



15 December 2017

## AQUACULTURE DECISION REPORT — JONATHAN TESTER, COASTAL PERMIT U161243, CLAY POINT, TORY CHANNEL

### PURPOSE

1 This report sets out my aquaculture decision (as the relevant decision maker<sup>1</sup>) for an aquaculture decision request made under section 114(4)(c)(ii) of the *Resource Management Act 1991 (RMA)*. The aquaculture decision request is described below. My aquaculture decision is made under section 186E of the *Fisheries Act 1996 (Fisheries Act)*.

### SUMMARY

2 I am satisfied the aquaculture activities proposed within the area of coastal permit U161243 will not have an undue adverse effect on the following fishing sectors:

- *recreational* - for the reasons set out in this report and summarised in paragraph 17;
- *customary* - for the reasons set out in this report and summarised in paragraph 17;
- *commercial* - for the reasons set out in this report and summarised in paragraph 37.

### AQUACULTURE DECISION REQUEST DETAILS

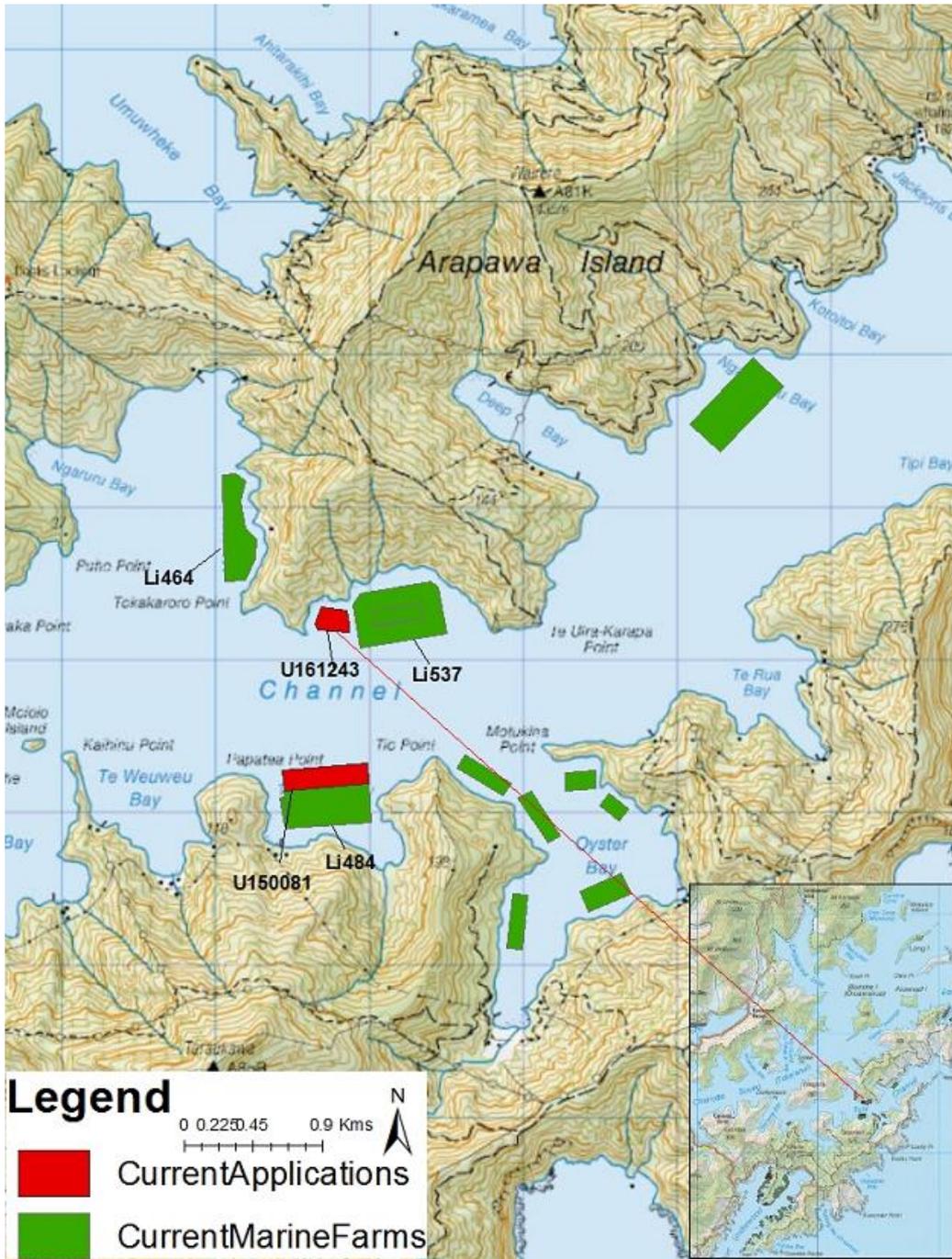
Regional Council:	Marlborough District Council ( <b>MDC</b> )
Date of Request:	13 September 2017
Coastal Permit Applicant:	Jonathan Tester
Location of marine farm site:	Clay Point, Tory Channel
Size of farm:	2.9 hectares ( <b>ha</b> ) of new space
Species to be farmed:	Green shell mussel ( <i>Perna canaliculus</i> ), scallop ( <i>Pecten novaezelandiae</i> ), pacific oyster ( <i>Crassostrea gigas</i> ), Blue shell mussel ( <i>Mytilus edulis</i> ), Flat oyster ( <i>Toistrea lutaria</i> ), and algae ( <i>Macrocystis pyrifera</i> , <i>Ecklonia radiata</i> , <i>Gracilaria spp</i> , <i>Pterocladia lucida</i> )
Farm structures:	Standard marine farm longlines and anchors with droppers

#### *Location and structures*

3 Coastal permit U161243 applies to an area near Clay Point in Tory Channel (Map 1). Coastal permit U161243 occupies 2.9 ha of new space.

4 The closest existing farm to the area of coastal permit U161243 is marine farm licence 537 (**Li 537**), to the east. Marine farm licence 464 (**Li 464**) lies around the headland to the west and the combination of marine farm licence 484 (**Li484**) and coastal permit U150081, lie southwest across Tory Channel.

<sup>1</sup> Acting under authority delegated to me by the Director-General of the Ministry for Primary Industries (**MPI**) in accordance with section 41 of the *State Sector Act 1988*.



**Map 1<sup>2</sup>: Location of the area authorised by coastal permit U161243 at Clay Point (MPI, 2017). A site map of structures can be found in Appendix A.**

<sup>2</sup> Disclaimer: Maps 1-6 and all accompanying information accompanying (the “Maps”) is intended to be used as a guide only, with other data sources and methods, and should only be used for the purpose for which it was developed. The information shown in the Maps is based on a summary of data obtained from various sources. While all reasonable measures have been taken to ensure the accuracy of the Maps, MPI: (a) gives no warranty or representation in relation to the accuracy, completeness, reliability or fitness for purpose of the Maps; and (b) accepts no liability whatsoever in relation to any loss, damage or other costs relating to any person’s use of the Maps, including but not limited to any compilations, derivative works or modifications of the Maps. Crown copyright ©. The maps are subject to Crown copyright administered by Ministry for Primary Industries (MPI). Data Attribution:

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5 The area of coastal permit U161243 is around 55 m from shore at its closest point and ranges from approximately 5-20 m deep. No species of fisheries interest were seen within the proposed site boundary during the survey; however some bedrock reef and giant kelp were seen more than 10m beyond the proposed site boundary.

6 The proposed site will operate nine longlines that will be between 94 and 133 m in length.

### *Input from stakeholders*

7 MPI publicised the application for coastal permit U161243 on its website on 5 January 2017. This gave persons and organisations potentially affected by the proposed aquaculture activities an opportunity to provide information on their fishing activities at the coastal permit area.

8 The submission closing date for those notified via the website was 13 February 2017. MPI did not receive any submissions.

### **STATUTORY CONTEXT**

9 Section 186E(1) of the Fisheries Act requires me to, within 20 working days after receiving a request for an aquaculture decision from a regional council, make a determination or reservation (or one or more of them in relation to different parts of the area to which the request relates).

10 A ‘*determination*’ is a decision that I am satisfied that the aquaculture activities authorised by the coastal permit will not have an undue adverse effect on customary, recreational, or commercial fishing<sup>3</sup>. A ‘*reservation*’ is a decision that I am not satisfied that the aquaculture activities authorised by the coastal permit will not have an undue adverse effect on fishing.

11 If I make a reservation, I am required to specify whether the reservation relates to customary, recreational or commercial fishing or a combination of them. If the reservation relates to commercial fishing, I must specify the stocks and area concerned—section 186H(4).

12 Section 186GB(1) of the Fisheries Act specifies the only matters I must have regard to when making an aquaculture decision. These matters are as follows:

- (a) the location of the area that the coastal permit relates to in relation to areas in which fishing is carried out;
- (b) the likely effect of the aquaculture activities in the area that the coastal permit relates to on fishing of any fishery, including the proportion of any fishery likely to become affected;
- (c) the degree to which the aquaculture activities in the area that the coastal permit relates to will lead to the exclusion of fishing;
- (d) the extent to which fishing for a species in the area that the coastal permit relates to can be carried out in other areas;
- (e) the extent to which the occupation of the coastal marine area authorised by the coastal permit will increase the cost of fishing; and

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<sup>3</sup> Section 186C of the Fisheries Act defines “adverse effect,” in relation to fishing, as restricting access for fishing or displacing fishing. An “undue adverse effect” is not defined. However, the ordinary meaning of “undue” is an effect that is unjustified or unwarranted in the circumstances. For the purpose of my decision under section 186E, an undue adverse effect will mean the significance of the effect on restricting access for fishing, displacing fishing or increasing the cost of fishing is unjustified or unwarranted in the circumstances.

- (f) the cumulative effect on fishing of any authorised aquaculture activities, including any structures authorised before the introduction of any relevant stock to the quota management system.

13 For the purpose of my assessment, customary fishing differs from recreational fishing if it is undertaken outside of the recreational limits provided in the *Fisheries (Amateur Fishing) Regulations 2013 (Amateur Regulations)* and is instead authorised by a customary authorisation.

14 Appendix B and C have further information on statutory context and customary fishing respectively.

## **ASSESSMENT**

15 The following is an assessment, within the statutory context, of the effects of the proposed aquaculture activities on recreational, customary and commercial fishing. It is based on all the relevant information available to me.

16 This assessment relates to the 2.9 ha of new marine farming space authorised by coastal permit U161243 (**proposed site**).

### ***Recreational and customary fishing***

17 I am satisfied the aquaculture activities that may operate within the proposed site will not have an undue adverse effect on recreational or customary fishing because:

- only a small amount of fishing is likely to occur at the proposed site;
- anchored rod/line fishing and diving could still occur at the proposed site;
- there are other recreational and customary fishing areas available in Tory Channel and the wider Marlborough Sounds;
- occupation of the proposed site will result in a minimal, if any, increase in the cost of recreational or customary fishing;
- the likely effect of occupation of the proposed site on recreational and customary fishing is only small; and
- this small effect added to existing effects of approved aquaculture space will not cause the cumulative effect on recreational or customary fishing to become undue.

18 The above conclusions were reached following the more detailed assessment below.

### ***Location of the coastal permit area relative to fishing areas***

19 The location of the coastal permit area relative to fishing areas for recreational and customary<sup>4</sup> sectors are considered separately below.

#### ***Recreational Fishing***

20 I consider the area of the proposed site is located where a relatively small amount of recreational fishing occurs. Methods likely to be used include mobile rod/line from a private

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<sup>4</sup> There is little quantitative data available on customary or recreational catch taken from the proposed site. Fishing locations for customary authorisations are usually only reported at the Fisheries Management Area (**FMA**) or Quota Management Area (**QMA**) although more specific sites are sometimes identified. Customary authorisations issued under regulations 50 and 51 of the Amateur Regulations do not need to be routinely reported. Recreational fishers are not required to report catch or fishing locations. MPI is therefore unable to estimate an average annual recreational catch or proportion of recreational catch likely to be affected by the proposed aquaculture activities. Rather, MPI can only assess the effect of the proposed aquaculture activities on recreational fishing based on qualitative information.

boat, diving, some dredging, set/drag netting and spearing. Main species likely to be caught could be sea perch, terakihi, kingfish, kahawai and snapper.

21 A moderate amount of Amateur Charter Vessel<sup>5</sup> (ACV) fishing has been reported that may overlap Clay Point, this moderate level is consistent in the wider Tory Channel.

22 Aerial survey results<sup>6</sup> suggest there is a moderate amount of recreational fishing at the proposed site. The diary survey published in 2008 by Davey et al recorded 9% of fishing trips in the survey zone of Tory Channel, which includes Clay point and the southern boundary of Arapawa Island.



**Map 2. Aerial survey results from 2006 of recreational fishing intensity (Davey et al, 2008).**

23 Table 1 summarises my assessment of the main methods used and species likely to be caught at the proposed site based on the Davey 2008 survey, the National Institute of Water and Atmospheric Research Ltd (NIWA), 2016 benthic survey, ACV data and other sources.

<sup>5</sup> ACV data is reported through Activity Catch Returns and includes fishing positions, target and caught species numbers, and methods used.

<sup>6</sup> Recreational fishing survey of the Marlborough Sounds (Davey et al, 2008)

**Table 1: Recreational fishing methods used, and species caught and targeted at the area of coastal permit U161243 based on the available information.**

	Source of Information			
	Davey <i>et al.</i> (2008) results for the survey zone including Tory Channel	ACV data for Tory channel	Other information	My assessment
Methods used	Rod/line from boat (69% of trips), diving (13%), drag netting (9.5%), spear and longline (both under <2% of trips)	Hand line, anchored and drift fishing, dredging, potting, diving and some set netting.	The muddy and relatively flat seabed is suitable for most of the methods identified as occurring in the survey zone containing Clay point by NIWA 2016  No species targeted by dredging was seen in the NIWA 2016 survey.	Stationary and mobile rod/line methods, longlining and a small amount of diving, set netting, dredging and potting may be used at the site.
Species caught <sup>7</sup>	Blue cod (244), sea perch (88), cray (76), terakihi (70), scallops (68), kingfish (60), moki (45), kahawai (25) mussel (20)	Blue cod, terakihi, sea perch, crayfish, snapper, kahawai and scallops were caught and retained	Some bedrock reef was seen in the NIWA (2015) survey, although this was outside of the farm area. While, its proximity (>10m) may mean species found over reef substrate are found at the proposed site, the mud and sand bottom do not usually harbour moki, crayfish, or blue cod.	Sea perch, terakihi, kingfish, kahawai, snapper are likely the most commonly caught species in the coastal permit area.  Blue cod, moki and crayfish could be caught at the coastal permit area, however mud bottom makes it unlikely.

<sup>7</sup> The number of species caught and kept at Tory Channel, the survey zone covering the proposed site U161243, over the 12 month survey period for the Davey survey, and species listed in order of catch numbers for the last five years, for the ACV data.

### Customary Fishing

23 I consider the proposed site is located where there is likely to be little, if any, customary fishing. Any customary fishing is likely to be by rod/line from a boat and some dredging, diving and set netting. Species targeted and caught may be rig, kahawai and terakihi.

24 Available information on customary fishing is primarily qualitative information from submissions and quantitative catch information from customary authorisations.<sup>8</sup> Further details on specific customary fishing information can be found in Appendix C.

25 I have assessed likely customary fishing in the proposed site in Table 2 below.

**Table 2: Customary fishing methods used and species caught or targeted at the area of coastal permit U161243<sup>9</sup>**

	Source of information		
	Customary authorisations for Tory Channel	Other information	My assessment
<b>Methods used</b>	N/A	Recreational fishers commonly use stationary and mobile rod/line methods, longlining and some dredging diving and set netting, so customary fishers may also use these methods.	Rod/line from boat, some longlining and some dredging, diving and set netting are the most common methods for recreational fishers and may also be used by customary fishers.
<b>Species caught or targeted</b>	Scallops, oysters, paua, rig, kahawai, blue cod, rock lobster, kina, butterfish, flatfish, blue moki, mussels, hapuku, school shark, rig, hapuku, bluenose, cockle, crayfish, flatfish, oysters.	Paua, crayfish, kina, butterfish, blue moki or green-lipped mussels are not typically found over the reef and algae-free substrate at the proposed site.  The coastal permit area is likely to be too shallow for hapuku fishing.	Rig, kahawai and terakihi likely to be the most commonly caught species at the coastal permit area.  Blue cod could be caught at the coastal permit area, however mud bottom makes it unlikely.

<sup>8</sup> Fishing locations for customary authorisations are usually only reported at the Fisheries Management Area (FMA) or Quota Management Area (QMA) although more specific sites are sometimes identified. Customary authorisations issued under regulations 50 and 51 of the Amateur Regulations do not need to be routinely reported.

<sup>9</sup> From January 2009 to April 2016 no customary authorisations with site-specific information were issued for Clay Point. Customary authorisations for the Tory Channel and wider Marlborough Sounds were issued for a large number of species.

### *Exclusion of fishing*

26 I consider recreational and customary fishing, including set netting and longlining would be excluded<sup>10</sup> from the proposed site because of the risk of entanglement.

27 However, I consider that anchored fishing could continue between the proposed structures, as anecdotal information suggests fishers commonly fish by rod/line within mussel farms.

### *Availability of other areas*

28 I consider alternative areas in the Tory Channel and the wider Marlborough Sounds could absorb recreational and customary fishing displaced from the proposed site because:

- the site is only a small area and the amount of fishing that would occur there is likely small also; and
- the mud and sand substrate beneath the site is widespread in the Marlborough Sounds. No information suggests the site offers special fishing habitats or species mix; and
- the same methods used at the site could be used elsewhere in Tory Channel and some other parts of the Marlborough Sounds; sufficient alternative areas exist especially for rod/line fishing which can also occur among mussel farms.

29 There are closures and various species and method restrictions in place for recreational fishing, particularly for set netting and longlining<sup>11</sup>, in Tory Channel and the wider Marlborough Sounds. While these restrictions limit the available area, there is still a large amount of area available for recreational fishing in relation to the small area of the proposed site.

30 Apart from the Long Island Marine Reserve and Fighting Bay<sup>12</sup>, all of the Marlborough Sounds is available for customary fishing under regulations 50 and 51 of the Amateur Regulations. Many alternative areas are therefore available for customary fishers.

31 Areas of authorised aquaculture space have reduced the availability of other recreational and customary fishing areas over time. The cumulative effects of existing aquaculture are further considered below.

### *Increased cost of fishing*

32 I consider that the aquaculture activities at the proposed site will increase the cost of recreational and customary fishing minimally, if at all.

33 I consider that any recreational or customary fishing excluded from the site could be carried out nearby with minimal additional cost, as a result of a marginal increase in fuel cost or change in method. I consider that most species targeted at the site can still be taken using alternative fishing methods.

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<sup>10</sup> Anecdotal information from recreational fishers suggests that spaces between longlines of mussel farms in the Marlborough Sounds are too narrow for longlining, set netting and trolling without risk of entanglement. I also consider that drift fishing is unlikely to occur within marine farms because of risk of entanglement.

<sup>11</sup> Amateur regulations.

<sup>12</sup> *Marine Reserves Act 1971* and the *Submarine Cables and Pipelines Protection Act 1996*.

### ***Likely effect on fishing***

34 I consider the effect on recreational and customary fishing from the proposed aquaculture activities will be small because:

- not all recreational or customary fishing methods would be excluded from the site;
- the area of the proposed site is relatively small and therefore the effect will be minimal;
- alternative areas within Tory Channel and the wider Marlborough Sounds could absorb the recreational and customary fishing displaced from the proposed site.

### ***Cumulative effects***

35 I consider existing aquaculture in the Marlborough Sounds has affected recreational and customary fishing. There are approximately 3,700 ha of existing aquaculture in the Marlborough Sounds, approximately 90 ha of which is in Tory Channel.<sup>13</sup>

36 I consider the cumulative effects on recreational and customary fishing, including the aquaculture activities at the proposed site will not be undue because:

- some recreational and customary fishing (eg, anchored rod/line fishing) can still occur within marine farms;
- not all existing farms are located in popular recreational and customary fishing areas; and
- the area of the proposed site is minimal with regard to all of the space available for recreational and customary fishing in the Marlborough Sounds.

### ***Commercial fishing***

37 I am satisfied the aquaculture activities that may operate within the proposed site will not have an undue adverse effect on commercial fishing because:

- a negligible amount of commercial fishing is likely to occur in the area;
- a negligible amount of commercial fishing is likely to be excluded from the proposed site;
- there are alternate fishing grounds in Tory Channel, SA017 and the relevant QMAs or FMA7;
- occupation of the proposed site will result in a minimal, if any, increase in the cost of commercial fishing;
- effects on commercial fishing catch will be negligible; and
- the additional adverse effect on commercial fishing is only small and will not cause the cumulative effect on commercial fishing for any fish stock to become undue.

38 The above conclusions were reached following the more detailed assessment below.

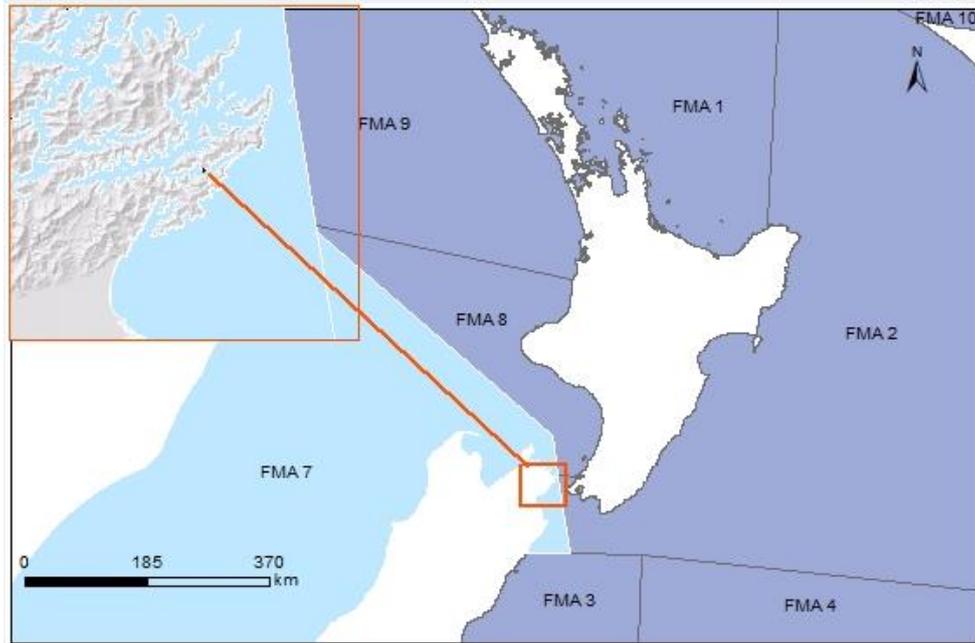
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<sup>13</sup> As noted, there is limited quantitative data available to assess the cumulative effects of authorised aquaculture on customary or recreational fishing. Therefore, MPI can only assess cumulative effects on customary or recreational fishing based on the amount of aquaculture already authorised in the relevant customary or recreational fishery and the likely importance of the area of the proposed site for fishing.

### *Location of the coastal permit area relative to fishing areas*

39 I consider the proposed site is located where there is little, if any, commercial fishing.

40 Clay Point is within Fisheries Management Area 7 (FMA7) (Map 3). Historically, most commercial fishing has been reported by statistical area. The area of the proposed site is in general statistical area 017 (SA017), which extends from the eastern edge of d’Urville Island to Cape Campbell (415,286 ha). Further detail on fisheries management and statistical areas is available in Appendix D.



**Map 3. Fisheries Management Area 7 (FMA7). Insert shows approximate location of proposed site.**

41 MPI has assessed the main fisheries, bathymetry and habitat known to occur in SA017 and the relative amounts of fishing that report by start position. MPI has used this, along with institutional information to inform Table 3 and the commercial fishing assessment below. MPI considers a negligible amount of commercial fishing occurs at the proposed site.

42 Further detail on how MPI analyses commercial fishing can be found in Appendix D.

**Table 3: Fisheries that are included in the commercial fishing assessment**

Fisheries (main fishstock or depth range and main fishing method) <sup>14</sup>	Statistical area	% of fine scale fishing events	Average annual no. fishing days <sup>15</sup>	% of main fishstock caught in statistical area	Included in the proposed site assessment?	Rationale for excluding a fishery from proposed farm assessment <sup>16</sup>
Flatfish (FLA7), Set Net	017	72%	155	6%	Yes	
School shark (SCH7), Long Lining	017	23%	95	14%	Yes	
Mixed fishery, Set Net	017	71%	63	N/A	Yes	
Barracouta (BAR7), Trawl	017	99%	62	2%	Yes	
Sea cucumber (SCC7A), Diving	017	0%	33	90%	Yes	
Blue cod (BCO7), Hand Lining	017	0%	36	40%	Yes	
Mixed fishery, Long Lining	017	82%	17	N/A	Yes	
School shark (SCH7), Set Net	017	98%	15	14%	Yes	
Other species, Diving	017	0%	13	N/A	Yes	
Mixed fishery, Hand Lining	017	0%	10	N/A	Yes	
Rock Lobster (CRA5), Lobster Pot	017	0%	731	14%	No	Rock lobsters concentrate in areas of rocky reef, although they may move across an open sandy bottom at certain times of the year. There is no rocky reef in the coastal permit area.
Hoki (HOK1), Trawl	017	100%	421	22%	No	A year round trawl closure exists in the area
Scallops (SCA7), Dredge	7JJ	0%	218	47%	No	Commercial scallop fishing is already is not reported in Tory channel.
Ghost shark (GSH7), Trawl	017	99%	214	57%	No	A year round trawl closure exists in the area
Sea Urchin (SUR7A), Diving	017	0%	209	84%	No	This type of fishing is highly unlikely to be affected. Kina are found on rock substrate. There is no rock substrate in the proposed site.

<sup>14</sup> Main fishstock refers to the species most often caught by the relevant method; it does not include all species taken by that method. Figures from 2007/08 to 2011/12.

<sup>15</sup> Excludes fisheries with less than 10 days fishing per year.

<sup>16</sup> Unless otherwise stated, fishing is permitted and MPI has no information to indicate it does not occur in the vicinity of the coastal permit area.

<b>Fishery segment (Main fishstock or depth range and main fishing method)</b>	<b>Statistical area</b>	<b>% of fine scale fishing events</b>	<b>Average annual no. fishing days</b>	<b>% of main fishstock caught in statistical area</b>	<b>Included in the proposed farm assessment?</b>	<b>Rationale for excluding a fishery from proposed farm assessment</b>
Inshore Mix <80m depth, Trawl	017	98%	204	N/A	No	A year round trawl closure exists in the area
Butterfish (BUT7), Set Net	017	40%	183	27%	No	Butterfish are unlikely to be found over the mud substrate in the proposed site.
Red cod (RCO7), Trawl	017	100%	176	18%	No	A year round trawl closure exists in the area
Inshore Mix >80m <300m, Trawl	017	100%	149	N/A	No	The proposed site is too shallow for this type of fishing.
Blue cod (BCO7), Cod Pot	017	0%	134	40%	No	Blue cod potting is highly unlikely to be affected as fishers are unlikely to set pots over soft substrate.
Hapuku and Bass (HPB7), Long Lining	017	52%	132	32%	No	Hapuku and bass are unlikely to be found in the shallow waters of the proposed site.
Flatfish (FLA7), Trawl	017	99%	68	6%	No	A year round trawl closure exists in the area
Barracouta (BAR7), Trawl	017	99%	62	2%	No	A year round trawl closure exists in the area
Gurnard (GUR7), Trawl	017	99%	62	8%	No	A year round trawl closure exists in the area
Tarakihi (TAR7), Trawl	017	100%	54	17%	No	A year round trawl closure exists in the area
Surf clams, Dredge (PDO7)	017	0%	34	0%	No	Tuatua are generally found in sandy intertidal zones. The proposed site does not overlap this substrate.
Other species, Potting	017	0%	19	N/A	No	Other species are likely bycatch from rock lobster or blue cod potting. Rock lobster and blue cod pots are unlikely to be set over soft substrate.
Other species, Dredging	017	0%	18	N/A	No	Other species is likely to occur as bycatch from scallop dredging. This is unlikely to occur at the proposed site.
Snapper (SNA7) Trawl	017	98%	17	10%	No	A year round trawl closure exists in the area
Blue Warehou (WAR7), Trawl	017	100%	11	6%	No	A year round trawl closure exists in the area

### *Exclusion of fishing*

43 I consider that some commercial fishing could be excluded from the proposed site.

44 I consider diving could occur within the proposed site, however, I consider it unlikely that species caught with this method would be targeted at the proposed site due to changes to the benthic habitat. However, I consider commercial diving, set net fishing and longlining could occur immediately adjacent to the proposed site.

### *Availability of other fishing areas*

45 I consider alternative areas in Tory Channel and other parts of SA017 could absorb any commercial fishing displaced from the proposed site because:

- the same methods as those possibly used at the coastal permit area could be used elsewhere in Tory Channel or other parts of SA017<sup>1</sup>;
- the species potentially targeted by commercial fishers within the area are typically found over silt and clay substrate common throughout the rest of Marlborough Sounds, elsewhere in SA017 and in the relevant QMAs or FMA7; and
- the area excluded to commercial fishing would be small compared to the available area.

46 Areas of authorised aquaculture space have reduced the availability of other commercial fishing areas over time. The cumulative effects of the existing aquaculture is considered further below.

### *Increased cost of fishing*

47 I consider that the aquaculture activities at the proposed site will not increase the cost of commercial fishing.

48 While the coastal permit area may be located within a region used for commercial fishing, I consider that using alternative commercial fishing grounds would not result in an increase in the cost of commercial fishing. This is because the coastal permit area will only exclude a small area from commercial fishing and there are equally productive fishing grounds available nearby.

### *Likely effect on fishing*

49 I consider the aquaculture activities at the proposed site will have a negligible adverse effect on commercial fishing.

50 MPI estimates the amount of fishing that would be displaced by the aquaculture activities in the proposed site is estimated at approximately 1kg total for all species included in the assessment as indicated in Table 3.

### *Cumulative effects*

51 I consider existing aquaculture in the Marlborough Sounds has affected commercial fishing. There are around 90 ha of authorised aquaculture space in Tory Channel. There are approximately 3,500 ha of marine farms in statistical area 017 that make up about 28% of the 12,300 ha of aquaculture in FMA7.

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<sup>1</sup> Few closures or restrictions in SA017 limit alternative areas for methods permitted in Tory Channel (ie, set netting and lining for taking finfish, and dredging, diving and other methods for taking non-fish species) but closures elsewhere in FMA7 limit alternative available areas, particularly for set netting.

52 I consider the cumulative effects on customary fishing, including the aquaculture activities at the proposed site will not be undue because:

- for any fish stocks potentially affected by the proposed site, the cumulative effect has previously been assessed as a maximum of approximately 1.5% effect on any fishery, and not undue;
- MPI estimates approximately 1kg of average annual catch occurs within the site, for the fishing as assessed in Table 3 as potentially occurring in the proposed site; and
- this amount of catch is small and would not cause the cumulative effects of approved aquaculture space to become undue.

## AQUACULTURE DECISION

53 I am satisfied – based on all relevant information available to me – the activities proposed for coastal permit area U161243 will not have an undue adverse effect on:

- a) recreational fishing, and
- b) customary fishing, and
- c) commercial fishing.

54 Accordingly, my decision is a determination for coastal permit U161243 with regard to:

- a) recreational fishing, and
- b) customary fishing, and
- c) commercial fishing.

55 The area of the determination on recreational, customary and commercial fishing is 2.5 ha comprising an area with the following coordinates (NZTM2000):

<u>Point</u>	<u>Easting</u>	<u>Northing</u>
1	1703867.04	-5434185.14
2	1703659.07	-5434200.07
3	1703645.17	-5434241.82
4	1703685.50	-5434346.30
5	1703850.53	-5434328.36
6	1703865.76	-5434237.12

56 The reasons for my decision are set out in the conclusions for recreational, customary and commercial fishing in this report.



**David Scranney**  
Manager Customary Fisheries and Spatial Allocations  
Ministry for Primary Industries

Dated 15 December 2017

## References

Davey, N.K.; Hartill, B.; Cairney, D.G.; Cole, R.G. 2008. Characterisation of the Marlborough Sounds recreational fishery and associated blue cod and snapper harvest estimates. *New Zealand Fisheries Assessment Report 2008/31*. 63 p.

Davidson, R. J.; Duffy, C.A.J; Gaze, P.; Baxter, A.; DuFresne S.; Courtney S.; Hammill P. 2011. Ecologically significant marine sites in Marlborough, New Zealand. Co-ordinated by Davidson Environmental Limited for Marlborough District Council and Department of Conservation.

National Institute of Water and Atmospheric Research Ltd (NIWA), 2016. Marine farm site assessment: Tory Channel. Client report number: 201613ONE



## APPENDIX B: ADDITIONAL STATUTORY CONTEXT

1 Section 186E(3) of the Fisheries Act <sup>18</sup> requires me, in making an aquaculture decision, to have regard to any:

- (a) information held by the Ministry for Primary Industries; and
- (b) information supplied, or submissions made, to the Director-General under section 186D(1) or (3) by:
  - i. an applicant for or holder of the coastal permit;
  - ii. any fisher whose interests may be affected;
  - iii. persons or organisations that the Director-General considers represent the classes of persons who have customary, commercial or recreational fishing interests that may be affected by the granting of the coastal permit or change to, or cancellation of, the conditions of the coastal permit; and
- (c) information that is forwarded by the regional council; and
- (d) any other information that the Director-General has requested and obtained.

2 Section 186F of the Fisheries Act specifies an order of processing that must be followed in making aquaculture decisions. But section 186F(5) allows aquaculture decisions to be made in a different order from that specified if I am satisfied that in making an aquaculture decision out of order it will not have an adverse effect on any other aquaculture decision that has been requested. I am so satisfied in this case.

3 Section 186GB(2) of the Fisheries Act says that if a pre-request aquaculture agreement has been registered under section 186ZH in relation to the areas that the coastal permit relates to, I must not have regard to the undue adverse effects on commercial fishing in respect of any stocks covered by the pre-request aquaculture agreement when having regard to the matters specified in section 186GB(1). No pre-request aquaculture agreements have been registered in relation to coastal permit U161243.

4 Section 186GB(1)(b) requires an assessment of the likely effects of the aquaculture activities on fishing of any fishery including the proportion of any fishery likely to be affected. “Fishery” is not defined either in section 186 or elsewhere in the Fisheries Act. However, “stock” is defined in section 2 to mean any fish, aquatic life, or seaweed of one or more species that are treated as a unit for the purposes of fisheries management. Parts (3) and (4) of the Fisheries Act focus on “stocks” for the purpose of setting and allocating Total Allowable Catches and managing species within the quota management system (**QMS**). Sections 186GB(1)(f) and (2) also refer to “stock” with specific regard to adverse effects on commercial fishing. So for the purpose of my decision under section 186E, I consider a commercial fishery is a fish stock delineated by a fisheries management area (**FMA**) or quota management area (**QMA**).

5 I consider the relevant recreational and customary fishery are as I have described in the assessment above in “*Location of the coastal areas relative to fishing area.*”

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<sup>18</sup> Section 186E(3)(a) of the Fisheries Act refers to the ‘Ministry of Fisheries’ which is now the Ministry for Primary Industries. Section 186E(3)(b) and (d) refers to the ‘chief executive’ who is now the director-general.

6 Section 186C of the Fisheries Act does not define “cumulative effect” beyond what is provided in section 186GB(1)(f) that the effect includes any structures authorised before the introduction of any relevant stock to the QMS. For the purpose of my decision under section 186E, “cumulative effect” on commercial fishing includes the total effect of all authorised aquaculture activities within the relevant QMA or FMA. For recreational and customary fisheries, the relevant areas for considering “cumulative effects” are as I have described in the assessment above in my consideration of section 186GB(1)(a) and (f). Sections 186GB(1)(a) and (f) relate to location at proposed site in relation to where fishing occurs and the cumulative effect of aquaculture, respectively.

7 The *Fisheries (South Island Customary Fishing) Regulations 1999* (**the South Island Regulations**) define customary food gathering as the traditional rights confirmed by the Treaty of Waitangi and the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992*, being the taking of fish, aquatic life, or seaweed or managing of fisheries resources, for a purpose authorised by Tangata Tiaki/Kaitiaki, including koha, to the extent that such purpose is consistent with tikanga Māori and is neither commercial in any way nor for pecuniary gain or trade.

8 The South Island Regulations and regulation 50 and 51 of the Amateur Regulations provide for Tangata Tiaki/Kaitiaki to determine the customary purpose for which fish, aquatic life, or seaweed may be taken, methods used, seasons fished, size and quantity taken etc. The South Island Regulations and regulations 50 and 51 do not contemplate restrictions under the Fisheries Act on the quantity of fish taken or the methods used to take fish. Should tangata whenua fish without customary authorisations, all the recreational limits under the Amateur Regulations apply.

## APPENDIX C: CUSTOMARY FISHING

1 At least eight iwi at the top of the South Island may have customary fishing interests in the coastal permit area. While there are no existing customary management areas in the Marlborough Sounds (eg, taiapure-local fishery or mātaimai reserves), the eight iwi have jointly notified their Tangata Tiaki/Kaitiaki for an area/rohe moana that encompasses the new coastal permit area. The notification is currently in dispute.<sup>19</sup>

2 The eight iwi, collectively known as Te Tau Ihu o Te Waka o Maui (**Te Tau Ihu Iwi**), include those defined as tangata whenua in regulation 2 of the Fisheries (South Island Customary Fishing) Regulations 1999: the whānau, hapu or iwi that hold manawhenua manamoana over a particular area and are represented by Ngāti Apa Ki Te Rā To Trust; or Ngāti Koata Trust; or Ngāti Rarua Iwi Trust; or Ngāti Tama ki e Waipounamu Trust; or Te Runanga o Ngati Toa Ngāti Toa Rangatira; or Te Atiawa o Te Waka a Maui Trust; or Te Runanga A Rangitane o Wairau; or Te Runanga O Ngāti Kuia Trust.

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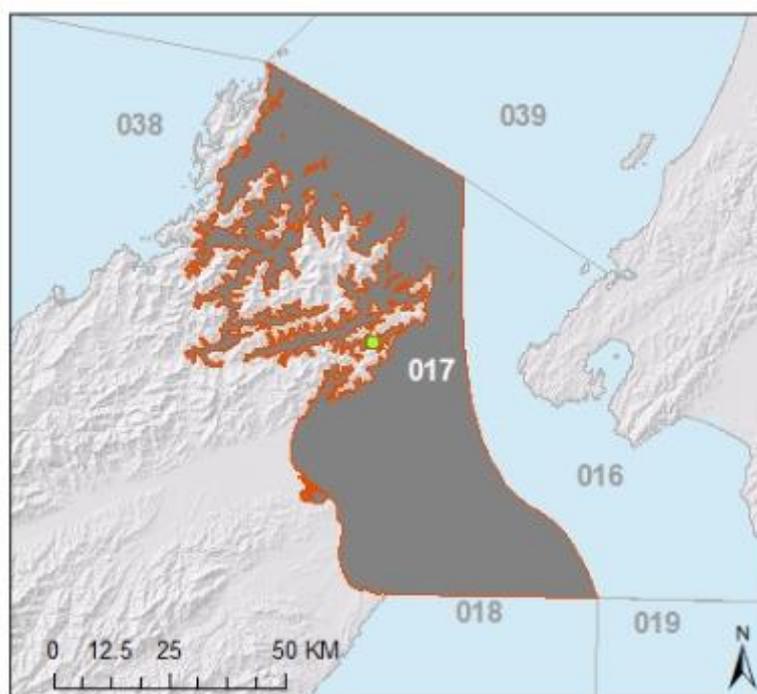
<sup>19</sup> Because the notification is in dispute, customary authorisations for the top of the South Island are issued under regulations 50 and 51 of the Amateur Regulations.

## APPENDIX D: COMMERCIAL FISHING

### *Fisheries boundaries*

1 A Fisheries Management Area (FMA) is one of the ten regions that the New Zealand 200nm Exclusive Economic Zone (EEZ) is divided into for fisheries management purposes. A Quota Management Area (QMA) is an area within which a designated fish stock is managed under the Quota Management System, and is generally based around FMAs. As noted, this application is in FMA7.

2 Fisheries reporting historically occurred by general statistical area. There are 120 of these areas in the New Zealand 200nm EEZ and this provides for more fine scale data to be collected than at an FMA scale. As noted, this application is in general statistical area 017 (Map 1).

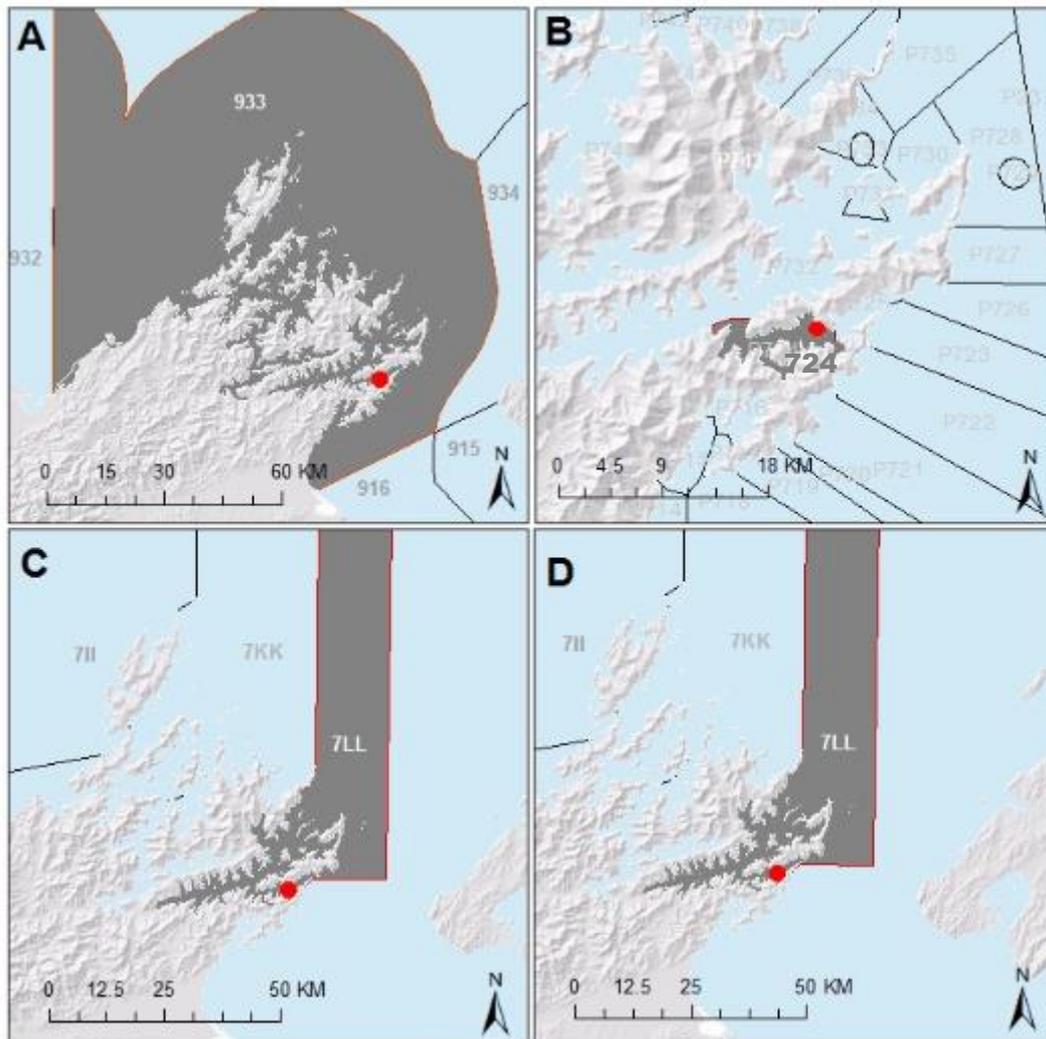


**Map 1: General statistical area SA017. The green circle marks the approximate location of coastal permit area U161243.<sup>1</sup>**

3 Scallops, oysters, rock lobster and paua are reported by species-specific statistical areas rather than by general statistical area. The area of coastal permit U161243 falls within rock lobster statistical area 933, paua statistical area P724, scallop statistical area 7LL and oyster statistical area 7LL (Maps 2A, 2B, 2C and 2D).

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<sup>1</sup> Hillshade imagery produced by Geographx. Sourced from [www.koordinates.com](http://www.koordinates.com) under CC-By. <http://creativecommons.org/licenses/by/3.0/nz/>



**Map 2: Species-specific statistical areas that encompass the area of coastal permit U161243 (approximate location as red circle). A – Rock lobster statistical area 933. B — Paua statistical area P724. C — Scallop statistical area 7LL. D — Oyster statistical area 7LL.<sup>2</sup>**

### ***Commercial fishing reporting and analysis***

1 Reporting by statistical area only provides coarse-scale information about where commercial fishing occurs. However, since 2007/08 vessels over 6 m long that have used trawl or line fishing methods have reported the start position of each fishing event by latitude and longitude to within 1 minute, which equates to around 1 nautical mile (nm). Since 2006/07, start positions for netting methods have reported to within 2 nm. Using this fine scale position data, MPI has modelled and mapped fishing intensity for different segments of fishing, characterised by a type of fishing gear and the main species caught.<sup>3</sup> This detail can be commercial sensitive and cannot be publically released

2 The location of fishing by vessels less than 6 m long within SA017 is unknown. However, based on information from fisheries officers and Maritime New Zealand, MPI has mapped long lining, bottom trawling and set netting by vessels less than 6 m as being within

<sup>2</sup> Hillshade imagery produced by Geographx. Sourced from [www.koordinates.com](http://www.koordinates.com) under CC-BY. <http://creativecommons.org/licenses/by/3.0/nz/>

<sup>3</sup> The Catchmapper tool is used to model the estimated catch from landing data, and is the best information available from fisheries statistics. This informs our assessment, and particularly, Table 3.

enclosed bays and within 3 nm of open coasts. Knowledge about species and information from commercial fishers and fishing companies, and Fishery Officers can also help to determine whether specific types of fishing are likely to occur in an area.

3 Maps of fishing intensity (effort per ha) for each fishing sector were used to calculate the average annual amounts of fishing effort that is likely to be displaced from the exclusion zone/s of the coastal permit area.<sup>4</sup> Average landings per unit effort for all species caught in each fishery segment were then used to estimate the amount of fish likely to have been landed.

4 Fishing effort that is only reported by statistical area was apportioned evenly across the area available for fishing although some areas are likely to include more productive habitats than others. The parts of the statistical area available for fishing for each type of fishing method are defined by using all available information (including regulated closures, bathymetry, seabed substrate, and consultation with fishers) about where the method is likely to be used. Where fishing is reported to the statistical area level, there is increased uncertainty as to where fishing events have taken place within the statistical area.

5 The amount of fishing was averaged over October fishing years 2007/08 to 2014/15. Eight years is long enough to take into account natural variation in the abundance and distribution of fish stocks and fishing effort so that likely average future fishing is fairly represented.

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<sup>4</sup> The “exclusion zone” used for commercial fishing methods assessed is the coastal permit area, with the exception (where applicable) of dredging, trawling and seining. In sheltered waters, buffers of 50m, 250m and 500m respectively are applied. In open water buffers of 75m, 500m and 500m respectively are applied.