorporating the prohibited areas, which were later included within the Marlborough Sounds Resource Management Plan.

### ***Marlborough Sounds Resource Management Plan***

On the 31<sup>st</sup> day of July 1995 the Council notified the Proposed Marlborough Sounds Resource Management Plan (Proposed Plan). When the Proposed Plan was publicly notified there was only one Coastal Marine Zone and marine farming was shown on the maps as being a prohibited activity in some areas of the Marlborough Sounds. Appendix N shows Zoning Map 2 and Sheet 2 from the Proposed Plan as an example. This shows the Waitata Reach area, which is the subject of a number of the sites sought by NZKS. Except for the White Horse Rock site, all of the other sites in this area sought by NZKS were notified as being prohibited areas for marine farming. (Note that the Wynens Bay area, which is near the Kaitira site, was originally not a prohibited marine farming area. However, in response to a submission lodged by the Pelorus Boating Club this area became a prohibited area when decisions were released.)

Rules in Volume Two of the Proposed Plan prohibited marine farms from being located within 50 metres from mean low water mark or beyond 200 metres from mean low water mark. Marine farms that were scheduled within an appendix to the Proposed Plan were identified as a controlled activity: this included marine farms licensed under the Marine Farming Act 1971 and those that had been granted consent under the RMA. New farms within 50 to 200 metres from mean low water mark were a discretionary activity. The Proposed Plan contained assessment criteria on a wide range of issues to assist the Council in determining whether marine farming could be consented to in this coastal strip.

Also of note was that for both the controlled activity and discretionary activity provisions for marine farms a rule stated that a coastal permit may be granted for a period not exceeding 20 years – notified Coastal Marine Zone rules 2.7.3 and 3.3.10.2.

The policy basis for the prohibited areas was contained in Policy 9.3.1.5 of Volume One of the Proposed Plan and this required avoiding the allocation of coastal space for marine farming where there was significant adverse effect on a range of identified values (e.g. iwi, landscapes, navigation etc). There was also a general policy (9.3.1.1) applicable to any activity involving occupation of space to not adversely affect to a significant degree a range of values (similar to those in notified Policy 9.3.1.5).

Another policy was specific to ensuring that recreational activities retained a dominant status over commercial activities in Queen Charlotte Sound. This policy and 9.3.1.5 were identified in an 'Area Identification' method in the methods of implementation section, as being the basis for the prohibited areas for marine farms. Copies of the notified provisions are available if the Board wishes to view them.

5 In total some 604 submissions were received with most submitting on multiple provisions of the Proposed Plan. The initial submissions were then the subject of some 1542 further submissions. A wide range of submissions were received on the marine farming provisions from marine farmers who wanted greater recognition for marine farming activity including the removal of the prohibited activity status through to people who wanted to protect the Sounds from further development.

10 When decisions on submissions were released in January 1998, the Coastal Marine Zone was split in two: Coastal Marine Zone 1, which was based on the original prohibited areas notified in the Proposed Plan and where marine farming continued to be a prohibited activity; and Coastal Marine Zone 2 where depending on the circumstances, marine farming could either have controlled, discretionary or non-complying activity status. Decisions on submissions also resulted in new areas being made prohibited for  
15 marine farming, which had not been prohibited areas at the time of notification. Many of these areas were in the outer Sounds. The decisions also saw in a number of locations the notified prohibited area being removed.

In terms of policy changes the specific policy on avoiding allocating space for marine farming where there would be significant adverse effect on a range of values (notified as Policy 9.3.1.5) was deleted.

20 Decisions on Policy 9.3.1.5 stated that this policy had been combined with Policy 9.3.1.1 and the reason given for this was that a single comprehensive policy would address the adverse effects of all activities in the coastal marine zone. (With changes in numbering systems in the operative Plan, this policy is now numbered 9.2.1.1.1.)

The 'Area Identification' method was also deleted insofar as it related to identifying prohibited areas for  
25 marine farming. Instead a paragraph was added to the 'Zoning' method, which stated that *'In Coastal Marine Zone 1 the Plan identifies those areas where marine farms are prohibited in accordance with Policies MO9.3.1.1 and MO9.3.1.6. These areas are identified as being where marine farming will have a significant adverse effect on navigational safety, recreational opportunities, natural character, ecological systems, or cultural, residential or amenity values.'* (In terms of current numbering in the Plan,  
30 references to MO9.3.1.1 and MO9.3.1.6 are now 9.2.1.1.1 and 9.2.1.1.6 respectively.)

There were 46 appeals lodged with the Environment Court on the Council's decisions on submissions received to the Proposed Plan. Of these appeals, 17 raised concerns over the zoning, policies and rules for marine farming. Some appeals sought greater recognition of marine farming through policies, more permissive rules and removal of the prohibited activity status for farms in the Coastal Marine Zone 1.

35 Others sought expansion of prohibited areas.

Through the negotiation process of settling the appeals a number of other policies were added to the Proposed Plan. These were at the enabling end of the policy framework, giving recognition to the existing marine farms. (The specific marine farm policies added were current policies 9.2.1.1.12 to 1.14 and 9.4.1.1.7 to 1.9.)

5 The marine farming appeals were set down to be heard by the Environment Court on 7 December 1998. Partial agreement had been reached prior to the hearing, and during the hearing, agreement was reached on the remainder of the issues. A consent order setting out the agreed changes was prepared, and signed by an Environment Court Judge on 29 January 1999, (Decision W11/99). The consent order effectively confirmed the prohibited activity status for marine farming in Coastal Marine Zone 1 subject to  
10 some 'tweaks' of the boundaries of the zone.

Since the Court's decision in January 1999, the provisions and zonings for marine farming have remained unchanged (except in relation to Plan Change 16). The Plan dealing with coastal issues, became operative in part in March 2003, after approval by the Minister of Conservation in accordance with the provisions of the RMA. Appeals on port noise provisions were not settled until some time later, becoming  
15 operative in August 2008.

### Variations/Plan Changes

A number of variations or plan changes have been undertaken to the Plan. Those listed immediately below are operative.

No.	Name	Operative Date
V2	Coastal Occupancy Charges	25/08/11
V3	Shipping Activity in the Marlborough Sounds	21/08/08
PC7	On-site discharges of Domestic Wastewater	10/03/06
PC8	Heritage Trees	28/10/10
PC9	Update and Correct Zonings and Heritage Information	10/03/06
PC12	Permitted Activity Hazard Rules	10/03/06
PC13	Special Subdivision Rules	28/08/11
PC14	Non-State Schools	03/01/08
PC16	Allocation of Authorisations (Marine Farming) (Private Plan Change)	25/08/11
PC17	Heritage Buildings, Places and Sites	28/10/10

20 Two other plan changes are currently under appeal. One of these concerns provisions for frost fans, which would not be applicable to the NZKS proposal.

The second appeal relates to a private plan change by Port Marlborough New Zealand Limited and is focussed on proposed provisions for moorings and marinas in Waikawa Bay. This plan change (PC21) makes amendments to Chapter 9 Coastal Marine of Volume One of the Plan, most of which are specific  
25 to moorings and marinas, but several are to provisions that may be regarded as being relevant in the

NZKS plan change before the Board. These have been set out in Part One of this report. The appeal, which was lodged in June 2011, has not been heard by the Environment Court.

## **Administering the provisions of the proposed and operative Marlborough Sounds Resource Management Plan**

5 There have been a number of matters arising for the administration of the Plan during the First Schedule process and subsequent to the Plan provisions becoming settled.

### ***Marine farms in prohibited areas***

A number of existing marine farms (26) are currently located in sites that are zoned CMZ 1 and these are shown in Appendix O, along with a table showing expiry dates for each of the farms. Marine farms at  
10 over half of these sites (15), were the subject of original marine farm licences granted under the Marine Farming Act 1971 and so were authorised by the then Minister of Fisheries. Some were the very earliest licensed marine farms in the Marlborough Sounds, such as that at Ruakaka Bay in Queen Charlotte Sound (Marine Farm Licence 001 – MFL001), now owned by NZKS and Licenses MFL007 to 009 in Fairy Bay in the mid Pelorus Sound. Some licences were granted by the Minister of Fisheries as late as 1993,  
15 after the introduction of the RMA. Those farms that had reached a certain stage of processing continued to be processed by the Ministry of Fisheries notwithstanding the introduction of the RMA.

The 15 sites are shown as red in Appendix O<sup>33</sup>. Some of these marine farm licences have been the subject of subsequent RMA consent processes but are shown as a marine farm licence on this map as that is the basis on which the site was initially consented to.

20 Under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (the Aquaculture Reform Act) these licences are now deemed coastal permits under the RMA on the same conditions (including species and area) as applied previously before the commencement of the Act. Under s20 of the Aquaculture Reform Act the Council undertook a process of reviewing the conditions of all these licences and amending them to be consistent with the RMA and with current consents.

25 Under s10(8) of the Aquaculture Reform Act a deemed coastal permit is to be treated as if it had been granted for a term of 20 years beginning on the commencement of the Act. The Act commenced on 1 January 2005, therefore the permits for 14 of the original marine farm licences all now expire on 31 December 2024. The 15<sup>th</sup> marine farm in this category, although originally authorised as a licence in  
30 1980, had been the subject of a resource consent application in the early days of the RMA to amend the boundaries of the licensed site. The consent for this farm expires on 1 December 2027.

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<sup>33</sup> The Council uses a 4 digit number to denote a marine farming 'site'. A site may include a coastal permit, an original marine farm licence, a marine farming permit or a combination of these.

Of the remaining 11 farms, 10 were applied for at sites, which at the time of processing, were not included within prohibited marine farming areas, either in the proposed Maritime Planning Scheme or the Proposed Marlborough Sounds Resource Management Plan. Some of these sites were identified as being available for marine farming in the proposed Maritime Planning Scheme.

- 5 For these 10 farms the areas became prohibited for marine farming, through the submission and decision-making processes on the Proposed Plan. These sites are shown as purple in Appendix O. There are a range of expiry dates for these coastal permits ranging from 2014 through to 2030.

The remaining application was lodged prior to notification of the Proposed Plan but was assessed against its provisions. The site in Richmond Bay, Waitata Reach, was identified as a prohibited area for marine farming in the notified Proposed Plan. The provisions of the RMA at the time in terms of 88(2)(b) enabled the Council to consider the application even though it was described as a prohibited activity in the Proposed Plan. This section provided that:

- (2) *No application shall be made for a resource consent—*
- (a) *For a prohibited activity; or*
- 15 (b) *For any activity described as a prohibited activity by a proposed plan once the time for making or lodging submissions or appeals against the proposed rule has expired and—*
- (i) *No such submissions or appeals have been made or lodged; or*
- (ii) *All such submissions and appeals have been withdrawn or dismissed.*

The Council's decision in granting consent, placed little weight on the Proposed Plan's prohibited status, given that the Proposed Plan was still in the submission phase, and that little opposition had been received to the application through the submission process.

In terms of the provisions of operative Rule 35.2.5, not all of the 26 marine farms in CMZ 1 are currently controlled activities. Those which are located in Port Gore are specifically identified in Appendix D2 and as such are to be assessed as discretionary activities when a new consent to allow marine farming at the same site is applied for at the time of expiry of the existing consent.

### **Controlled Activity Rule 35.2.5**

The heading to this rule, which states '*Marine Farms Within Specifically Identified Areas and Beyond 50 Metres From MLWM and Listed in Appendix D*', is slightly misleading in the context of the wording of the following rule. This wording is a carryover from the version of the Plan prepared immediately following the release of decisions on submissions. At the time of notification of the Proposed Plan, marine farms (both marine farm licences under the Marine Farming Act 1971 and coastal permits under the RMA) that were listed in a schedule to the Plan (Appendix D) were regarded as a controlled activity. When decisions were made on submissions and the resulting agreements made through the Environment Court proceedings, the majority of farms were removed from the Appendix D, instead being provided for through the wording of the revised controlled activity rule. It appears as if the heading of the controlled activity rule was not amended to reflect the change to the wording of the rule.

There are now only five marine farms listed in Appendix D. As indicated earlier in this report these marine farms have additional matters of control over which the Council may impose conditions – Rule 35.2.5.3 j) and k). Appendix D2 farms are excluded from the controlled activity provisions and are to be assessed as discretionary activities under Rule 35.4 and 35.4.2.9. The D2 listed farms are located in Port Gore.

### ***Order in Council***

During the First Schedule process for the Proposed Plan, the Council continued to receive and process many resource consent applications for marine farms. In response to this and to give the Council time to complete the First Schedule process, central government introduced a marine farming “moratorium” by Order in Council under the coastal tendering provisions of the Resource Management Act 1991. This moratorium initially came into force on the 12<sup>th</sup> day of July 1996 and expired on the 11<sup>th</sup> day of July 1998. The moratorium was subsequently extended for a further year and expired on the 11<sup>th</sup> day of July 1999. A copy of a Department of Conservation Fact Sheet<sup>34</sup> which describes the reasons for the Order in Council is attached as Appendix P.

This Government led initiative was to enable consideration of the establishment of a coastal tendering regime. The moratorium was ultimately abandoned without the establishment of such a regime. A significant difficulty in establishing an appropriate coastal tendering regime was the fact that the marine farming industry in Marlborough was already well established in those areas where marine farming could be undertaken with a coastal permit or had been approved under the Marine Farming Act 1971.

### ***Post order in Council***

One of the consequences resulting from the lifting of the moratorium was an administrative bottleneck for the Council and marine farm applicants. Within two months of the moratorium being uplifted, 163 applications for marine farms were lodged with the Council. By July 2000, 357 applications had been lodged with the Council<sup>35</sup>. Not all applications were for new sites with many applications being lodged to extend existing marine farms. It took some time for the Council to process these applications and this involved notifying, reporting and hearing applications on a near daily basis. Given the sheer number of applications to be processed, at the time of lodging applications applicants were asked to waive the timeframes specified in the RMA for processing in order to allow the Council some breathing space to process the applications. Many of the Council’s decisions, regardless of whether consent was granted or refused, were appealed to the Environment Court.

Prior to the introduction of the marine farming moratorium in 1996, applications for marine farm space in the Marlborough Sounds were invariably made within a band confined to 200 metres from mean low

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<sup>34</sup> Fact Sheet No. 16. Marine Farming and Coastal Tendering. Department of Conservation.

<sup>35</sup> The numbers quoted in this paragraph are those that were made by the Council in a submission lodged with the Primary Production Select Committee on the Resource Management (Aquaculture Moratorium) Amendment Bill in 2002 – paragraph 34.

water mark. That had been the historical pattern of development, however, when the moratorium was lifted, there was a significant change to the pattern of applications. Although applications were still received for marine farming within 200 metres from mean low water mark, the end of the moratorium saw applications for marine farms beyond 200 metres, in the middle of bays or in the exposed open waters of the coastal marine area outside of the Marlborough Sounds.

In dealing with the large number of marine farm applications and the large mid bay farms, the Council noted that many people commented on the importance of the Marlborough Sounds in a national context. Because of this, the Council commissioned a nationwide survey<sup>36</sup> in 2000 to see how people viewed the importance of the Marlborough Sounds and to what extent marine farms detrimentally affected people's ability to provide for their own social and cultural wellbeing.

To help answer these questions the survey sought information on the following:

- The extent to which the Marlborough Sounds can be considered a recreation area of national importance.
- The level of importance people attached to the Sounds as a national icon.
- The particular qualities that people valued about the Sounds.
- The types of development that people believed posed a threat to the qualities they especially valued about the Sounds.

The following synopsis about the results of the survey has been taken from the Council's 2008 State of the Environment report.

*Over 1,100 hundred people were surveyed and on a scale of 1 to 5 (where 1 is the least important and 5 the most important), 60% of people considered that the Sounds were very important in terms of their sense of national identity, or what New Zealand means to them. Just over 72% of people thought the Sounds were important as a recreational resource for all New Zealanders. Scenic beauty was one of the main characteristics that people associated with the Sounds and this was also one of the qualities of the Sounds that people valued the most. Excellent water quality, tranquillity and fishing were also said to be important qualities.*

*Those surveyed were asked to name any activity they thought could have negative impacts on the qualities of the Sounds they most valued. The most often mentioned threat was that of the fast ferry operations, cited by 308 of 828 respondents who thought there were threats of some type. The next most commonly cited threats were residential activity (99 respondents or 12%) and resort development (85 respondents or 10%).*

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<sup>36</sup> Corydon Consultants. May 2001. Perceptions of the Marlborough Sounds and the Impacts of Marine Farms. Results of a Nation-Wide Survey. Report for the Marlborough District Council.

For people who thought that residential activity, marine farming and/or forestry could have a negative impact on the qualities of the Sounds they most valued, the survey sought to identify the impacts these activities were thought to have. Six percent of people (52) thought that marine farming was a threat to a range of values. The most commonly mentioned negative impact of marine farms was adverse effects on marine life followed by visual impacts. Marine farms were also seen as likely to affect access to or use of the Sounds, either by reducing accessibility to parts of the Sounds, inhibiting the use of the coast, hindering the freedom of boat movement and or interfering with fishing.<sup>37</sup>

Both the original survey report and the Council's State of the Environment report are available if the Board wishes.

### **Current administration**

Currently there are 576 marine farm sites in Marlborough. The majority of these are within the Marlborough Sounds but there are two large sites located in open coastal waters: to the southwest of d'Urville Island; and in Clifford Bay near Lake Grassmere on the east Marlborough coast. The farms in the Marlborough Sounds Plan area are shown in Appendix Q. Each of the resource consents authorising the marine farms are the subject of a range of conditions, including ongoing obligations for structural safety and navigational lighting.

For a number of marine farms around the Sounds, there is a difference between what the coastal permit allowed through the RMA process and what the Ministry of Fisheries allowed through its marine farming permit process. This has resulted from the Ministry applying its undue adverse effects test post the Council granting a coastal permit. As an example, Appendix R shows part of Port Gore where some consented marine farms, shown in blue, have a darker blue diagonal line over an area of the farm site. This is referred to as a Ministry of Fisheries 'exclusion' area. The exclusion area means that no structures are able to be placed in these areas in order to protect recreational, customary or commercial fishing because it restricts access to or displaces fishing.

When the aquaculture reforms of 2004 were implemented, applications for resource consent for marine farms were no longer able to be received by the Council for processing. There were 13 applications that had been lodged with the Council prior to the reforms, which were effectively 'frozen' in process. With the further reforms of October 2011 allowing the Council to receive applications for marine farming, these 'frozen' applications have been reactivated for processing. A few applicants have indicated they no longer wish to pursue their applications, and the remainder are being assessed for adequacy of information for processing.

Since the change in October 2011 to allow the Council to receive and process marine farm applications, there have been 17 applications received for processing. These applications include expansion of existing farms, adding new species to existing farms (including salmon at one site), and a new farm. If

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<sup>37</sup> Marlborough District Council. 2008 State of the Environment Report. Chapter 10 Coastal. Pages 253-254.

the Board wishes to have more information about these applications, which are at different stages of processing, this can be made available.

## Summary

- 5 This part of the issues report has set out in some detail the planning processes undertaken by both the Marlborough District Council and its predecessors in respect of marine farming. The history set out above demonstrates that the current provisions in the Plan are the culmination of a process going back some 35 years – from the initial studies undertaken by central government for the then Marlborough County Council to assist in developing a framework for planning in the Sounds through to the requirements for policies and plans under the RMA.
- 10 The Plan has been built on the knowledge of those with responsibilities for planning generally and specifically for marine farming in the Marlborough Sounds over that period of years. The Plan reflects the accumulated experience of not only the Council but also the various other governmental, industry and environmental organisations and importantly members of the public who have been active in planning processes over the years to help refine provisions. The approach adopted in the Plan can be regarded
- 15 as 'balanced' in having prohibited areas for marine farming as well as areas where application can be made.

## PART THREE – PERMITTED BASELINE/EXISTING ENVIRONMENT AND IWI SETTLEMENT

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Part Three of the issues report includes a statement about the matters in s149G(3)(b) and (c) of the RMA, consideration of the permitted baseline and existing environment as requested by the EPA and a  
5 description of a process currently being undertaken in the Marlborough Sounds in respect of determining sites for aquaculture for iwi settlement.

### **s149G(3)(b) and (c) of the RMA**

This report has discussed previously in a number of places the status of the proposed salmon farms and the nature of consents applied for. However, the EPA has requested that the report includes a stand  
10 alone section that explicitly addresses the matters in s149G(3)(b) and (c) of the RMA.

The plan change proposes to introduce new rules and definitions for marine farms in CMZ 3. For the eight sites to be created as CMZ 3, NZKS have sought a controlled activity status for all aspects of the salmon farming operation. This is in terms of the definition proposed to be added to the Plan through Rule 35.2.5A<sup>38</sup>.

15 For the White Horse Rock site a different regime will apply. The site is currently within CMZ 2 and NZKS have not sought to change the zoning at this site to CMZ 3 so the current provisions of the Plan will apply. The resource consent application form states that the White Horse Rock site meets the Plan's criteria to be a discretionary activity<sup>39</sup>. However, because the application seeks a 35 year permit, the provisions of the Plan are not met: the Plan provides in Coastal Marine Zone Rule 35.4.2.9.2 that the term for a marine  
20 farm in CMZ 2 '*may be granted for a period up to but not exceeding 20 years*'. This was identified as a key issue in the Introduction to this report because the Board will need to determine whether the application for the White Horse Rock site is a non-complying activity rather than the discretionary activity as stated by NZKS.

In terms of the consents that have been sought specifically for the White Horse Rock site, the resource  
25 consent form states that NSKS seek all the necessary resource consents to establish marine farms and carry out marine farming activities as described in the AEE<sup>40</sup>. The AEE for the White Horse Rock site sets out the consents sought and these are the same as those sought for the other eight sites<sup>41</sup>.

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<sup>38</sup> Tab 2, Proposed Plan Change, Change 18.

<sup>39</sup> Tab 30, Resource Consent Form, Page 3, first paragraph.

<sup>40</sup> Tab 30, Resource Consent Form, Page 3, second paragraph.

<sup>41</sup> Tab 31, Page 5, 3.2a.

Of note is that the current marine farming definition<sup>42</sup> in the Plan does not makes specific reference to the deposition or discharges associated with the activity of marine farming. If the Board grants consent for the White Horse Rock site, it will be important that it is granted in terms of the activity as sought in the AEE and not just for 'marine farming' as defined for CMZ 2.

5 **Permitted baseline/existing environment**

The EPA has requested the Council to include in this report a consideration of the permitted baseline and the existing environment.

***Permitted baseline***

10 Section 104(2) states that “*When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*”

15 Section 12 of the RMA places restrictions on the use of coastal marine area. Generally this means that use of the coastal marine area is prohibited, unless it is allowed for by a rule in a regional coastal plan or by resource consent. This is obviously the reverse presumption from section 9 or 'land' activities, where unless restricted by a plan or resource consent, a use of land is able to be carried out.

20 The list of permitted activities for the CMZ 1 and 2 are set out in Rule 35.1 of Volume Two of the Plan. Only a few of the activities listed involve occupation of the coastal marine area e.g. erection or placement of temporary structures, public information signs, or monitoring equipment, and minor extensions, additions and alterations to structures. There are limitations on each of these activities through conditions set out in 35.1.1 and 35.1.2.

25 There are some permitted discharges such as those from ships, non-point source stormwater discharges and of coastal water. Aside from discharges from ships, which is controlled through the Resource Management (Marine Pollution) Regulations, the other discharge activities also have to meet permitted activity standards. (Note that Rule 35.1.2.7.1 relating to point source discharges of stormwater is now a controlled activity in terms of 35.1.2.7.1.2.)

There is one permitted activity relevant to marine farming and this is the 7<sup>th</sup> bullet point, which starts “*Harvesting of marine farming produce ...*”. There are no specific conditions applicable to this listed activity.

30 None of the listed permitted activities in the Plan would generate the same level or type of effects as that which would occur with salmon farming. Significantly the list of permitted activities in 35.1 of the Plan and its associated conditions, only provide for very limited occupation of the coastal marine area whereas

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<sup>42</sup> MSRMP, Volume Two, Chapter 25, Page 9.

salmon farm structures and associated feed and accommodation facilities require almost an exclusive occupation of the coastal marine area. There are also no permitted discharge activities of a type or volume that would be similar in effect to the discharge of feed required for the operation of a salmon farm.

In summary there would appear to be no basis for being able to apply the permitted baseline provisions of 104(2) of the RMA to the sites proposed for salmon farming.

In terms of the land adjoining the coastal marine area at each of the proposed marine farms, there are two zones which have been applied: Conservation and Rural One. At all locations, aside from Kaitapeha, there is a strip of Conservation Zone extending along the foreshore, which is either the Sounds Foreshore Reserve administered by the Department of Conservation or road reserve. The Kaitapeha site has no coastal strip and therefore has riparian rights to the water mark. Aside from the Conservation zoned strip running along the foreshore, the following table shows the zoning of land for each of the sites beyond this strip.

Site	Zone	Plan reference (Volume Three)
<b>Ngamahau</b>	Rural One	Map 6 and 42
<b>Ruaomoko</b>	Part Conservation and Part Rural One	Map 6 and 41
<b>Kaitapeha</b>	Rural One	Map 6 and 41
<b>Papatua</b>	Part Conservation and Part Rural One	Map 3
<b>Richmond</b>	Rural One	Map 2 and 19
<b>Tapipi</b>	Rural One	Map 2 and 19
<b>Kaitira</b>	Rural One	Map 2 and 20
<b>Waitata/White Horse Rock</b>	Rural One	Map 2 and 19

The provisions for the Rural One Zone are found in Chapter 36 of Volume Two. The rules are fairly permissive for rural type activities, which is expected in this type of zone and includes farming, land disturbance, parks, reserves etc. The permitted activity rules and associated standards are found in 36.1. Erection of buildings is permitted, including one dwelling house per allotment.

One significant rural activity not provided for as a permitted activity in the Rural One Zone is commercial forestry. Woodlot, conservation and protection forestry is permitted but commercial forestry is a limited discretionary activity (provided it is not within identified natural hazard, significant landscape or ecological significant areas). Intensive farming activity is provided for as a discretionary activity and in terms of the Plan's definitions in Chapter 25, includes land based aquaculture.

For the Conservation Zone the permitted activities can be found at Chapter 38 of Volume Two. The activities listed are limited in scope with the two main activities being those carried out in accordance with a conservation management strategy for the area or those in accordance with a management plan prepared under the Reserves Act 1977 for the area. The nature of these activities reflects that the majority of land that has been zoned Conservation is in public ownership. Other activities include

application of agrichemicals, some limited discharges, land disturbance, which are all subject to standards.

### ***Existing environment***

5 The existing environment has been assessed by NZKS in the Assessment of Effects – Tab 3. This issues report does not comment on the adequacy or accuracy of this as this would be beyond the purpose of the report. The adequacy and accuracy of NZKS’s assessment will be a matter that is considered through submissions and presented in evidence at the hearing.

10 The only matter that is covered in this existing environment assessment relates to consented marine farms and previous marine farm applications at or near NZKS’s proposed marine farms. Only those applications that are in relatively close proximity to a NZKS site are shown/described. If the Board wishes to have more information about consented or refused marine farm applications that are further afield, this can be provided.

15 Appendix S shows the location of consented marine farms near the Papatua site in Port Gore and near the Waitata group of sites. The White Horse Rock site at which NZKS have sought consent is the subject of an unimplemented consent and this has already been canvassed as a key issue in the Introduction to this report.

20 Also shown are applications for marine farms that have gone through a notification and hearing process but which have been refused consent by the Council. The consented farms are shown in blue and the refused farms are shown as either a grey oblong or as a small grey circle containing the letter ‘M’. In both cases the accompanying 6 digit number is the Council’s file number. A table showing the Council’s reasons for consent being refused is also included in Appendix S. (A copy of the original decision letter is available on request.)

25 At the location of the proposed NZKS farms in Queen Charlotte Sound/Tory Channel, there are no previous applications in close proximity, so no map is provided for these areas. The nearest applications for which consent was refused are in Oyster Bay, Tory Channel and in East Bay, Queen Charlotte Sound. The consented marine farms in this area can be seen on the map in Appendix Q.

30 At a number of locations where resource consents were applied for there had also been previous applications made for a marine farm licence under the former Marine Farming Act. Information in the following table shows those sites where there had been a marine farm licence application that had been declined. This has been gleaned from the Council’s files through comments made by the Ministry of Fisheries and by other submitters. However, if the Board wishes to have detail about these former applications, it would be appropriate to request this information directly from the Ministry as the Council’s records contain no detail about these previous applications.

Location	MDC Resource Consent file ref	Ministry of Fisheries ref
Pig Bay South, Port Gore	U941008	C18-419
Hunia North, Port Gore	U950877	C18-426
Hunia South, Port Gore	U950878	C18-427
Pig Bay South, Port Gore	U950879	C18-428
Tapipi coast, Richmond Bay	U930014	F65/436
Tapipi coast, Richmond Bay	U930016	F65/486
Tapipi coast, Richmond Bay	U951126	C18-448

## Maori Commercial Aquaculture Claims Settlement Act 2004

The Maori Commercial Aquaculture Claims Settlement Act 2004 provides for full and final settlement of contemporary Maori claims to commercial aquaculture. The Settlement Act was developed in parallel with the 2004 aquaculture law and provided for claims to be settled by allocating authorisations for 20% of any new aquaculture management areas to iwi. With recent legislative reform returning aquaculture to a consenting regime there was a need for a new delivery mechanism for settlement.

The Maori Commercial Aquaculture Claims Settlement Amendment Act 2011 amended the 2004 Settlement Act to enable the settlement to be delivered on a regional basis. Regional agreements will be negotiated between the Crown and regional iwi. Where an agreement is reached, settlement assets will still be transferred to the Trustee who will then allocate these to the appropriate iwi.

During development of the revised settlement provisions, iwi maintained a strong preference for settlement to be provided through access to appropriate space in the marine environment for aquaculture activities. As part of the Amendment Act, powers have been given to the Minister responsible for aquaculture to gazette space in the coastal marine area as Aquaculture Settlement Areas. This power has recently been exercised to create future settlement options and to mitigate the risk that private interests may gain first access to better aquaculture space while regional agreements are negotiated. Twelve sites located in Northland, Waikato and Marlborough were gazetted on 29 September 2011.

There are six Marlborough sites gazetted as follows:

Site	Area	Species
Port Gore - South	7.5 hectares	Salmon
Port Underwood - Entrance	20 hectares	Mussels
Croiselles Harbour - Upper	2 hectares	Oysters
Croiselles Harbour - Oyster Bay	3 hectares	Oysters
Tory Channel - Oyster Bay	3 hectares	Oysters
Port Underwood - Upper	2 hectares	Oysters

A briefing on 20 October 2011 given to Councillors from the Aquaculture Unit, Ministry of Agriculture and Forestry advised that the initial settlement implementation is for 20 hectares of space for mussels, 10 hectares for oysters and 50 hectares for salmon. To date only 7.5 hectares has been gazetted for salmon and the remainder of the allocation is being worked through with the Minister and iwi. Councillors were  
5 advised that the gazetted mussel and oyster sites are in CMZ 2 and the salmon site is CMZ 1. The other potential salmon sites being considered for gazettal are also CMZ 1. The Councillors were also informed that the outcome of the New Zealand King Salmon private plan change request will influence what the Crown's obligations are in respect of settlement for salmon<sup>43</sup>.

10 More detail about the process of iwi settlement can be obtained from the Ministry of Fisheries Aquaculture Unit.

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<sup>43</sup> Minutes of Marlborough District Council's Environment Committee – 20 October 2011.

# PART FOUR – REVIEW OF RPS AND RESOURCE MANAGEMENT PLANS

The intention of this part of the issues report is to provide the Board of Inquiry with information about future planning for Marlborough in terms of the current review of the Marlborough Regional Policy Statement and both resource management plans (Marlborough Sounds and Wairau/Awatere). It is considered important as the process has been underway for some time and there has already been input from those within the Sounds, the wider Marlborough community or those who otherwise have interests in Marlborough about the significance of the Marlborough Sounds and the activities that occur there, including marine farming.

## Progress on the review

The review of the Council’s regional policy statement has been underway for some time. Initially a community flyer went to all ratepayers in June 2006 advising of the review with the aim of finding out what the community’s views of the most important resource management issues Marlborough would face over the next 10 years. The flyer highlighted the existing RPS issues and under headings of the ‘coastal environment’, ‘natural areas’, ‘freshwater resources’, ‘urban areas’, ‘infrastructure’ and ‘rural areas’ set out a number of issues the Council believed needed consideration.

380 written responses were received with a further 40 people wanting to be kept advised of the review process.

From this the Council prepared a series of 12 discussion papers on issues that were thought to be regionally significant for Marlborough. The discussion papers were intended to enable the community to comment on the identified issues, or others that people thought could be regionally significant, as part of the review process. Options were provided for how the issues could be resolved or managed. An overview on each paper (except for Discussion Paper 1: Quality of Life in Marlborough) was also prepared, because some of the papers were reasonably long. Comments were received over a period of some 11 weeks from late September 2007 through to early December 2007.

The 12 papers were:

Discussion Paper 1: Quality of Life in Marlborough	Discussion Paper 7: Biodiversity and Natural Areas
Discussion Paper 2: Marlborough Townships and Small Settlements	Discussion Paper 8: Pests
Discussion Paper 3: Rural Issues	Discussion Paper 9: Energy
Discussion Paper 4: The Future of the Marlborough Sounds	Discussion Paper 10: Transport and Access
Discussion Paper 5: Water Allocation and Use	Discussion Paper 11: Waste Management
Discussion Paper 6: Water Quality	Discussion Paper 12: Natural and Other Hazards

A healthy response was received to the discussion papers with 133 people or organisations making comments. The organisations reflected a good cross section, including iwi, residents groups, individuals, industry groups, environmental groups and government departments. Although Discussion Paper 3: Rural Issues (68) and Discussion Paper 4: The Future of the Marlborough Sounds (70) received most responses, all discussion papers attracted at least 40 responses, demonstrating wide interest in all of the issues raised. People commented on more than one paper in many cases with some responses being very detailed.

Each of the discussion papers, overviews and a summary of comments received have been made available on the Council's website. Periodically newsletters are sent out to those who have expressed interest in the review process and these are also available on the Council's website.

Of particular relevance to the NZKS applications are the issues for the coastal environment as set out in the community ratepayer flyer and Discussion Paper 4: The Future of the Marlborough Sounds and the responses received to these. An important point to note about Discussion Paper 4 is that it was prepared in terms of the legislation applying at the time which required marine farms to be located in aquaculture management areas or AMA's. The questions included in the discussion paper were therefore based on the AMA approach.

The community response to a question posed in Discussion Paper 4 on whether the Council should provide further space for marine farming (through the creation of AMAs), was threefold:

- Some responses, predominantly representing marine farming interests, sought further areas for aquaculture to be established.
- A second group of responses argued that the Marlborough Sounds had already reached saturation and no further areas for marine farming should be set aside. Some in this group could accept some expansion provided it was limited to existing marine farming areas including a 50 metre seaward extension of existing marine farms, allowing one line to be added to all existing marine farms and opportunities for amalgamation and infill.
- A third group of responses said areas should be identified in the Marlborough Sounds where marine farms should not be established.

The Council also wanted to know what people actually thought about the Marlborough Sounds as a whole and what their vision was for the Sounds in 10 years time. So in Discussion Paper 4 this question was asked and highlighted that a vision would be important in determining how issues within the Sounds environment should be addressed. The responses received to this were diverse but for a variety of economic, social, cultural and recreational reasons many people said the Sounds were of considerable significance for them and had values that need to be protected.

This led to the development of an important chapter for the regional policy statement that will provide guidance at a high level about use of Marlborough's natural and physical resources. One aspect of this

chapter includes specific provision for the Marlborough Sounds to guide resource use in that environment on an ongoing basis while seeking to maintain and enhance the visual, ecological and physical qualities that contribute to the character of the Sounds. No other environment of Marlborough has been provided for in the draft regional policy statement in the way the Sounds has been at this high level. The way that perhaps best reflects how the Council views the Sounds is how it has described the Sounds in the Objective for these high level provisions: it is described as being the 'jewel in the crown' in terms of Marlborough's natural assets.

The following documents from the review process are those that may be useful to the Board of Inquiry in terms of providing a perspective on marine farming and, most importantly on the significance of the Marlborough Sounds, to Marlborough residents and those with interests in the Marlborough Sounds. These documents can be made available in hard copy form to the Board or can be found at <http://www.marlborough.govt.nz/Your-Council/RMA/Review-of-Resource-Management-Documents/Early-Consultation.aspx>.

	<b>Name of document</b>	<b>Relevant sections</b>
1	Community flyer sent to all ratepayers	
2	Community Views on Significant Issues for Marlborough - Summary of Responses Received on the Review Brochure - November 2006	Pages 5-7 contain specific comments on aquaculture
3	Newsletter 1 - October 2006	Brief summary of views on Marlborough Sounds
4	Discussion Paper 4: The Future of the Marlborough Sounds	Issue 1 – What is the community's vision? (Page 8) Issue 5 – Should there be more aquaculture in the Marlborough Sounds? (Page 29)
5	An Overview: The Future of the Marlborough Sounds	
6	Summary of Responses to Discussion Paper 4: Overview on the Future of the Marlborough Sounds	Issue 1 – What is the community's vision? (Page 1) Issue 5 – Should there be more aquaculture in the Marlborough Sounds? (Page 14)
7	Newsletter 3 April 2008	Brief summary of responses from document 6 (Page 3)

## **Projects supporting the review process**

As part of the review process there have been a number of supporting projects looking at some key issues. Information about Marlborough's outstanding landscapes, natural character, wetlands, allocation of water, significant marine areas, freshwater values and urban growth strategies for north and south Marlborough has, or is in the process of, being gathered. Some of these have been completed and some are ongoing. Of relevance for the NZKS proposals are the following two projects:

### ***Landscape and natural character review***

An extensive reassessment of Marlborough's landscapes was undertaken for the Council in 2009 by Boffa Miskell Limited. The important landscapes on private land that have been identified through the reassessment are currently the subject of ongoing discussions with landowners. Once this consultation

has been completed a report will be made publicly available and as part of the review process the Council will determine which areas will be included within the reviewed resource management plan.

Of note, the review has identified the whole of the Marlborough Sounds as either an outstanding natural landscape (s6) or a visual amenity landscape (s7). The following table shows for each of the NZKS sites the mapped landscapes of significance in the current Plan and the updated information gathered through the 2009 landscape study. Because the consultation has not been completed, the spatial areas have not been shown in this issues report.

<b>NZKS Sites</b>	<b>Current MSRMP</b>	<b>Updated information</b>
Waitata	None	Visual amenity landscape
Kaitira	Outstanding natural landscape	Visual amenity landscape
Taipipi	None	Visual amenity landscape
Richmond	None	Visual amenity landscape
Papatua	Outstanding natural landscape for part of Pig Bay	Visual amenity landscape Outstanding natural landscape
Kaitapeha	None	Outstanding natural landscape
Ruaomoko	None	Outstanding natural landscape
Ngamahau	None	Visual amenity landscape

As part of the reassessment project Boffa Miskell also considered the natural character of the coastal environment. However, in response to the release of the NZCPS in 2010, the Council engaged Boffa's to review and update the natural character aspects of the landscape study. Policy 13 of the NZCPS places greater emphasis on mapping (or otherwise identifying) areas of at least high natural character. The review undertaken by Boffa's has mapped high, very high and outstanding areas of natural character. These are shown in draft form in Appendix T. It is important to note that this work is currently being considered by the Department of Conservation as part of its national guidance project on implementing the NZCPS and could be subject to change.

The following table shows the areas of natural character relevant to each of the NZKS sites. Note that in the current Plan, natural character has not been mapped, so there is no comparison available.

<b>NZKS Sites</b>	<b>Updated information</b>
Waitata Reach sites	High natural character
Port Gore	Very high/outstanding natural character
Queen Charlotte Sound	High natural character
Tory Channel	-

**Significant marine areas identification**

The Council has in conjunction with the Department of Conservation, undertaken a process to identify and describe ecological values for significant sites that support rare, unique or special features from the

top of the high tide mark out to the Council's regional boundary. A published report<sup>44</sup> from this work, outlines known information on areas with conservation, scientific or ecological value that have come from a range of sources. The report notes that some areas have not been the subject of in-depth study and require further investigation to more clearly determine the values of the site.

- 5 The sites identified in the report will be included within the reviewed resource management plan.

There are sites of significance identified in the report, which are close to a number of the NZKS proposed farm sites, and these are set out in the table below. The mapped significant sites in relation to the NZKS proposed farm sites are shown in Appendix U.

<b>NZKS sites</b>	<b>Site number (from published report) and approximate distance</b>	<b>Ecological values</b>
Waitata Reach	Site 3.3 Duffers Reach is the nearest site, to the east of the proposed farm at Kaitira.	King Shag breeding – identified as the most important of the four main breeding sites in the Sounds.
Port Gore	Site 2.32 Off shore shallows (sub tidal) to east of proposed farm site	One of two largest horse mussel beds in the biogeographic area. The present condition of the bed is unknown as the area has been trawled regularly.
	Site 2.33 Inshore sub tidal site to southwest of proposed farm site	Density of horse mussels and associated variety of species unique in northern Sounds biogeography region.
Queen Charlotte Sound	Site 4.17 Queen Charlotte Sound including most of Ruaomoko site and all of Kaitapeha	Hectors dolphin area. Only area in the Marlborough Sounds.
	Site 5.4 Sub tidal sites immediately south of Ruaomoko.	Tidal current communities dominated by habitat forming bryozoan mounds, hydroids, sponges and ascidians.
	Site 7.15 Sub tidal – includes most of Queen Charlotte Sound including area of proposed farms.	Cook Strait Whale Migratory corridor including Oceania subpopulation of humpback whales, which is classified as an endangered species by the International Union for Conservation of Nature.
Tory Channel	Site 5.8 Series of sub tidal sites on outcrops and headlands to the east and west of proposed farm site	Tidal current communities dominated by dense colonies of hydroids found nowhere else in Marlborough.
	Site 7.15 Sub tidal – includes all of Tory Channel including area of proposed farm.	Cook Strait Whale Migratory corridor including Oceania subpopulation of humpback whales, which is classified as an endangered species by the International Union for Conservation of Nature.

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<sup>44</sup> Davidson RJ; Duffy CAJ; Baxter A; DuFresne S; Courtney S; Hamill P. September 2011. Ecologically significant marine sites in Marlborough, New Zealand. Coordinated by Davidson Environmental Limited for Marlborough District Council and Department of Conservation.

### **Joint project with Department of Conservation - Outcomes for Places**

The Department of Conservation (DOC) and the Council undertook a project together to identify a community vision for the Marlborough Sounds. This was termed the Marlborough Sounds “Outcomes for Places” Project and was to help in the review of the Nelson/Marlborough Conservation Management Strategy (CMS) <sup>45</sup> and the RPS.

The project was run with guidance from the Marlborough Sounds Advisory Group (SAG) and involved a series of four interactive, participatory workshops/hui. The aim of the project was to define a collective community vision for the Marlborough Sounds as an important first step in setting objectives for the management of the Sounds. The aim was that if both the CMS and RPS shared a common community vision then that vision would be much more likely to be realised.

The workshops/hui were designed to build upon the responses the Council received to the RPS discussion papers and the participants were asked to consider:

- The factors that make the Sounds special, and/or that they valued;
- The elements of the Sounds that are at risk and the factors contributing to that risk; and
- How the Sounds should look in 50 years time and what needed to happen to achieve that vision.

The activities that participants were specifically asked to consider included residential development, pastoral farming, marine farming, commercial forestry, tourist facilities and public facilities for access and recreation. The results of the workshops were written up<sup>46</sup> by an independent consultant who also assessed the provisions within the CMS and RPS in relation to the outcomes identified through the workshops.

A summary from the document on activities in the Sounds identified the following for marine farming:

	<b>Acceptable areas for marine farming</b>	<b>Exclusion areas for marine farming</b>
<b>Workshop 1 MDC and DOC</b>	Did not identify any further areas for marine farming.	Considered that marine farming should be excluded from Queen Charlotte Sound (from the Grove to Dieffenbach). Also that marine farms should be excluded from other areas as follows: the whole of D’Urville Island; the whole of Tory Channel; the whole of Tennyson Inlet; Maud Island; Chetwode Island; outer reaches of Port Gore; Mahau Sound to Maori Bay; Kenepuru Sound (southern side); Northwest side of Nydia Bay to Tawero Point; and Hopai Bay. Workshop 1 also felt that existing

<sup>45</sup> The Nelson/Marlborough Conservation Management Strategy is prepared by the Department of Conservation under the Conservation Act 1987. It establishes objectives for the integrated management of the natural and historic resources managed by the Department.

<sup>46</sup> Corydon Consultants Ltd (Dianne Buchan and Kirsty Austin). April 2009. Outcomes for Places Stakeholder views on Future Development in the Marlborough Sounds. Report prepared for Department of Conservation and Marlborough District Council.

		marine farms in East Bay should be reassessed in the future.
<b>Workshop 2 (Havelock)</b> <b>Pelorus Sound stakeholders</b>	Considered that marine farming should be confined to the areas where it is currently located and that no additional surface structures should be permitted.	Considered that marine farms should be excluded from those areas which do not currently have marine farms and that there should be no additional surface structures in areas where marine farms are currently allowed.
<b>Workshop 3 (Picton)</b> <b>Queen Charlotte Sound stakeholders</b>	Thought that marine farming in the Queen Charlotte/Tory Channel/Port Underwood area should be limited to Tory Channel (from Dieffenbach Point to East / West Head) and the area around Otanerau and Onauku Bays on Arapawa Island.	Considered that marine farming should be excluded from Queen Charlotte Sound (from the Grove to Dieffenbach).
<b>Workshop 4 Iwi</b>	Did not specify areas for marine farming as such but the map provided by Ngati Kuia identified Titirangi Bay and Robin Hood Bay (Port Underwood) as important for Mahinga Kai.	Did not specify areas for marine farming as such but the map provided by Ngati Kuia identified Titirangi Bay and Robin Hood Bay (Port Underwood) as important for Mahinga Kai.

The outcomes from the project have been used in the process of developing new policy for the Council's resource management framework.

## Developing policy

- 5 The Council has been developing policy for the draft regional policy statement since completing summaries of comments received on the discussion papers. Early on in developing policy, staff considered that it would be important for the provisions to be 'tested' before the new regional policy statement was formally notified under the First Schedule of the RMA. The rationale for this was that the greatest flexibility for change to provisions actually exists prior to notification of a proposed document.
- 10 Once notified, only those provisions submitted on can be changed, and then only within the scope of those submissions.

Therefore the Council set up a number of focus groups with the task of reviewing the provisions and seeing how they might work and/or what the fishhooks might be with them. The aim was to identify and resolve any substantive issues prior to notification, which would then have the effect of minimising the number and size of submissions received and effectively speed up the First Schedule process.

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As it currently stands, the draft regional policy statement will contain 18 issue based chapters associated with the use, development and protection of natural and physical resources. Given the interconnections between many of the issues, resource based focus groups were established (Rural, Urban, Freshwater and Marine), as opposed to a focus group for each chapter. Key stakeholders in each of the focus groups with experience in dealing with the resource management issues have been used.

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A number of issue based groups had already been established by the Council. These groups included the Sounds Advisory Group, the Landscape Group and the Significant Natural Areas Project Group. An

Iwi Working Group had been established early on in the review process and this has continued in its existing partnership role with the Council in the development of policy.

A Practitioners' focus group was established so that an objective and external view of all provisions is provided from those in the planning and legal professions. The Council's view was that as these professions will use the regional policy statement the most, they would be a good barometer of the workability of draft provisions.

The Council has not limited its consultation on the draft provisions to the focus groups however. There are many other organisations that have been and will continue to be consulted directly. The provisions are also considered by internal staff and the Council's Plan Review Sub-Committee (which is made up of the chairs of each of the Council's standing committees).

Draft rules have also been developed for a number of activities and these are also starting to be tested through the focus group process. This includes rules for many activities in the coastal marine area, port and marina areas and for outstanding and visual amenity landscapes.

## **Change in approach for resource management planning in**

### **Marlborough**

As policy has been developed, focus group participants, especially resource users, expressed concern that it was difficult to provide feedback on the draft objectives, policies and methods without reference to draft rules. They highlighted that the rules would trigger the need to consider particular policies, but that there is currently no certainty over the likely trigger. This led to a request from Federated Farmers and others to delay the notification of the RPS pending development of rules.

After considering this the Council relooked at its approach to reviewing the regional policy statement. With the opportunities available through being a unitary authority the Council made a decision to rationalise the current framework by combining the regional policy statement and the Marlborough Sounds and Wairau/Awatere Resource Management Plans into one document. In effect, the current Volume One of both plans, which is the policy volume, becomes part of the RPS. However, an RPS cannot contain rules so the Council intends to prepare a separate volume of regional, regional coastal and district rules. This will implement the direction provided by the RPS. The objectives and policies of the RPS will help to process and determine resource consent applications required by the rules.

The aim with this approach is to ensure that there is a high level of integration and clear and concise direction on the critical resource management issues in Marlborough and importantly will also ensure a user friendly planning framework. Importantly this approach will achieve the greatest level of integration that could possibly occur in policy terms – a significant imperative of the RMA but also the NZCPS. One downside to this change in approach has meant that notification of the RPS will be delayed until such time as the review work on the rules can catch up. However, there is also a significant advantage in

being able to provide the community with the opportunity to consider and submit on a complete package of resource management provisions.

Work has commenced on reviewing the rules in the current resource management plans. The initial work stream has been to focus on regional coastal rules and these are substantially complete, as is the policy chapter for 'Use of the Coastal Environment'. At the time of preparing this report, policy development had been substantially completed for the following chapters of the new regional policy statement/plans:

2: Natural Character	12: Heritage Resources
3: Regionally Significant Natural and Physical Resources	13: Energy
4: Te Tau Ihu Iwi	14: Climate Change
6: Use of the Coastal Environment	15: Public access, open space and recreation
7: Resource Quality – Water, Air and Soil Quality	16: Transportation
10: Biodiversity and Natural Areas	17: Waste
11: Landscapes	18: Natural Hazards

Progress on policy for allocation of public resources, townships and small settlements and use of the rural environment is at the early stages of development.

***Simplified planning framework***

The planning framework being worked towards is much simplified from that which currently exists in the plans. This includes a reduced range of activity statuses being applied with clearer triggers about when a resource consent is needed. There will be no non-complying activities and minimal use of controlled and restricted discretionary statuses.

The rules will be simple triggers i.e. is a consent needed or not. The assessment criteria that are contained in the plans at present will not be used in the new resource management plan. Any assessment criteria will be in the form of policy.

***Proposed provisions for marine farming***

Policies and draft rules have been developed for the activity of marine farming. The policy has, at the time of preparing this report, been considered by the Sounds Advisory Group, the Marine Focus Group and the Council's Plan Review Sub-Committee.

The policy is specifically for marine farming activities and with an objective to have a sustainable marine farming industry has a three part framework that:

- Identifies inappropriate locations for marine farms;
- Establishes the matters and effects to be considered when developing new areas or new forms of marine farming or where new resource consents are sought for existing marine farms; and

- Guides the management of existing marine farms.

The policy is more detailed than that currently in the Plan but still reflects the existing situation in terms of a prohibited area for marine farming. There is a major difference however, from the current Plan and this is in terms of the use of two coastal marine zones. In the new resource management plan it is intended there will only be one coastal marine zone. The Council intends to use overlays to set out areas prohibited for certain activities, including for marine farming, and to identify areas of significance for landscape, natural character, indigenous biodiversity value and for natural hazards.

## Summary

In summary:

- 10 ▪ The review of the regional policy statement and resource management plans for Marlborough is well underway.
- There has been a delay in notifying a new regional policy statement because of a change in approach by the Council to prepare a combined regional policy statement, coastal, district and regional plan.
- 15 ▪ A summarised view from comments received from the community on discussion papers prepared as part of the regional policy statement/resource management plan review showed that there were diverging views about the future of marine farming. Some people said more areas should be made available for marine farming while others thought the Sounds had already reached saturation point with marine farms. Others thought the RPS should identify 'no-go' areas.
- 20 ▪ A more detailed approach to guiding a sustainable marine farming industry has been developed through the draft policies prepared for the regional policy statement. This includes retaining prohibited areas for marine farming but providing for some expansion within areas already used for marine farming.
- 25 ▪ One coastal marine zone is proposed with a more simplified rule structure but more detailed policy to guide decision makers where resource consents are required.