

4 March 2024

Ministry for Primary Industries
By email: Aquaculturepolicy@mpi.govt.nz

Extending the duration of existing consents for marine farming

This letter constitutes the Environmental Defence Society's (EDS's) feedback on the Government's proposal to extend existing marine farm consent durations by an additional 25 years via amendment to the Resource Management Act 1991 (RMA).

We strongly oppose the proposal for the reasons set out below.

This letter also serves as notice that we consider the timeframe for feedback and information provided on the proposal to be completely insufficient, inadequate and unreasonable.

We acknowledge that Ministry officials are acting under Ministerial direction on these matters.

Insufficient time for feedback

On Friday 23 February at 1.20pm, you informed us of the proposal and requested feedback by 4 March 2024. On Sunday 25 February 2024, we advised that a 1-week consultation period was inadequate and requested a 2-month extension to the feedback deadline.

On Wednesday 28 February 2024, you declined that request noting that the "The timeframes we are working to have been set by the Government's legislative amendment schedule this year and are not able to be changed."

On Friday 1 March 2024, you hosted a 45-minute on-line information session on the proposal and notified us that feedback had to be received by noon on 4 March 2024.

We have therefore been given 1 week (5 working days) to provide this feedback.

Providing sufficient time for feedback is a key tenant of adequate consultation. One week falls significantly short of sufficient time. It is a woefully inadequate consultation period. It is completely unreasonable to expect stakeholders to properly respond under such constraints.

EDS has extensive knowledge of marine farming. In 2019, EDS produced a report called *Farming the Sea*¹ which described scientific information on the environmental impacts of different types of marine farming, reviewed past management approaches and developed recommendations for future management.

¹ <https://eds.org.nz/resources/documents/reports/farming-the-sea/>

We have participated in numerous marine farm applications over the years, including a proposal at Pig Bay in Marlborough Sounds, a fin fish farm in the Hauraki Gulf and reconstituting of mussel farms in Port Gore.

In 2014 we won a Supreme Court decision *EDS v King Salmon*² which focused on a salmon farm proposal in Port Gore and the application of the New Zealand Coastal Policy Statement to plan changes and consenting.

We are currently engaged in Environment Court mediation on Variation 1 to the Marlborough Regional Environment Plan which sets the policy framework for aquaculture in Marlborough, a marine farming 'hot spot' of New Zealand which hosts around half the marine farms in the country.

EDS was also involved in a consultative group established by the Ministry of Primary Industries (MPI) to assist with the development of the National Environmental Standards for Marine Aquaculture (NES MA) which came into force on 1 December 2020.

Offering us 1 week to provide feedback is an insult to our extensive expertise on aquaculture matters. Further, the brief timeframe suggests the consultation is not genuine. We consider it tokenism and a sham.

Insufficient information

Another key tenet of adequate consultation is the provision of enough information to enable stakeholders to be adequately informed so as to be able to make intelligent and useful responses.

You have only provided us with a 1-page summary of the proposal and a power-point presentation which repeats the summary.

The proposal relates to 1200 marine farms across the country. As set out below, it has potentially significant ramifications from an environmental, trade, international reputation and climate change perspective.

Against that backdrop, the information provided is completely insufficient. It does not provide any description of the circumstances of the 1200 farms involved, any assessment of the environmental impacts of the proposal, or any analysis of the extent to which it meets the requirements under Part 2 of the RMA.

Feedback on proposal

Our feedback on the proposal is necessarily brief due to the insufficient period of consultation and inadequate provision of information as set out above.

Proposed law change is not needed

In our view there is no need for this law change. Three reviews of the NES MA have shown that the nuanced approach provided for in those regulations is working well. The NES MA allows fast reconstituting via a non-notified process where there are no issues.

² *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38

Importantly, it allows for a more robust approach where there are issues, specifically when marine farms are located in unsuitable areas.

It also allows conditions attached to consents to be updated. Many marine farms were initially consented prior to the RMA coming into force and they have undergone only very rudimentary assessment since that time. Many have scant and inadequate conditions attached to them.

In addition, in many cases little was known about the benthic environment underneath the farms when they were first consented, a gap that has since been filled in the Marlborough Sounds through multibeam seafloor mapping. It is important that regional and unitary councils retain the power to identify where aquaculture is unsuitable within their regions, drawing on the best science available at that time.

In short, there is no problem that needs addressing. The current regulations represent a practical and effective approach to the re consenting of marine farms.

The Government's current proposal to extend durations by 25 years has its genesis in ill-informed political bargaining. The Ministry needs to provide Ministers with clear advice that the proposal should be discontinued.

Proposed law change will have negative environmental impacts

Marine farming can be a sustainable industry if located in the right place and at the right density. Poorly located and managed farms can have significant adverse environmental impacts including cumulative impacts. These include:

- Degradation of reef communities when shellfish farms are located over reef systems and drop shells, faeces, pseudofaeces and biofouling onto the seabed
- Phytoplankton and zooplankton depletion when intensive shellfish farming occurs in low flow areas
- Disruption of currents, tidal and sediment flows by marine farming structures placed in the water column and on the seabed including oyster racks causing sediment build-up
- Organic enrichment and oxygen depletion in the water column and seabed sediment, fundamentally shifting seabed communities, when uneaten food and fish faeces are discharged from fish farms
- Accumulation of toxic levels of zinc and copper in seabed sediments from fish feed and use of anti-fouling
- Exclusion of marine mammals and seabirds from feeding habitat including dolphins and the nationally endangered king shag
- Degradation of landscape and natural character values
- Genetic mixing when indigenous species are farmed and spat is transported from other areas of the country with different genetic characteristics or selectively bred
- Biosecurity risks with the movement of living material (ie spat and juvenile fish) and structures (ie lines, anchors and nets).

Climate change, with resultant warming and acidification of sea water and increased sediment flows from land (with more intense storms), means that sites that previously were suitable for marine farming may no longer be suitable in the future. We have already seen

the die-off of thousands of salmon in the Marlborough Sounds during marine heatwaves which will become more common.

A law change that assumes that consenting decisions made in the past will still be good decisions in the future ignores current best available scientific information and the realities of climate change. It will lead to bad outcomes for both the aquaculture industry and the environment. It will also potentially lead to irreversible environmental damage where systems are pushed over their environmental tipping points.

Councils must retain the ability to review conditions as circumstances change over time. Freezing approvals as proposed is not sensible in such a dynamic context.

Reputational damage

The proposed attempt to bypass environmental assessment will bring the sector's international and domestic reputation into disrepute. In particular, the industry will lose social license amongst affected communities making it difficult to operate effectively.

It will arguably lead to clear breaches of the obligations on environment and climate change in both existing and proposed free trade agreements (FTAs). EDS has recently analysed the NZ-UK FTA and has concluded that current government policies that roll back environmental protections and climate change responses are likely in breach. This proposal compounds that breach.

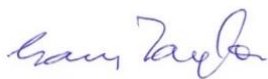
Conclusion

Running roughshod over environmental standards, and lowering protection, which is explicit in this proposal, is wrong and should be stopped. Given that existing regulation is already effective in addressing consenting costs and timelines, legislating is unnecessary and a step too far.

We strongly oppose the Government's proposal to extend existing marine farm consent durations by an additional 25 years.

We urge the Ministry to impress upon the Minister the risks of proceeding and to recommend that the proposal be discontinued.

Ngā mihi



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Chief Executive
Environmental Defence Society