



28 May 2020

AQUACULTURE DECISION REPORT — JONATHAN BLAIR ALLAN TESTER, COASTAL PERMIT U190593, BRIGHTLANDS BAY, PELORUS SOUND

PURPOSE

1. This report sets out my aquaculture decision (as the relevant decision maker¹) 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 U190593 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 15;
- customary - for the reasons set out in this report and summarised in paragraph 15;
- commercial - for the reasons set out in this report and summarised in paragraph 39.

AQUACULTURE DECISION REQUEST DETAILS

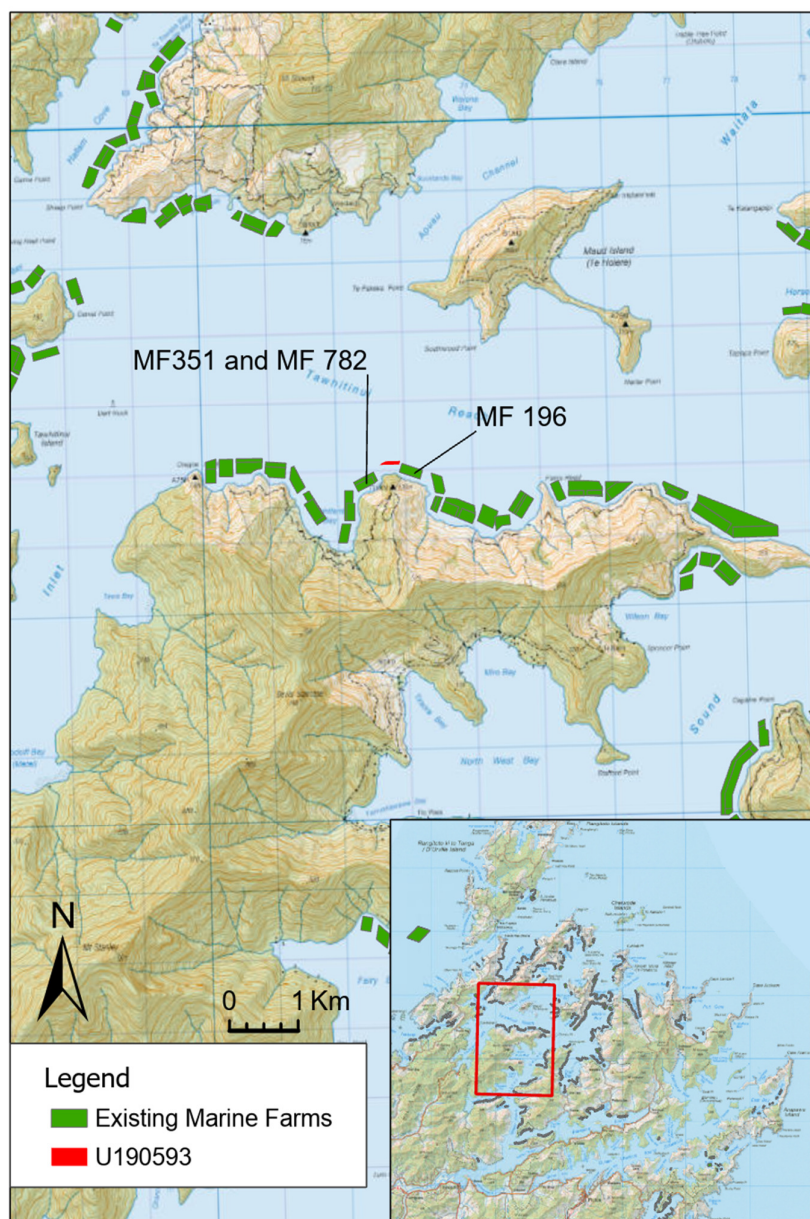
Regional Council:	Marlborough District Council (MDC)
Date of Request:	1 April 2020
Coastal Permit Applicant:	Jonathan Blair Allan Tester
Location of marine farm site:	Brightlands Bay, Pelorus Sound
Size of farm:	1.29 hectares (ha) of new space.
Species listed on consent:	Green-lipped mussel (<i>Perna canaliculus</i>), blue mussel (<i>Mytilus galloprovincialis</i>), scallop (<i>Pecten novaezelandiae</i>), flat oyster (<i>Ostrea chilensis</i>), Pacific oyster (<i>Crassostrea gigas</i>) and algae (<i>Macrocystis pyrifera</i> , <i>Ecklonia radiata</i> , <i>Gracilaria</i> spp. and <i>Pterocladia lucida</i>).
Farm structures:	Standard marine farm longlines and anchors.

Location and structures

3. Coastal permit U190593 applies to a new 1.29 ha area off the headland to the east of Brightlands Bay, Tawhitinui Reach in Pelorus Sound (Map 1). The nearest existing marine

¹ 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*.

farms are marine farming permit 196 (MF 196) approximately 35 m to the east and marine farming permits 351 and 782 (MF 651 and MF 782) 130 m to the south-east.



Map 1²: Location of the proposed site (area authorised by coastal permit U190593) at Brightlands Bay, Pelorus Sound.

² Disclaimer: Maps 1 and 2 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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4. The proposed site will be consented for four longlines. Site and structures maps are in Appendix A.

Environment

5. An independent survey of the proposed site in January 2018 recorded depths ranging from 26 m to 28.5 m. The application area was dominated by silt and clay substratum with and without natural dead whole shell. Dead whole shell was mostly recorded from the inshore parts of the application, with this material becoming less common with increasing distance from shore. No horse mussels, scallops or assemblages of significant natural value were present. Boulders and cobble were observed inshore of the application site; however, these did not extend to within the application site (Davidson *et al.*, 2018).

6. The effects of the existing farm activities was considered to be generally typical for shellfish farming and no more than minor (Davidson *et al.*, 2018).

Input from stakeholders

7. Fisheries New Zealand did not seek information from the public or stakeholders as the application is a small new farm within a ribbon of existing marine farms.

STATUTORY CONTEXT

8. 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).

9. 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 fishing³. 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.

10. 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).

11. 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:

- the location of the area that the coastal permit relates to in relation to areas in which fishing is carried out;
- 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;

³ 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.

- the degree to which the aquaculture activities in the area that the coastal permit relates to will lead to the exclusion of fishing;
- the extent to which fishing for a species in the area that the coastal permit relates to can be carried out in other areas;
- the extent to which the occupation of the coastal marine area authorised by the coastal permit will increase the cost of fishing; and
- 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.

12. 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.

13. Appendix B gives further information on statutory context.

ASSESSMENT

14. 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.

Recreational and customary fishing

15. 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:

- a negligible amount of recreational and customary fishing is likely to occur at the proposed site;
- anchored rod/line fishing could still occur when the proposed structures are installed;
- there are other recreational and customary fishing areas available nearby;
- 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 negligible; 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.

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

Location of the coastal permit area relative to fishing areas

17. The location of the coastal permit area relative to fishing areas for recreational and customary sectors are considered separately below.

Recreational fishing

18. I consider the area of the proposed site is located where little if any recreational fishing is likely to occur. The general locality of the proposed site is not particularly important for recreational fishing, but some does occur around this area. Methods that could possibly be used include mobile and stationary rod/line fishing from a boat, and possibly long lining or set netting. Species which could be caught include snapper and kahawai.⁴

19. Information on recreational fishing used in this assessment comes from:

- two national interview surveys in the 2011-12 and 2017-18 fishing years (Wynne-Jones *et al.*, 2014, 2019);
- three aerial over-flight surveys coupled with boat ramp surveys covering Fisheries Management Area 7 (FMA7), a 12 month period in 2005-06 (Davey *et al.*, 2008), for two days in 2014-15 (Hartill, *et al.*, 2015) and again for 12 months in 2015-16 (Hartill, *et al.*, 2017); and
- Amateur Charter Vessel (ACV) returns. Charter fishing must be reported to MPI and reports include location of fishing and catches.

20. Rod and line fishing from boats targeting blue cod, gurnard or snapper is the most popular type of fishing in Pelorus Sound (Davey *et al.*, 2008, Wynne-Jones *et al.*, 2014, 2019). Hand gathering or dredging of shellfish is also popular. Averaged over the two national panel surveys, those fishing within Pelorus Sound were mostly fishing from trailer boats (65%), or launches (16%) or from land (10%). Most fishing was done using rod or line (91%) and nets (6%), dredge (6%) and diving (4%) were also popular. Species caught included blue cod (46% of fishing trips), snapper (15%), kahawai (14%), gurnard (12%) and scallops (7%). Other popular species included tarakihi, flatfish and barracoota.⁵

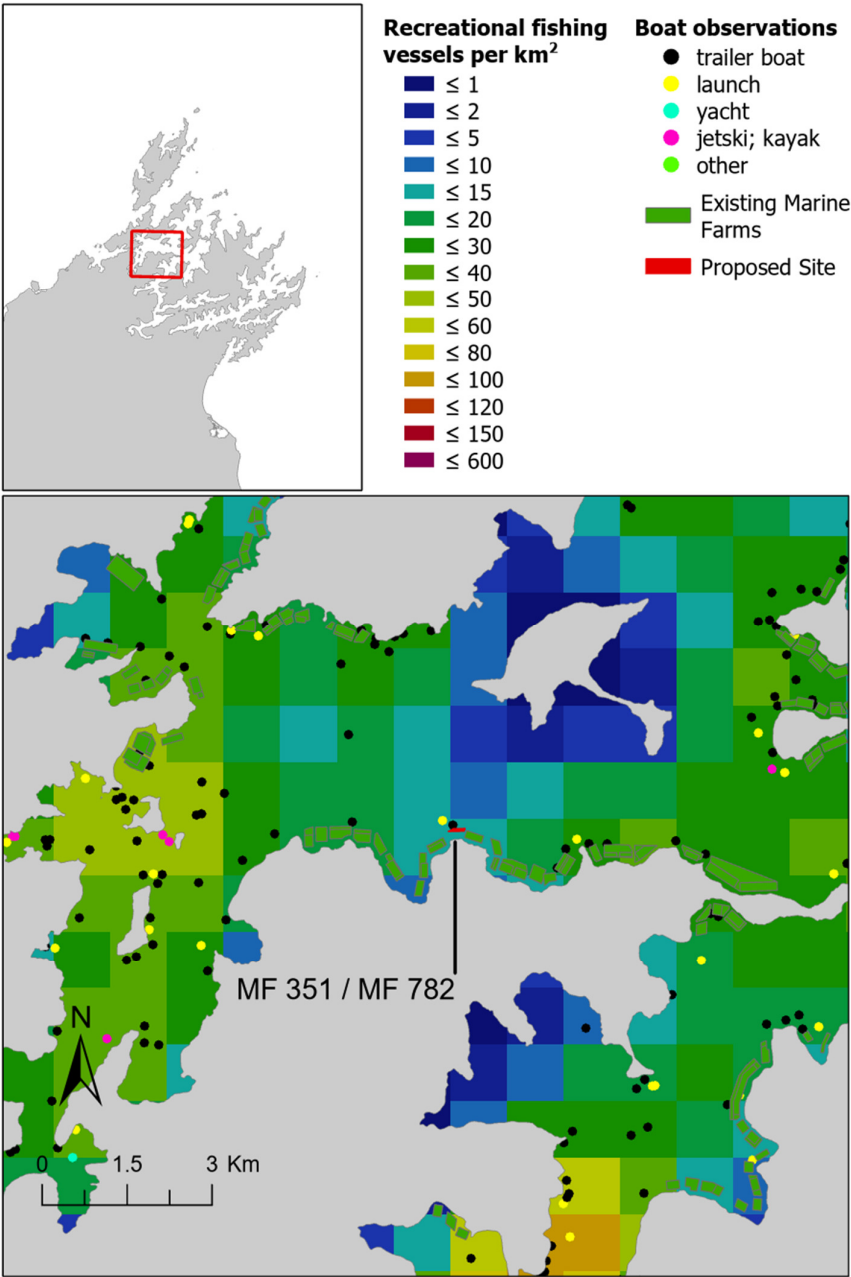
21. MPI aerial surveys of fishing boats show a large number of recreational fishing vessels fish in Kenepuru Sound, Queen Charlotte Sound, Croisilles Harbour and some areas in the outer Pelorus Sound. As shown in Map 2, fishing intensity is reasonably low in the Brightlands Bay part of Pelorus Sounds where the proposed site is located.

22. ACV fishing must be reported to MPI and include location of fishing and amount of catch. ACV fishing around the location of the proposed marine farm targets snapper, blue cod, and kahawai by rod and line, usually at anchor but also while drifting. In the 8 years from October 2010 to September 2018, 14 ACV reports were received within a 5 km radius of the proposed site (0.2 events per km²) compared with over 900 reports within a 20 km radius (0.7 events per km²). So, the close vicinity of the proposed site is not particularly important for fishing from charter boats.

⁴ 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.

⁵The national survey is designed to give statistically robust estimates at the scale of FMAs and not smaller areas but has been used here to give a rough characterisation of recreational fishing patterns within a single survey strata covering Pelorus Sound.

23. Table 1 summarises my assessment of the main methods used and species likely to be caught by recreational fishers at the proposed site based on recreational fishing surveys, the applicant’s benthic survey (Davidson *et al.*, 2018), ACV data and anecdotal sources.



Map 2. Estimated annual intensity of recreational fishing from boats in 2006 (Davey *et al.*, 2008) and boat observations for 12 months in 2015-16 in the Marlborough Sounds (Hartill *et al.*, 2017)

Table 1: Recreational fishing methods used and species likely to be caught near and around the area of coastal permit U190593, based on the available information.

	ACV data for 5 km radius	Recreational fishing surveys	Other information	My assessment
Methods used	Rod/line on anchor and rod/line drifting	Rod/line (used on 91% of trips in Pelorus Sound survey zone), set netting (6%), dredging (6%) and diving (4%) (Wynne-Jones <i>et al.</i> , 2014, 2019).	<p>The benthic habitats recorded in Davidson <i>et al.</i> (2018) support line and net finfish fishing methods.</p> <p>Dredging and diving may occur in the general locality but are unlikely to occur at the proposed site due to the absence of reef or shellfish beds in the silt and clay substrate.</p> <p>Set netting is possible but usually occurs in shallower bays and estuaries.</p>	Stationary and mobile rod/line, and possibly long lining methods may be used at the site.
Species caught	<p>Targeted – snapper, blue cod, hapuku, gurnard and sea perch.</p> <p>Caught – snapper, blue cod, hapuku, gurnard and sea perch.</p>	<p>Blue cod (caught on 46% of trips), snapper (15%), kahawai (14%), gurnard (12%) are the main species caught in the Pelorus Sound survey zone.</p> <p>Scallops (7%), terakihi (5%), barracoota (5%) and flatfish (5%) also caught (Wynne-Jones <i>et al.</i>, 2014, 2019).</p>	<p>Very few large benthic epifauna and no fished invertebrates were observed in ecological surveys of the proposed site. No scallops were observed Davidson <i>et al.</i> (2018).</p>	<p>The absence of hard substrates beneath the proposed marine farm makes it unlikely rock lobster, blue cod or other reef species are caught in the area of the proposed marine farm.</p> <p>Scallops are known to occur beneath some marine farms in Pelorus Sound but were not observed at this site.</p> <p>Snapper and kahawai are likely to be the main species available for fishing at this site.</p>

Customary Fishing

24. I consider the proposed marine farm is located where there may be customary fishing but it is unlikely. The main method likely to be used, if any, is stationary rod/line fishing from a boat with drift fishing and long lining also suitable methods. The main species caught would be snapper and kahawai.

25. Up to eight Iwi may have customary fisheries interests in the area of the proposed marine farm.⁶ There are no mātaihai reserves, temporary rāhui or taiāpure customary management areas in the vicinity of the proposed marine farm.

26. There is little quantitative data available on customary catch taken from the area of the proposed marine farm. Fishing locations for customary authorisations are usually only reported by FMA or Quota Management Area (QMA), although more specific sites are sometimes identified. Customary fishers are not required to report catch or fishing locations.

27. From April 1998 to March 2020, no customary fishing authorisations were reported to Fisheries New Zealand for Brightlands Bay. However, there were 74 reports for unspecified areas of Pelorus and Marlborough Sounds. These were mostly for scallops, pāua, blue cod, rock lobster, and butterfish. It is not possible to say whether any of these authorisations involved customary fishing in the area of the proposed marine farm but it is reasonable to assume they may have.

28. I have assessed likely customary fishing in the proposed site in Table 2 below, using the available information.

⁶Ngāti Tama, Ngāti Apa, Ngāti Koata, Ngāti Kuia, Ngāti Rārua, Ngāti Toa, Rangitāne, Te Āti Awa

Table 2: Customary fishing methods used and species caught or targeted at the area of the proposed marine farm

	Source of information		
	Customary authorisations issued for Marlborough Sounds	Other information	My assessment
Methods used	N/A	Recreational fishers commonly use stationary and mobile rod/line methods, so customary fishers may also use these methods. The site is possibly too deep for set netting. Longlines may be used.	Stationary rod/line fishing, are the most common methods for recreational fishers and may also be used by customary fishers.
Species caught or targeted	Scallops, blue cod, crayfish, pāua and butterfish are the most common species taken with customary authorisations from Pelorus Sound. Kina, snapper, moki and flatfish are also taken.	Butterfish, kina, pāua and crayfish are not typically found over the soft silty substrate at the proposed site. No scallops were observed by Davidson <i>et al.</i> (2018).	The absence of hard substrates beneath the proposed marine farm makes it unlikely rock lobster, blue cod or other reef species are caught in the area of the proposed marine farm. Scallops are known to occur beneath some marine farms in Pelorus Sound but were not observed at this site. Snapper, and possibly flatfish are likely to be the main species available for fishing at this site.

Exclusion of fishing

29. The proposed marine farming structures are standard mussel longlines about 13 m apart. I consider that any recreational or customary set netting, longlining, or rod/line drift fishing occurring in the area of the proposed site may be excluded from the proposed site because of the risk of entanglement.⁷

30. However, I consider that stationary rod/line fishing could continue between the proposed structures, as anecdotal information suggests fishers commonly fish by rod/line within mussel farms. Some diving may still occur but is highly unlikely at this site.

Availability of other areas

31. I consider alternative areas around Pelorus Sound could absorb any recreational and customary fishing displaced from the proposed site because:

- the proposed site is only small and the amount of fishing that would occur there is likely to be negligible;
- the same species seen over the soft substrate at the proposed site could be found in most areas of Pelorus Sound, where this substrate is common. No information suggests the proposed site offers unique habitats or species mix; and
- the same methods used at the proposed site could be used elsewhere nearby; sufficient alternative areas exist.

32. Apart from the closed area for finfish fishing around Maud Island and longline and set net restrictions in certain areas under the Amateur Regulations, all Pelorus Sound is available for recreational and customary fishing. Many alternative areas are available for the type of fishing that could occur at the proposed site.

Increased cost of fishing

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

34. 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.

Likely effect on fishing

35. 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 proposed site;
- the area of the proposed site is small and is unlikely to be of particular importance to recreational or customary fishers; and

⁷ 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. Drift fishing is also difficult between closely set mussel lines because of risk of entanglement.

- alternative areas around Pelorus Sound could absorb the recreational and customary fishing displaced from the proposed site.

Cumulative effects

36. I consider existing aquaculture in the Marlborough Sounds may have affected recreational and customary fishing. However, I consider the cumulative effects on recreational and customary fishing, including the aquaculture activities at the proposed marine farm, will not be undue.

37. There is about 400 ha of authorised aquaculture space in the Tawhitinui Reach area of Pelorus Sound where the proposed site is located. There are also about 3 300 ha of marine farms in the wider Marlborough Sounds.

38. 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 Pelorus Sound and the wider Marlborough Sounds.

Commercial fishing

39. 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, if any, is likely to be excluded from the proposed site;
- there are alternate fishing grounds within the quota management areas for any fishing excluded from the proposed site;
- occupation of the proposed site will result in a negligible, 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 negligible and will not cause the cumulative effect on commercial fishing for any fish stock to become undue.

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

Location of the coastal permit area relative to fishing areas

41. I consider the proposed site is located where there may be some commercial fishing. Trawling and set netting have occurred nearby in the past and it's possible that some longlining

and dredging may also occur at this site. If any fishing does occur, species caught might include school shark, hapuku, gurnard, flatfish, red cod and scallops.

42. Fisheries New Zealand used CatchMapper⁸ to identify the fishing that has potentially occurred in the vicinity of the proposed site (Table 3). The site is surrounded by other farms but protrudes into Tawhitinui Reach a bit further than the adjacent farms. The likelihood that any commercial fishing actually occurs that close to existing structures is very small, but Table 3 gives the fishing that may occur within the vicinity.

43. Most of the potentially affected commercial fisheries in Table 3 are managed as stock units over FMA⁹ which spans the west coast and top of the South Island from Awarua Point in Fiordland to the Clarence River in Marlborough. The proposed site is very small in relation to the area of the potentially affected fisheries.

⁸ CatchMapper is a spatial database of all commercial fishing events for the eleven years from October 2007 to September 2018 (see Appendix C for more explanation).

⁹ FMAs can be seen here <https://fs.fish.govt.nz/Page.aspx?pk=45&tk=389>

Table 3: Fisheries identified as potentially occurring within the affected footprint of the proposed marine farm and estimated relative amount of the fishstock caught within the footprint.^{10,11}

All types of fishing detected within proposed farm footprint (and main fishstock)	% high spatial resolution	Average annual no. of overlapping fishing days	% of main fishstock caught by this method	Commercial fishing potentially affected	Likelihood of being affected
Blue cod (BCO7), cod pot	0.0 %	37.1	less than 0.01%	Yes	Could occur here but is mainly thought to occur elsewhere
Hapuku bass (HPB7), longline	0.0 %	36.9	less than 0.01%	Yes	Might occur here and might be slightly displaced
School shark(SCH7), longline	0.0 %	24.6	less than 0.01%	Yes	Might occur here and might be slightly displaced
Scallop (SCA7), dredge	0.0 %	21.1	less than 0.02%	Yes	Might occur here and might be slightly displaced
Flatfish(FLA7), set net	7.0 %	14.1	less than 0.01%	Yes	Might occur here and might be slightly displaced
Other species (mainly ELE7), set net	11.7 %	11.9	less than 0.01%	Yes	Might occur here and might be slightly displaced
Other species (mainly HOR7), hand gathering	0.0 %	11.8	less than 0.01%	Yes	Horse mussels weren't observed in benthic surveys
Sea Cucumber, Diving	0.0 %	10.6	less than 0.01%	Yes	Might occur here and might be slightly displaced
Other species longline	0.0 %	3.7	less than 0.01%	Yes	Might occur here and might be slightly displaced
Albacore troll	0.0 %	2.3	less than 0.01%	Yes	Might occur here and might be slightly displaced
Other species (mainly SUR7B), dredge	0.0 %	1.9	less than 0.01%	Yes	Kina dredging will not occur in this habitat
Kahawai (KAH3), set net	0.0 %	1.5	less than 0.01%	Yes	Might occur here and might be slightly displaced
Oyster (OYS7), dredge	0.0 %	0.8	less than 0.01%	Yes	Might occur here and might be slightly displaced
Inshore Mixed species (mainly GUR7), trawl	100.0 %	0.4	less than 0.01%	Yes	Trawling happens nearby and might be slightly displaced
Kina (SUR7A), diving	0.0 %	54.0	less than 0.01%	No	Kina diving will not occur in this habitat
Rock lobster, Rock Lobster Pot (CRA5)	0.0 %	50.8	less than 0.01%	No	Rock lobster potting will not occur in this habitat
Butterfish (BUT7), set net	0.0 %	27.5	less than 0.01%	No	Butterfish will not occur in this habitat
Blue cod (BCO7), hand line	0.0 %	21.5	less than 0.01%	No	Hand lining on commercial boats for recreation
Other species, Pot (mainly rock lobster CRA5)	0.0 %	14.6	less than 0.01%	No	Rock lobster potting will not occur in this habitat
Other species (mainly BCO7), hand line	0.0 %	6.9	less than 0.01%	No	Hand lining on commercial boats for recreation
Other species (mainly GAR7), beach seine	0.0 %	2.5	less than 0.01%	No	Seining will not occur at this site due to the existing structures

¹⁰Main fishstock refers to the main species caught in the fishing cluster but does not include all species taken by those fishing events.

¹¹ The amount of fishing overlapping with farm footprints is more precisely estimated where fishing location is reported by specific point coordinates rather than general statistical areas. The presence of a fishery within a footprint might be mistaken or the number of days overestimated when the fishing events were not mapped to precise locations. In these cases, other knowledge or available information may be used to confirm whether a fishery might potentially be affected.

Exclusion of fishing

44. I consider it unlikely that any fishing will be excluded. Trawl, set net, dredge and longline fishing may occur close by but given that marine farms already surround the sites the additional obstruction to commercial fishing is negligible.

45. The fisheries given in Table 3 were identified by overlaying exclusion areas for each fishing method with the mapped fishing events in CatchMapper. The exclusion areas, also termed footprints of the proposed site, include appropriate buffer zones around the farm depending on the type of fishing method. Towed fishing methods have larger footprints, i.e. larger areas from which they would be excluded, than static fishing methods. Only new footprint area where fisheries have not already been excluded by existing authorised aquaculture is included in this assessment.

46. Set net and longline fishing, if any occurs, would be excluded from within the immediate boundaries of the proposed site. The site is unlikely to be suitable for beach seining because of the distance offshore of the new farm space. However, any beach seining occurring within the new farm space would be excluded.

47. There was no rock or stone substrata detected within the proposed site during a benthic survey of the site (Davidson *et al.*, 2018). Nor were any commercial shellfish species observed there. Therefore oyster, kina and scallop dredging, crayfish potting, or butterfish set netting will probably not occur at this site.

Availability of other fishing areas

48. I consider alternative areas are available to absorb any commercial fishing displaced from the proposed site, if there was any, because:

- the annual catches of each species potentially caught at this site are a negligible percentage of the total catches for those species within the relevant Quota Management Area (QMA) (Table 3);
- the same methods as those possibly used at the proposed site could be used elsewhere in the relevant QMA for each fishstock; and
- there is nothing special or unique about the fisheries habitat in the proposed site.

Increased cost of fishing

49. I consider that the aquaculture activities at the proposed site are highly unlikely to increase any cost of commercial fishing. The proposed site is not unique or especially productive for fishing and the area excluded is very small compared to other fishing grounds available nearby.

Likely effect on fishing

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

51. Fisheries New Zealand estimated that on average less than 20 kg of fish per year were possibly caught from the footprint of the proposed farm over the 11 most recent years (from the fisheries assessed as potentially affected in Table 3).

Cumulative effects

52. I consider existing aquaculture in the Marlborough Sounds has affected commercial fishing. However, I consider the cumulative effects on commercial fishing, including the aquaculture activities at the proposed marine farm, will not be undue.

53. There is about 400 ha of authorised aquaculture space in the Tawhitinui Reach area of Pelorus Sound where the proposed site is located. There are also about 3 300 ha of marine farms in the wider Marlborough Sounds that make up about 23% of the 14 700 ha of aquaculture in FMA 7.

54. I consider the cumulative effects on commercial fishing, including from 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 2.3% effect on any fishery, and not undue; and
- the amount of additional catch that might have been displaced at the proposed site is considered to be negligible.

AQUACULTURE DECISION

55. I am satisfied – based on all relevant information available to me – the activities proposed for the area authorised by coastal permit U190593 will not have an undue adverse effect on:

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

56. Accordingly, my decision is a determination for coastal permit U190593 with regard to:

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

57. The area of the determination on recreational, customary and commercial fishing is 1.29 ha within the following coordinates (NZTM2000):

Point	Easting	Northing
1	1672919.74	5455082.50
2	1672624.74	5455082.50
3	1672715.13	5455132.50
4	1672935.13	5455132.50

58. 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
Fisheries New Zealand – Tini a Tangaroa
Ministry for Primary Industries – Manatū Ahu Matua

Dated 29 May 2020

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APPENDIX A: SITE AND STRUCTURES MAPS

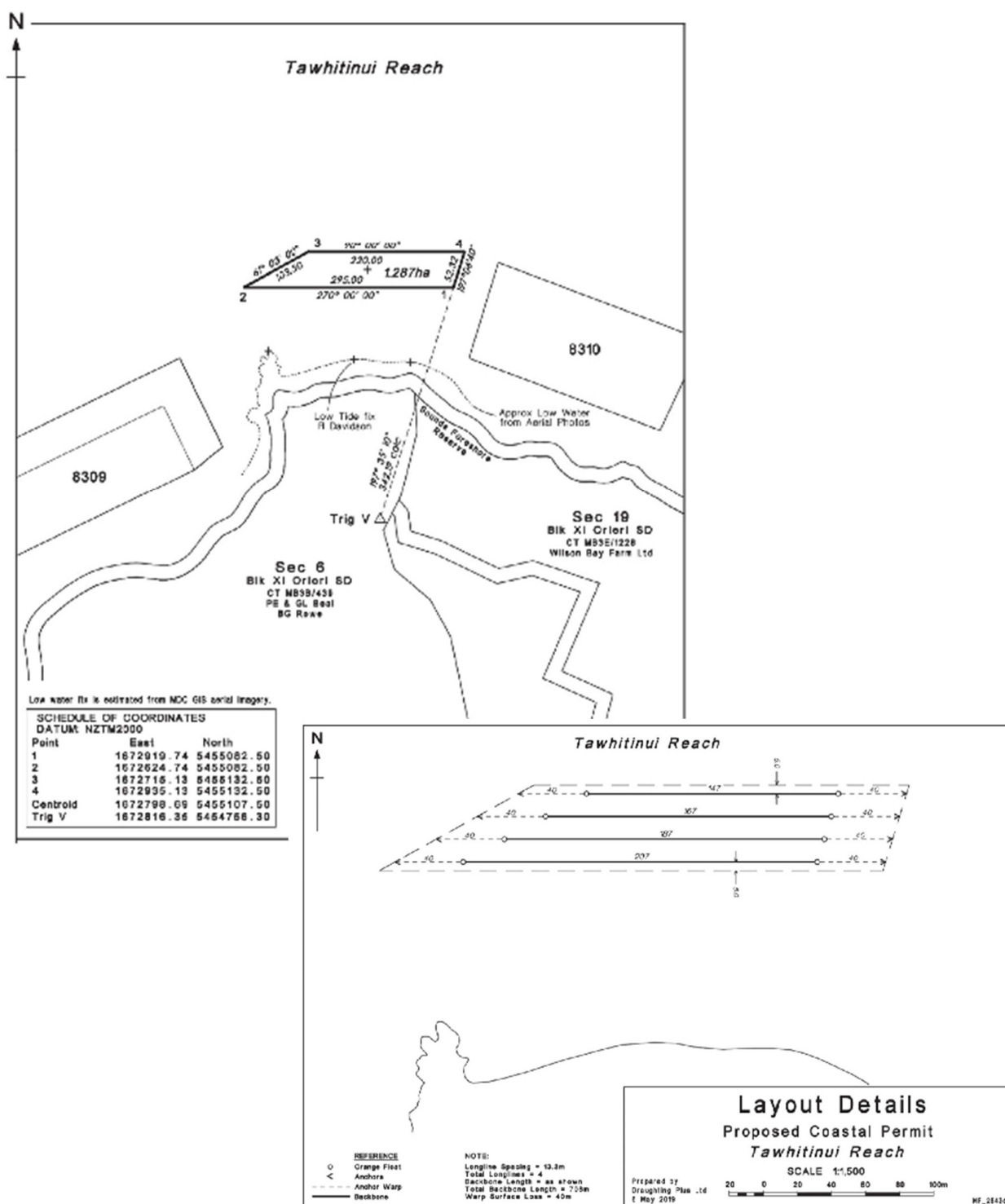


Figure 1. Copies of site map and structures plans showing location of new space and structures taken from Marlborough District Council coastal permit decision paper.

APPENDIX B: ADDITIONAL STATUTORY CONTEXT

1. Section 186E(3) of the Fisheries Act¹² 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 U190593.
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).

¹² 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.

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.*”

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 1998* (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: COMMERCIAL FISHING REPORTING AND ANALYSIS

1. Historically, fishing catches were reporting by a set of statistical areas providing only 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, Fisheries New Zealand has modelled and mapped fishing intensity for different clusters of fishing, characterised by a type of fishing gear and the main species caught.¹³ This detail can be commercially sensitive and may not be publically released
2. Until recently, vessels less than 6 m long still reported by statistical areas and so the precise location of their fishing is unknown. However, based on information from Fisheries Officers and Maritime New Zealand, Fisheries New Zealand has mapped long lining, bottom trawling and set netting by vessels less than 6 m as being within enclosed bays and within 3 nm of open coasts. Knowledge about species and information from commercial fishers and fishing companies, and Fisheries Officers can also help to determine whether specific types of fishing are likely to occur in an area.
3. 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.
4. The amount of all mapped fishing events that overlap with a proposed farm footprint is calculated. Trip landings are apportioned to the overlapping part of each event. These are summed and annually averaged for each fishery cluster and fishstock to estimate the amount of fish likely to have been landed within the footprint.
5. The amount of fishing was averaged over October fishing years 2007/08 to 2017/18. Eleven 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.

¹³ MPI developed the CatchMapper tool to spatially model the estimated catch from landing data. This informs our assessment, and particularly, Table 3. For more information see Osborne, TA 2018 Forecasting quantity of displaced fishing Part 2: CatchMapper - Mapping EEZ catch and effort. New Zealand Aquatic Environment and Biodiversity Report No. 200. Downloaded on 4 March 2019 from <https://fs.fish.govt.nz/Page.aspx?pk=113&dk=24611>