



Growing and Protecting New Zealand

TERMS OF REFERENCE FOR

Marlborough Salmon Farm Relocation Advisory Panel

21 February 2017

Background

Many different values apply to the coastal environment and these can come into conflict over salmon farming. While there are economic, cultural and social benefits to salmon farming in the Marlborough Sounds, there are also environmental, social and cultural costs. It is important to the Government, the public, iwi and the aquaculture industry that the effects of salmon farming on the marine environment are managed well.

Planning for salmon farming is challenging. There are often a wide range of uses and values potentially affected, and aspects of the relevant science are complex. Previous efforts have been controversial, divisive among communities and costly in time and resources. Efforts have been made to bring people together to better manage salmon farming. Government (central and local), iwi, marine farmers and the public worked together to develop “Best Management Practice Guidelines for Salmon Farms in the Marlborough Sounds”, Part 1 being “Benthic environmental quality standards and monitoring protocol”. Further work, through the Marlborough Salmon Working Group, has been undertaken to consider how these Benthic Guidelines could be implemented.

The problem identified with implementation is that six of the consented salmon farm sites in the Marlborough Sounds are “low flow” and cannot commercially operate and meet the Benthic Guidelines. Two farms currently operate over four of these sites. The other four sites are consented but are currently fallow. The Working Group confirmed that if salmon farming occurred at higher flow sites, production could continue (and possibly increase), while allowing the benthic environmental quality standards to be met.

Not surprisingly, use of the higher flow sites would also have potential impacts on other values, which need to be considered. Some of the predictions about future impacts rely on detailed technical information and scientific modelling. There is a degree of uncertainty about whether the modelled predictions will apply in reality. This gives rise to considerations about their sustainability and the application of the precautionary principle.

None of the identified “relocation sites” are able to be used under the present planning regime applying to the Marlborough Sounds. If they are to be used the planning controls in the Marlborough Sounds Resource Management Plan will have to change.

The Government’s policy for aquaculture (based on the New Zealand Coastal Policy Statement 2010, the Aquaculture Strategy 2012 and the Natural Resource Business Growth Agenda 2015) is:

1. To recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:
 - a. Including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:
 - i. The need for high water quality for aquaculture activities; and
 - ii. The need for land-based facilities associated with marine farming;
 - b. Taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and

- c. Ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for the purpose;
2. To support well-planned and sustainable aquaculture growth;
3. To improve productivity while reducing environmental impact; and
4. To support aquaculture development regionally.

Aquaculture policy cannot be seen in isolation. It forms part of the Government's broader policy for use of the coastal marine area as articulated in the New Zealand Coastal Policy Statement.

To give effect to the Government's policy for aquaculture, officials from the Ministry for Primary Industries have worked with other Government agencies, New Zealand King Salmon Ltd (the only salmon marine farmer in the Marlborough Sounds), the Marlborough District Council, iwi authorities and other members of the local community to ascertain if relocation of up to six lower flow sites to higher flow sites through a plan change to the Marlborough Sounds Resource Management Plan was sustainable. In doing so the following objectives were identified:

- To improve the environmental performance of salmon farming in the Marlborough Sounds by ensuring implementation of the Benthic Guidelines;
- To maintain or improve the social and cultural outcomes of salmon farming in the Marlborough Sounds;
- To maintain or increase the economic benefits of salmon farming in the Marlborough Sounds;
- To ensure no overall increase in the total surface structure area of salmon farms in the Marlborough Sounds.

It was also acknowledged there is a need to use coastal space more efficiently including providing for industry growth through more efficient use of marine farming space rather than creating additional new space.

As a result, the Ministry for Primary Industries has prepared a draft plan change which aims to provide for the relocation of existing salmon farms in the Marlborough Sounds from lower to higher flow sites. Section 360A of the Resource Management Act 1991 (RMA) provides for the Governor-General, by Order in Council, to amend provisions in a regional coastal plan that relate to the management of aquaculture activities in the coastal marine area. The Minister for Primary Industries has decided that the use of regulations may be appropriate in relation to the relocation of salmon farms in the Marlborough Sounds.

Before regulations can be made, the Minister for Primary Industries (exercising the powers of the Minister of Aquaculture) (the Minister) must have regard to or be satisfied of a number of matters listed in section 360B of the RMA. The Minister must, for example, be satisfied that the proposed regulations are necessary or desirable for the management of aquaculture activities in accordance with the Government's policy for aquaculture, that the matters addressed are of regional or national significance and the plan as amended will still give effect to other planning documents such as the New Zealand Coastal Policy Statement.

Section 360B(2)(b) says the Minister must also consult other Ministers, any affected regional council, and the public and iwi authorities.

In consulting the public and iwi authorities, section 360B(3) of the RMA says the Minister must:

- a. notify the public and iwi authorities of the proposed regulations; and
- b. establish a process that:
 - i. the Minister considers gives the public and iwi authorities adequate time and opportunity to comment on the proposed regulations; and
 - ii. requires a report and recommendation to be made to the Minister on those comments and the proposed regulations; and
- c. publicly notify the report and recommendation.

The Marlborough Salmon Farm Relocation Advisory Panel (**Panel**) has been established as part of the Minister's process to give the public and iwi authorities adequate time and opportunity to comment on the proposed regulations.

Purpose and Functions of the Panel

Purpose

The public and iwi authorities are invited to make written comments by 27 March and indicate if they wish to speak to their written comments before the Panel at a hearing or hui.

The Panel will consider these comments, giving those who wish to be heard on their written comment an adequate opportunity to do so without undue delay. Linked to this will be the need to consider the technical information provided and any comments made on it. The Panel will need to test the material before it, keeping in mind the provisions of the Government's policy for aquaculture and the RMA.

The Panel will provide an independent report and recommendations to the Minister on the comments received through this consultation process on the proposed regulations. The report may frame up options for the Minister, as opposed to recommending one approach. It is possible that there may be various combinations of the sites and/or alternative rules (including conditions/standards) which meet the requirements of the RMA, achieve the Government's policy for aquaculture (and give effect to the identified objectives) as well as addressing issues raised in the comments.

[Note: The consultation process the Minister has established enables the public and iwi authorities to meet with officials prior to the close of written comments to discuss the proposed regulations and what is intended. This step of the process enables the public and iwi authorities to obtain more information but is not a way of obtaining "comments". The information exchange at these informal meetings will not be provided to the Panel and will not be part of the Panel's consideration.]

Functions

The functions of the Panel are to:

- Consider all consultation material made publically available, including on the scientific, ecological, economic, social, and cultural aspects of the proposal.
- Consider all comments (written and spoken) on the proposed regulations received from the public and iwi authorities during the consultation process.
- Hold public hearings for persons wishing to speak to their written comments.
- Hold hui with relevant iwi authorities, if appropriate.
- Identify specific issues about which expert workshops will be held.
- Coordinate expert workshops.
- Consider any statements resulting from any expert workshops during the consultation process.
- Provide a report and recommendations to the Minister on the comments and the proposed regulations.

The Panel's report to the Minister will be publically notified by the Minister, once it has been considered by the Minister.

Membership and participation

Composition of the Panel

The following members are appointed:

- a. Peter Skelton (Chairperson);
- b. Ron Crosby;
- c. Alan Dormer.

Members of the Panel are not appointed as advocates or representatives of a particular interest or sector group. They are appointed because of their personal expertise, skills and knowledge, and are to provide an independent report and recommendations to the Minister.

Attendance and substitutions

Members are expected to treat meetings of the Panel as a high priority and attend all public hearings.

Members who are unable to attend a hearing or meeting of the Panel cannot be represented by a substitute or proxy.

Removal of members

A member may resign from the Panel by notifying the Minister and the other Panel members of the member's resignation.

Any serious breach of any of these terms of reference may result in the Minister removing a member from this Panel at his sole discretion. Serious breaches of the terms of reference include, but are not limited to, a breach of confidentiality, unauthorised communication with media about the Panel, or a failure to declare a conflict of interest.

Membership rights and obligations

Nothing contained within these terms of reference create or give rise to a partnership, any fiduciary duty, agency, joint venture or any relationship of employment.

How the Panel operates

Meetings of the Panel

The Panel will meet and hold hearings in the Marlborough region for up to 40 days between the date of appointment and 30 July 2017.

The Chairperson will determine where and how many meetings and hearings are required, and the dates and times allocated for each meeting.

If the Panel wishes, visits (with an independent guide appointed by the Panel) to the sites of the six existing salmon farms and the proposed relocation sites will be arranged through the Ministry for Primary Industries.

Public hearings

The Panel must hold public hearings on written comments if any person making a written comment requests to appear and be heard. The Panel will have discretion to organise the hearings so that comments can be efficiently presented and heard.

The Panel is asked to ensure that the process is as informal as possible and that the community is encouraged to participate. This is not intended to be an adversarial process. Therefore whilst the Panel may determine its own procedure, it must:

- a. avoid unnecessary formality;
- b. recognise tikanga Maori where appropriate;
- c. not permit any person other than the Chairperson or other member of the Panel to question any person making comment;
- d. not permit cross-examination.

If a person providing comment attends with an expert to support their comments, the Panel shall consider whether the expert should be invited to attend an appropriate expert workshop.

Hui

The legislation requires that iwi authorities be consulted. Any Maori, tangata whenua or other iwi representative is able and welcome to participate in the public hearing process. In relation to the authorities for the eight iwi with an interest in the Marlborough Sounds (Te

Ātiawa, Ngāti Rarua, Ngāti Kōata, Ngāti Tama, Ngāti Apa, Ngāti Toa, Ngāti Kuia and Rangitāne) the Panel may wish to consider whether hui are held where those iwi authorities that wish to attend can speak to the Panel.

Expert workshops

It is likely that the Panel will wish to hear from experts to test the relevant technical and other information provided. The consultation process agreed to by the Minister provides for expert workshops. This is to enable the experts to be brought together to identify and discuss issues and form common views where possible and to identify areas of disagreement, including whether concerns can be mitigated through appropriate conditions, standards or other modifications in the plan change.

The Panel can decide how, if at all, it wishes to participate in such workshops. Options include the whole Panel attending the workshop and directing the discussion, one member of the Panel facilitating and participating in the workshop, through to an independent facilitator appointed by the Panel reporting back to the Panel on the outcome of a workshop. The Panel will need to consider who is an expert and whether they wish to hear from other experts, including those engaged by the Crown.

It is anticipated that expert workshops may be required on water quality, King Shags and landscape values but the Panel is not required to hold any workshops nor is it constrained to these topics. Navigation and planning may be topics for other workshops, for example.

Outputs

The Panel will provide a written report and recommendations to the Minister on the comments and the proposed regulations by 30 June 2017. As noted above, the report provides input to the Minister's decision on the proposed regulations and is not, itself, the decision.

The Panel must not release the report and recommendations to the public. The Minister will make the report and recommendations public after the Minister has considered the report.

The Panel members will make themselves available to discuss their report and recommendations with the Minister, if requested.

Consensus

The Panel will operate on the basis of consensus and, where it is not possible to achieve a consensus, on the basis of majority vote with the Chairperson having the final casting vote.

Disestablishment of the Panel

The Panel will be disestablished when the purpose and functions of the Panel have been completed, as determined by the Minister.

Working relationships with government officials

The Ministry for Primary industries will fund secretariat and report writing support to the Panel.

All publically available consultation material (or a link to it) will be provided to Panel members as soon as practicable.

All written comments will be provided to the Panel at the close of the written comment period. A summary of the comments will be made available to the Panel prior to the first hearing day.

All deliberations of the Panel are to remain confidential to the members.

The Ministry for Primary industries will continue to provide advice to the Minister for Primary Industries, including a response to findings and recommendations of the Panel.

Confidentiality and information

General confidentiality requirements

In order for the Panel to operate effectively, members must maintain the confidence of the Panel, including maintaining confidentiality of matters discussed at meetings, and any information or documents (not otherwise publically available) provided to the Panel.

Any person presenting information to the Panel, whether written or oral, may request that that information be treated as confidential by the members. The Panel will decide whether that is appropriate, but should advise the person wishing to rely on confidentiality that as this is a Government process it is possible that information may legally be released under other requirement such as the Official Information Act 1982 or Select Committee processes.

Where information is already in the public domain (through no fault of a member), the confidentiality requirements do not apply to that information.

Media

Members must refrain from representing the Panel, or commenting on the business of the Panel, to the media.

The Chairperson may seek agreement from the Minister for the Panel to release a media statement on any matter related to these terms of reference.

With the prior agreement of the Minister, a member may participate in a media interview or make some other public statement about the business of the Panel.

Conflicts of Interest

Definition of a conflict of interest

A conflict of interest occurs when a member's private interest or professional obligation interferes, or appears to interfere with an issue that is before the Panel.

A conflict of interest may be real or perceived.

Declaration of conflict

Members are responsible for declaring any real or potential conflict of interest to the other members of the Panel, as soon as the conflict arises.

Management of conflict of interest

At the discretion of the members not conflicted, a member may participate in discussions about issues in which they have declared a conflict of interest.

Members may not participate in any vote or decision on an issue in which they have a conflict of interest, whether it has been declared or not.