

Environmental Defence Society submission on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

SUBMITTER DETAILS

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Introduction

1. The Environmental Defence Society (**EDS**) thanks the Primary Production Committee for the opportunity to make a submission on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill (**Bill**).
2. EDS is an independent not-for-profit organisation conducting policy research and litigation. It was established in 1971 with the objective of bringing together the disciplines of law, science and planning to promote better environmental outcomes. EDS has a special interest in the marine environment and recently completed a multiyear project looking at issues within the national oceans management system and options for future reform, which included (among other things) marine spatial planning and aquaculture.¹
3. EDS has extensive knowledge of the issues associated with marine farming in Aotearoa New Zealand. In 2019, EDS produced a report called *Farming the Sea* which described scientific information on the environmental impacts of different types of marine farming, reviewed past management approaches and developed recommendations for future management.²
4. Over the years, EDS has consistently advocated for improved regulation of marine farms to ensure appropriate management of environmental effects. This has involved litigation (when necessary) and participation in numerous marine farm applications including a proposal at Pig Bay in Marlborough Sounds, a fin fish farm in the Hauraki Gulf and consenting of mussel farms in Port Gore. In 2014, the Supreme Court issued its landmark “*King Salmon*” decision in which EDS successfully appealed decisions to approve a salmon farm in Port Gore.³
5. EDS was 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.

¹ Greg Severinsen and others *The Breaking Wave: Oceans Reform in Aotearoa New Zealand* (EDS, Auckland, June 2022), available [here](#).

² Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), available [here](#).

³ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd & Ors* [2014] NZSC 38.

6. EDS is currently engaged in Environment Court mediation on Variation 1 to the Marlborough Regional Environment Plan (**MREP**) which sets the policy framework for aquaculture in Marlborough, a marine farming 'hot spot' which hosts around half the marine farms in the country.
7. EDS wishes to appear before the Primary Production Committee to speak to the points raised in this submission.

Summary of EDS's position on the Bill

8. The Bill proposes to amend the Resource Management Act 1991 (**RMA**) so it is easier for existing marine farms to continue operating by:
 - (a) Extending the duration of current permits by an additional 20 years (but not beyond 2050);⁴ and
 - (b) Introducing a bespoke mechanism for councils to review the conditions of extended consents.⁵
9. EDS strongly opposes the Bill in its entirety.
10. The Government's approach to the legislative process fails to respect fundamental principles of good law-making. The Bill is being rushed through the Committee without adequate analysis or information. There is insufficient time for effective public scrutiny and participation. The approach adopted by the Government risks creating bad law and eroding public confidence in the consenting regime. EDS is concerned the Bill could undermine the social licence for marine farming in Aotearoa New Zealand and harm the industry's reputation in international markets.
11. The Bill's proposals raise several concerns that cannot be resolved by legislative amendment. The key issues are:
 - (a) The Bill is unnecessary;
 - (b) The blanket rollover of permits for an additional 20 years poses significant risks to the coastal environment;
 - (c) The proposed consent review mechanism is inadequate and undermines the ability of councils to effectively manage the environmental risks of existing marine farms in accordance with the RMA;
 - (d) The Bill gives insufficient consideration to obligations under international law.
12. EDS requests that the Bill be withdrawn and that a process is initiated to review the NES MA to address issues identified in the Fisheries New Zealand (**FNZ**) Year 3 Review 2023 (discussed below).
13. If the Bill is not withdrawn, EDS seeks the following amendments to the Bill:
 - (a) Reduce the term of extension to 5 years.
 - (b) Strengthen the review mechanism by empowering councils to make decisions that promote sustainable management. As a minimum:
 - (i) Remove prescriptive limits on council powers of review;

⁴ The Bill, cl 4, inserting new Subpart 1A.

⁵ The Bill, cl 4, inserting new Subpart 1B.

- (ii) Remove the requirement for the Director General of MPI to approve reviews; and
 - (iii) Allow councils to recover the costs of review.
- (c) Provide for effective public participation in the review process. As a minimum:
- (i) Make notification mandatory and expand the notification criteria to include public interest groups such as environmental organisations, conservation bodies and local community groups;
 - (ii) Allow written submissions from the same; and
 - (iii) Require consent authorities to hold public hearings as part of the review process.

Issue 1: The legislative process fails to respect fundamental principles of good law-making

14. Development and introduction of the Bill has progressed in a manner that does not adhere to the principles of good law-making with respect to adequate public engagement, provision of information or cost-benefit analysis. Specifically:

- (a) In March 2024, stakeholders, including Councils and environmental groups, were only provided five working days to provide feedback on the Government’s original proposal to extend the duration of current marine farm permits by 25 years. There were fundamental deficiencies in the information provided as part of that ‘consultation’.⁶
- (b) Information released to EDS under the Official Information Act shows that industry players were provided an inside-track prior to the above process and asked to provide input into the proposals months earlier. The Regulatory Impact Statement (**RIS**) confirms that informal engagement was undertaken with industry in December 2023.⁷
- (c) A RIS was undertaken in April 2024, but it was based on the Government’s original proposal to extend the duration of current marine farm permits by 25 years. The quality assurance panel reviewing the RIS considered that it only partially met the Quality Assurance criteria because, among other things, the consultation was limited, and stakeholders were not given sufficient time or a full range of options to consider.⁸
- (d) No further impact analysis has been undertaken on the Bill’s revised proposals. The costs and benefits of a 20-year extension or a bespoke review provision have not, therefore, been assessed or estimated.⁹
- (e) Notwithstanding that the Bill purports to address some of the concerns raised in Council and environmental group feedback, no further engagement was undertaken on the Bill’s revised proposals to test if that was the case before it was introduced to the House.
- (f) The Bill was introduced and referred to the Committee on 30 May with public submissions closing on 16 June. That only provided a maximum of 11 working days for the public to consider the details and potential implications of the Bill and then prepare submissions.

⁶ Letter from EDS to MPI “*Extending the duration of existing consents for marine farming*” (4 March 2024), available [here](#).

⁷ MPI “Regulatory Impact Statement: Extending the duration of existing marine farm consents” (4 April 2024) [**RIS**] available [here](#), page 7.

⁸ RIS, page 4.

⁹ MPI “Departmental Disclosure Statement: Resource Management (Extending Duration of Marine Farm Coastal Permits) Amendment Bill” (15 May 2024) [**Disclosure Statement**], available [here](#), section 2.5.

- (g) Notwithstanding its completion in April, the RIS was not made publicly available by MPI until the afternoon of 6 June. That only left a maximum of six working days for the public to consider analysis that was integral to the Bill’s design.
 - (h) A New Zealand Bill of Rights Act assessment has not been completed, despite it being promised upon introduction of the Bill, and despite acknowledgment that the Bill may cause concern because it bypasses default consenting processes, including rights of appeal.¹⁰
 - (i) The policy details to be given effect to by the Bill have not otherwise been tested or assessed to ensure that the Bill’s provisions are workable and complete.¹¹
15. Further, on 22 March 2024, EDS made an official information request for all feedback received on the Government’s original proposal to extend marine farm durations. That information has still not been provided and EDS has consequently laid a complaint with the Ombudsman. Feedback from other interested parties was required to inform our submission on the Bill and that has not been available.
 16. Overall, we find the Government’s approach to development and introduction of the Bill deeply concerning.
 17. The Bill provides for the rollover of exclusive rights to occupy and use the coastal and marine area (a *public commons*) for 20 years. It does so in a way that effectively excludes the *public* from having a say in the consent process and limits the ability of the *public* to appeal decisions on the same. Given the Bill has potentially significant implications *for the public* EDS considers it is essential that sufficient time is provided to enable adequate scrutiny of its implications.
 18. The timeframes set out above are woefully inadequate. These concerns are exacerbated by delays in the provision of information and the incomplete disclosure of relevant analysis, which in itself is inadequate.
 19. The approach adopted not only risks creating bad law – it erodes public confidence in the Bill and undermines the legitimacy of the marine farms it seeks to authorise.

Issue 2: The Bill is unnecessary

20. The Government has not provided any clear rationale to support the need for change.
21. The Bill’s general policy statement suggests the legislative intent is to improve investment certainty by overcoming costs and delays in the consenting of existing marine farms:¹²

“Those representing the marine farming industry have expressed concerns that obtaining replacement resource consent is costly and time consuming. They have indicated that the process of renewing consents creates uncertainty, acts as a barrier to growth, and impacts their ability to invest in farms, improvements and assets.”
22. There is scant evidence that this is true. Indeed, the main driver for the proposed change appears to be the coalition Government’s agreement to deliver longer durations for marine farming permits and remove regulations that impede the productivity and enormous potential of

¹⁰ Disclosure Statement, section 3.4.
¹¹ Disclosure Statement, section 3.7.
¹² Disclosure Statement, page 3.

the seafood sector. As noted in the RIS, this agreement has shaped policy options and direction on delivering longer durations for marine farming permits.¹³

Available consenting pathways under the NES MA are effective and efficient

23. There is strong evidence that available re-consenting pathways under the NES MA are operating effectively and efficiently.
24. The NES MA was introduced in 2020 to “increase regulatory consistency and certainty, ensure environmental effects are appropriately managed and, as an indirect benefit, increase confidence to invest in the industry.”¹⁴ It provides for streamlined re-consenting of existing marine farms in circumstances where their environmental risk is relatively low. For instance, public notification is precluded for certain farms if minimum information and consultation requirements are met;¹⁵ and council discretion to impose conditions is restricted if farms are located in appropriate areas.¹⁶
25. In August 2023, FNZ published findings from the Year 3 review of the NES MA.¹⁷ The review found “overall, the NES MA have been effective and met their objective”.¹⁸ As set out, several benefits have been realised through the NES MA consenting process:¹⁹

“Applications processed under the NES-MA rules have largely benefited from the more consistent and efficient consenting pathway, including not being given public or limited notification. No decisions on applications processed under the NES-MA rules have been subject to Environment Court appeal. No applications have been declined during this period.”

26. We acknowledge the FNZ review also identified several issues within the NES MA, including:²⁰
- (a) Slow implementation through regional plans;
 - (b) Unanticipated complexity relating to realignment of farms in the Marlborough Region;
 - (c) Need to improve resiliency of spat supply for the Wainui Bay spat catching farms;
 - (d) Need to further enable on-farm innovation and better use of existing marine farming space;
 - (e) Need to create more nuanced pathways for replacement consent applications in areas where certain activities have been identified as inappropriate;
 - (f) Need for further engagement with iwi / hapū and other Māori groups; and
 - (g) Need for additional support and guidance for councils and the industry to improve outcomes and implementation.
27. These issues all highlight the need to adopt a place-based approach that accounts for the highly nuanced nature of marine farming in Aotearoa New Zealand. The Bill fails to adequately address any of these issues and instead adopts a blanket approach that treats every marine farm and every location the same. We consider that the Bill will only entrench existing issues with the industry by deferring the statutory assessment process for an additional 20 years.

¹³ RIS, page 1.

¹⁴ Fisheries New Zealand “Report on the Year Three Review of the National Environmental Standards for Marine Aquaculture” (FNZ Technical Paper No: 2023/02, August 2023) [FNZ Year Three Review], page 1.

¹⁵ Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 [NES MA], reg 24.

¹⁶ For example, see NES MA, reg 14.

¹⁷ FNZ Year Three Review.

¹⁸ FNZ Year Three Review, page 1.

¹⁹ FNZ Year Three Review, page 5.

²⁰ FNZ Year Three Review, page 1.

Alleged delays in re consenting do not exist

28. EDS has gone directly to Councils to seek their feedback on the Government's original proposal to extend durations of marine farm permits by 25 years. It is abundantly clear from that feedback that there is no problem with current re consenting pathways. All Councils rejected the Government's proposal as an inappropriate response to concerns raised. For example:

(a) *Marlborough*

Marlborough District Council's feedback on the Government's proposals confirms that there is no issue with respect to industry certainty:

*"The concern expressed in the "one pager" regarding a bottle neck of applications **does not exist in Marlborough** through proactive engagement with the marine farming industry. Combined with the effect of Variation 1 in providing certainty to the industry, there would seem **little justification for the intervention locally.**"*

Through Variation 1, Marlborough District Council has struck the right balance between enabling Marlborough's marine farming industry to continue to thrive while protecting sensitive coastal areas and habitats. As Council stated:

*"**Council has successfully provided certainty to marine farmers and the marine farming industry, including those farmers still operating under deemed coastal permits. Provided the standards and terms of the relevant controlled activity are complied with, marine farmers will secure a replacement coastal permit to continue farming in the relevant AMA. The controlled activity status has not been disputed via appeals, so there now exists a streamlined re consenting process and reduced re consenting costs for marine farmers going forward.**"*

With respect to the Government's proposal, the Council stated, "... *that the proposal has the **very real potential to undermine the outcomes sought by Variation 1 and the NZCPS.***" EDS considers this particularly concerning given the extensive plan review process that has been undertaken. We expand on these concerns below.

(b) *Northland*

Northland has 272 hectares of marine farms producing Pacific Oysters and Greenshell Mussels for domestic and international consumption. The Northland Regional Council has recently completed its plan with respect to aquaculture. As the Council advised in its feedback:

"Northland Regional Council has collaborated with the aquaculture industry and the community to develop an RMA plan for managing and growing aquaculture in Northland. All parties reached an agreement on these provisions in 2023. A 25-year extension would bypass the anticipated outcomes outlined in those provisions.

Under the new Regional Plan, renewing a resource consent for aquaculture is typically a controlled activity. The plan provides industry certainty while allowing for the review and adjustment of resource consent conditions where necessary. ..."

(c) Southland

Environment Southland's feedback could not be clearer:

*"This proposal [the Government's] appears to be an **excessive reaction to an issue that has not been properly defined.**"*

Southland currently has 55 existing consented aquaculture activities. Most of these have been established since the mid 1990's and 45 aquaculture consents will be expiring in January 2025. Only five consent holders currently operate the 45 aquaculture consents that expire in 2025. As Council stated:

"Environment Southland has already initiated conversations with applicants to renew these consents, that group is looking to bundle consents and jointly lodge applications to cover various aquaculture activities and sites.

This bundling initiative will significantly streamline the re consenting process and reduce costs for applicants. It will reduce Environment Southland's consenting volume to only five consents which is insignificant in terms of our annual consenting volume."

No quantifiable evidence that the Bill's proposals will address alleged issues

29. The RIS considered five options including the status quo, extending the duration of current permits by either 5, 15 or 25 years, or applying a blanket extension to 2050.²¹

30. It does not provide any quantifiable evidence of the costs and benefits of these options, stating:²²

*"A range of monetary and non-monetary benefits are likely to accrue to consent holders as a result of extending consents, meanwhile extending consents is likely to have some costs to the environment and sustainable management of resources. **These benefits and costs cannot be quantified or validated based on the current information and data, and unintended consequences cannot be ruled out.** This, along with compressed timeframes, means officials have not recommended an option."*

31. No cost-benefit analysis has been provided on the Bill's 20-year extension or bespoke council review mechanism.

Issue 3: The Bill poses significant risks to the coastal environment

New Subpart 1A – duration of coastal permits for marine farms extended

32. The Bill proposes to amend the RMA to extend the duration of current permits for marine farms by an additional 20 years.²³ The suite of amendments in new subpart 1A would in effect provide for the automatic rollover of existing consent conditions, without the need for a statutory assessment as to whether that is appropriate.²⁴

²¹ RIS, available [here](#).

²² RIS, page 2.

²³ The Bill, cl 4, inserting new s 165ZFHC(1).

²⁴ The Bill, cl 4, inserting new s 165ZFHC(3).

33. It is deeply concerning that all existing marine farms could be re-consented for two decades without any consideration of environmental effects. The approach is problematic because:

- (a) Aquaculture activities have inherent environmental risks and these can increase significantly if marine farms are located in the wrong place.
- (b) Climate change is likely to increase these risks.
- (c) Consequently, there is a need for periodic review of current permits.
- (d) The Bill provides for known environmental risks to be ignored.

34. EDS therefore strongly opposes the Bill's proposed 20-year blanket extension of marine farm durations. We expand on each of these concerns by reference to specific aspects of the Bill below.

Aquaculture activities have inherent environmental risks that are strongly influenced by location

35. There is a wealth of information on the environmental impacts of aquaculture in Aotearoa New Zealand. These impacts include:

- (a) Degradation of reef communities when shellfish farms are located over reef systems and drop shells, faeces, pseudofaeces and biofouling onto the seabed;
- (b) Phytoplankton and zooplankton depletion when intensive shellfish farming occurs in low flow areas;
- (c) 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;
- (d) 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;
- (e) Accumulation of toxic levels of zinc and copper in seabed sediments from fish feed and use of anti-fouling;
- (f) Entanglement risks and exclusion of marine mammals from feeding habitat;
- (g) Vessel movements in proximity to king shag roosting and colony sites can cause breeding failure;
- (h) Degradation of natural landscape and natural character values;
- (i) Genetic mixing when indigenous species are farmed and spat is transported from other areas of the country with different genetic characteristics or selectively bred; and
- (j) Biosecurity risks with the movement of living material (i.e. spat and juvenile fish) and structures (i.e. lines, anchors and nets).

36. The *Aquatic environment and biodiversity annual review (AEBAR)* provides a summary of the best available scientific information on the environmental effects of aquaculture in Aotearoa New Zealand.²⁵ This information was last updated in 2021. It demonstrates that the environmental effects of marine farms are not uniform. Multiple interacting factors influence the magnitude and scale of environmental impacts for any given site, including marine farm attributes (e.g. size, location, feed type, equipment) and environmental factors (e.g. depth, currents, temperature). Moreover, the cumulative effects of other activities (including other marine farms) affect the carrying capacity of a coastal area and how vulnerable it is to environmental impacts.

²⁵ MPI *Aquatic environment and biodiversity annual review (AEBAR) 2021 - Chapter 16 Ecological Effects of Aquaculture* Technical Summary [AEBAR], available [here](#).

37. The benthic effects of shellfish farming are relatively small in terms of severity but can take substantial time to reverse if farms are poorly sited. For instance, a study monitoring the recovery of benthic habitat following the removal of a mussel farm in East Bay, Queen Charlotte Sound, found it took five to 11 years for sediment recovery; and 11 years or longer for populations of filter feeders such as horse mussels and giant lampshell to recover.²⁶ These types of seabed effects can be minimised by locating shellfish farms in well-flushed areas and away from reef systems and important biota.²⁷
38. In contrast, salmon farming can have serious effects on the seabed beneath and around farms because of the addition of feeds and associated nutrients which contribute disproportionately to organic enrichment and smothering.²⁸ The impacts are greater in shallow, low flow sites, which is where most salmon farms were originally located and some still operate. For example, significant adverse impacts on benthic ecosystems, including persistent anoxia and excessive nutrient enrichment, have been recorded at sites with weak flushing in the Marlborough Sounds.²⁹

Climate change is likely to exacerbate these risks

39. 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.³⁰ For instance, studies have indicated that projected increases in heavy rainfall may alter sediment characteristics and reduce the suitability of intertidal habitats for shellfish farms;³¹ and warming seas may increase the frequency of algal blooms, disease and biofouling with significant implications for farm productivity.³² Issues with farm productivity have recently been highlighted with the announcement that North Island Mussels Limited is closing its Tauranga processing plant due to “significant crop mortalities and poor yielding crops in the North Island”.³³
40. In addition, in recent years, marine heatwaves have repetitively caused mass mortality of salmon farmed at shallow sites in Pelorus Sound and Queen Charlotte Sound.³⁴ In 2022, following record temperatures and mass mortality of stock, New Zealand King Salmon decided to close three of its farms in Pelorus Sound.³⁵ The coastal permits authorising salmon farming at these sites are due to expire this year.³⁶ Despite evidence of significant adverse environmental impacts and limited (if any) productive capacity, the Bill would allow farming to continue at these sites for an additional 20 years. This means sites that are currently being allowed could be reopened despite known risks of environmental harm. This represents a lose-lose situation that will perpetuate bad outcomes for both the environment and the marine aquaculture industry.
41. The approach adopted by the Bill disregards the best available scientific information and lacks the necessary agility to respond effectively to changing circumstances. Given the inherent risks and complexity associated with marine farm operations, and changing marine conditions due to climate change, EDS considers it essential that environmental impacts are regularly assessed and appropriately managed through the planning and resource consent processes.

²⁶ See spotlight in Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), page 81.

²⁷ Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), page 81.

²⁸ See summary in Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), pages 79-102.

²⁹ Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), page 82.

³⁰ See summary in Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), pages 98 - 100.

³¹ MPI “Factsheet 5: Projected Climate-related Impacts on Food Safety Systems in the Seafood and Aquaculture Sector” available [here](#).

³² Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), pages 57, 98 and 99, available [here](#).

³³ Sandra Conchie *North Island Mussels Ltd to close Tauranga processing plant this month, 139 jobs lost Bay of Plenty Times* (Jun 12 2024), available [here](#).

³⁴ Vanessa Phillips *New Zealand King Salmon reduces workforce by 139 Staff* (May 24 2022), available [here](#).

³⁵ Vanessa Phillips *New Zealand King Salmon reduces workforce by 139 Staff* (May 24 2022), available [here](#).

³⁶ New Zealand King Salmon Operations Report (NZKS, date unspecified), page 23, available [here](#).

Need for periodic review of current permits

42. Based on the Bill's explanatory note, about 450 marine farms are operating under coastal permits that will expire within six years.³⁷ As outlined in the EDS publication "*Farming the Sea*", many of the early marine farms in Aotearoa New Zealand were consented before the RMA came into force and have few (if any) environmental monitoring conditions.³⁸ Moreover, when these farms were consented, there was minimal information available to decision-makers (including on the characteristics of the site being occupied) and often little assessment of environmental effects.³⁹
43. Drawing on past experience, EDS considers it is likely many current permits would not meet the environmental standards set by operative planning documents. In our submission, that does not justify turning a blind eye. It makes it even more important that existing marine farms are reassessed against the best available information and (if appropriate) conditions imposed to bring operations into line with modern environmental performance standards. It is inappropriate to allow permits to rollover for an additional 20 years without any statutory effects assessment.
44. The outcomes of the Council-led Marlborough plan change process highlight the need for periodic review of existing marine farms.
45. In 2016, Marlborough District Council notified the Proposed Marlborough Environment Plan (**PMEP**). On notifying the PMEP, the Council decided to remove draft aquaculture provisions and undertake further review to ensure they gave effect to the New Zealand Coastal Policy Statement (**NZCPS**). The aquaculture directives in the NZCPS recognise the need to ensure farms are located in "*appropriate places in the coastal environment*" so the appropriateness of existing marine farm sites was an integral component of the review process.⁴⁰
46. The Council appointed an independent working group to provide recommendations. A comprehensive assessment was undertaken to identify areas that were appropriate for aquaculture. The assessment process involved extensive community and stakeholder input. Following this process the working group identified a number of Aquaculture Management Areas (**AMAs**) that were generally located outside areas with important ecological or landscape values. The working group did not consider finfish farming due to a concurrent salmon relocation process which forms the basis of a separate ongoing plan review.
47. The AMAs were included in the PMEP along with rules prohibiting marine farming outside of AMAs in inshore coastal areas. The Council considers these areas have reached, or are reaching, their carrying capacity. Therefore, prohibited activity status was necessary to appropriately manage the risk to coastal ecosystems.
48. In its decision on Variation 1, the Hearing Panel determined that 21 existing marine farms are in inappropriate locations and must relocate to AMAs. Key reasons for this included the desire to relocate farms away from vulnerable reef ecosystems, outstanding natural landscapes, areas of outstanding natural character, and beaches and jetties.
49. Notwithstanding relocation requirements, existing farms can continue to operate in their current location until they require an authorisation and new resource consent. Existing farms will then be given priority for space in AMAs, with replacement consents assessed as controlled activities if

³⁷ The Bill, explanatory note.

³⁸ Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), page 31, available [here](#).

³⁹ Raewyn Peart *Farming the Sea* (EDS, Auckland, August 2019), page 31, available [here](#).

⁴⁰ New Zealand Coastal Policy Statement, Policy 8.

the applications are for the same area, number of lines, and backbone (i.e. floating structure) length.

50. Variation 1 was notified on 2 December 2020, and decisions and recommendations of the Hearing Panel notified on 28 April 2023. The Council publicly adopted the Panel's recommendations and decisions on 19 May 2023. Although Variation 1 is the subject of Environment Court appeals it (including its AMAs) was largely accepted by all parties (communities, industry, and environmental organisations). Mediation is ongoing in relation to technical issues and some outstanding spatial appeals.
51. The Bill would enable marine farms to continue operating without any assessment as to their appropriateness. In the Marlborough example, it would allow up to 21 farms to continue operating for 20 years despite the fact this would likely exceed the carrying capacity of inshore coastal areas and generate permanent effects on vulnerable benthic habitats with alternative priority space having been identified. EDS strongly opposes this outcome and is concerned at the potential implications of the Bill for other regions which have less developed aquaculture planning provisions.
52. We acknowledge that efforts have been made by some sectors of the aquaculture industry to improve environmental performance over the years. For example, the most recently consented salmon farms in the Marlborough Sounds have a variety of conditions for monitoring, environmental standards and management of water column effects.⁴¹ However, the best available information demonstrates it is difficult (if not impossible) to remedy poor siting of marine farms via conditions.
53. Moreover, to date, no standardised best practice guidelines have been developed for existing marine farms. The FNZ Review of the NES MA explicitly recognises the importance of addressing monitoring through the consent process and includes a recommendation to "*consider developing best practice guidelines on the scope and scale of monitoring for existing marine farms*".⁴² The blanket rollover of current permits does nothing to address this issue.
54. We find the Bill's approach seriously deficient. Extending current permits in the absence of evidence-based monitoring requirements and clear environmental standards is unacceptable. The approach risks causing significant harm to taonga species and the marine ecosystems they inhabit. These outcomes do not promote the sustainable management purpose of the RMA – they undermine it.

The Bill provides for known environmental risks to be ignored

55. The Bill exacerbates the risk of environmental harm by giving consent holders the ability to pick and choose what consents they rely on. Specifically:
 - (a) A consent holder can choose to withdraw any 'live' application for replacement consents and rely on current permits for another 20 years instead.⁴³ This is problematic because in applying for replacement consents a consent holder has necessarily undertaken an environmental impact assessment. That information should be used to inform whether it is appropriate to allow operations to continue and/or any conditions that should be imposed. Instead, the Bill allows for it to be ignored.

⁴¹ For example, see FNZ "*Best management practice guidelines for salmon farms in the Marlborough sounds - Part 2: Water quality standards and monitoring protocol (Version 1.0)*" (New Zealand Aquatic Environment and Biodiversity Report No. 230, October 2019).

⁴² FNZ Year Three Review, page 30.

⁴³ The Bill, cl 4, inserting new s 165ZFHD(1).

(b) A consent holder can choose to rely on current permits for an additional 20 years even if they already hold valid replacement permits.⁴⁴ If the consent holder opts to rely on the current (i.e. older) permit, it must surrender the replacement (i.e. newer) permit.⁴⁵ This proposal is unacceptable. It gives consent holders an ability to ignore the latest information and outcomes of a statutory assessment process e.g. if the replacement permit imposed more stringent conditions to manage environmental effects. This does nothing to provide certainty to consent holders or reduce application costs (as the costs of obtaining a new permit have already been expended) – it simply allows a consent holder to operate under permits that risk poor environmental outcomes.

56. The 20-year extension would also apply to permits that are subject to appeals (if they are subsequently granted).⁴⁶ This would allow marine farms to continue operating for 20 years even if the Court had determined that a shorter consent duration was necessary to manage environmental effects after hearing specialist evidence. The Bill, if passed, sends a signal that central government is willing to usurp judicial findings on consent duration. It is entirely inappropriate. The Bill also provides for a consent holder to withdraw an application on appeal.⁴⁷ A consent holder could choose to rely on the current permit (if it had not yet expired) instead.

Issue 4: The proposed review mechanism is inadequate

New Subpart 1B – Review of conditions applying to extended coastal permits

57. The Bill introduces a new mechanism for councils to review the conditions of extended permits.⁴⁸ The proposed mechanism falls short in most respects and does not resolve any of the concerns raised by the blanket 20-year rollover of current permits.

Discretionary powers of review

58. The Bill provides councils with discretionary powers to review extended coastal permits.⁴⁹ A council *may* initiate a review of an extended consent, but it is not required to. This risks marine farms continuing to operate for another 20 years without review, particularly if council resources are stretched. We have already addressed why this is not appropriate from an environmental perspective.

59. The risk is elevated by the inclusion of provisions that would deter councils from initiating a review of extended permits. Specifically:

(a) Councils must commence a review within 2 years of extension, irrespective of internal resourcing.⁵⁰ Then, once a review has been initiated, councils have 2 years to make decisions on any changes to conditions.⁵¹

(b) Councils cannot recover the costs of reviews.⁵²

⁴⁴ The Bill, cl 4, inserting new s 165ZFHE.

⁴⁵ The Bill, cl 4, inserting new s 165ZFHF(1).

⁴⁶ The Bill, cl 4, inserting new s 165ZFHH(1)(b).

⁴⁷ The Bill, cl 4, inserting new s 165FHH(2).

⁴⁸ The Bill, cl 4, inserting new Subpart 1B - Review of conditions applying to extended coastal permits.

⁴⁹ The Bill, cl 4, inserting new s 165ZFHI(1).

⁵⁰ The Bill, cl 4, inserting new s 165ZFHI(3)(a).

⁵¹ The Bill, cl 4, inserting new s 165ZGHM(1).

⁵² The Bill, cl 4, inserting new s 165ZFHI(4).

Limited powers of review

60. The Bill's proposals place significant limits on a council's ability to review extended permits to the detriment of the environment.

61. First, the Bill contains a specific "*purpose of review*" provision:⁵³

*"The purpose of undertaking a review is to better promote the sustainable management of the natural and physical resources associated with the marine farm, **without preventing the permit holder from carrying out the aquaculture activity to which the permit relates.**"*

62. This purpose creates a narrow purview for review. It limits the ability of councils to address significant environmental impacts because the activity cannot be prevented from continuing in the same location.

63. Second, the Bill prevents councils from amending the consent duration, species or area authorised by an extended permit.⁵⁴ These are fundamental aspects of a permit that directly influence the environmental risk profile of any given farm. By excluding these aspects from review, the Bill severely restricts the ability of councils to implement effective controls and achieve sustainable outcomes. Notably, the NES MA provided for replacement permits to change consented species and structures.

64. Third, the Bill introduces a novel ability for the Director-General of MPI to veto a review.⁵⁵ A consent authority cannot proceed with a review unless the Director-General agrees to it. Prior to initiating a review, a consent authority must submit a proposal to the Director-General setting out how the review meets the specified "*purpose of review*" (above).⁵⁶ Then, the Director-General must decide whether to concur with the consent authority that the proposal is consistent with the purpose of review.⁵⁷ The Bill gives relatively wide powers to the Director-General in this regard. There are no explicit statutory criteria to guide the Director-General in this process but he or she can request information from the consent authority and relevant permit holder before making a decision.⁵⁸ Marine farm consenting is a RMA matter and sits with consenting authorities. The Director General of MPI has no role under the RMA, and nor should it, given that MPI has different, and potentially conflicting, aims of promoting industry.

Inadequate opportunities for public input in review process

65. The proposed review process provides for limited notification and written submissions from specified groups including the permit holder, iwi authorities, post-settlement governance entities, and iwi and hapū groups with certain recognised rights (e.g. customary marine title).⁵⁹ The consent authority is barred from holding a hearing.⁶⁰

66. The Bill appears to exclude iwi and hapū that are in the process of negotiating settlements and rights under Marine and Coastal Area (Takutai Moana) Act 2011. Moreover, there are no opportunities for input from the wider community or public interest groups (such as environmental NGOs, conservation bodies or industry representatives). The Bill effectively

⁵³ The Bill, cl 4, inserting new s 165ZFHI.

⁵⁴ The Bill, cl 4, inserting new s 165ZFHI(3)(c).

⁵⁵ The Bill, cl 4, inserting new s 165ZFHK.

⁵⁶ The Bill, cl 4, inserting new s 165ZFHK(1).

⁵⁷ The Bill, cl 4, inserting new s 165ZFHK(2)(a).

⁵⁸ The Bill, cl 4, inserting new s 165ZFHK(3), (4) and (6).

⁵⁹ The Bill, cl 4, inserting new s 165ZFHL(1) and (2).

⁶⁰ The Bill, cl 4, inserting new s 165ZFHL(3).

excludes the general public from having a say in the review process. This is a marked change from the status quo under the NES MA which provides for limited notification in certain circumstances where replacement consents *are not within inappropriate areas*.⁶¹

67. The significance of the ability to participate in the review process is elevated because appeal rights are limited to the permit holder and anyone that was notified and made a submission.⁶²

Issue 5: Lack of regard for commitments under international law

68. Government Ministers have been clear that the Bill is being promoted to enable better access to international markets and to cut 'red tape' by ensuring regulations are less costly and bureaucratic.⁶³

69. Aotearoa New Zealand has ratified significant free trade agreements with the UK and Europe. The latter, in particular, includes legally binding commitments subject to dispute settlement provisions, with New Zealand's trading partners potentially able to initiate a legal dispute. If New Zealand is found to be in breach of the trade agreement, and fails to bring measures into compliance, 'sanctions' can be imposed. Other commitments, whilst less strictly enforceable, may nevertheless undermine the integrity of the trade relationship where a Party acts inconsistently with them (e.g. commitments to cooperate).

70. Given the environmental concerns listed above, the Bill is likely to be inconsistent with, or breach, several commitments under the free trade agreements, including:

- (a) The commitment to provide for a high level of environmental protection and continue to improve environmental protections.
- (b) The obligation not to weaken, reduce, waiver, or otherwise derogate from environmental laws to encourage trade or investment; and
- (c) The requirement for evidence-based decision making.

71. These potential breaches were not raised in the RIS, nor does it appear that they have been assessed. This is a significant failing of the Bill.

Conclusion

72. The Bill's revised proposals, limiting extensions to 20 years and introduction of a bespoke review clause, do nothing to assuage EDS's concerns.

73. The Bill provides for the blanket extension of current permits for an additional 20 years without any regard to environmental impacts or changes in environmental conditions. It gives consent holders the power to ignore the best available information and conditions imposed by independent decision-makers following rigorous assessment and community input. Then, it limits the ability of consent authorities to effectively review extended permits by prioritising the continuation of existing marine farm operations at all costs.

74. In the absence of any clear evidence justifying the risks associated with the Bill's proposals, we submit that a better approach would be to rely on the available consent pathways in the NES MA and to undertake a review of it to address the matters raised in the Year 3 FNZ Review.

⁶¹ NES MA, reg 14 and reg 24.

⁶² The Bill, cl 4, inserting new s 165ZFHN(1).

⁶³ Hon Todd McClay and Hon Shane Jones "Government focus on long-term food, fibre growth" (Press release, 13 June 2024), available [here](#).

75. For these reasons, EDS strongly opposes the Bill and requests that it be withdrawn.

76. If the Bill is not withdrawn, amendments must be made to:

- (a) Reduce the term of extension to 5 years.
- (b) Strengthen the review mechanism by empowering councils to make decisions that promote sustainable management. As a minimum:
 - (i) Remove prescriptive limits on council powers of review;
 - (ii) Remove the requirement for the Director General of MPI to approve reviews; and
 - (iii) Allow councils to recover costs.
- (c) Provide for effective public participation in the review process. As a minimum:
 - (i) Make notification mandatory and expand the notification criteria to include public interest groups such as environmental organisations, conservation bodies and local community groups that represent a significant aspect of the public interest;
 - (ii) Allow written submissions from the same; and
 - (iii) Require consent authorities to hold public hearings as part of the review process.

77. EDS would welcome an opportunity to present its submission to the Select Committee.