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MEMORANDUM

To: The Marlborough Environment Plan Hearings Panel

From: Debbie Donaldson, Consultant Planner - S42A Reporting Officer – Topic 11 – The Use of the Coastal Environment

Date: 31st October 2018

Subject: Response to Minute 35

This memorandum responds to matters raised by the Panel in Minute 35, issued on 19 September 2018.

In response to the Minute issued by the Hearings Panel, a meeting was organised on the 16th October 2018 between myself, Marlborough District Council, the Department of Conservation (DOC) and the Ministry of Primary Industries (MPI) representatives. The attendees at the meeting were;

- Debbie Donaldson – Consultant Planner and S42A Reporting Officer for Topic 11 – The Use of the Coastal Environment
- Jono Underwood, MDC Biosecurity Officer
- Dean Van Mierlo – Barrister for DOC
- Sarah Hucker – DOC RMA Senior Policy Advisor
- Mary Klaver – MPI Senior Advisor, Recovery & Pest Management Services, Biosecurity NZ

The purpose of the meeting was to seek agreement on the proposed wording for a permitted activity within the pMEP, to allow for the '*In water cleaning of biofouling from ships, moveable structures or navigational aids and associated discharge of contaminants and biological material*' within the Port, Port Landing Area, Marina and Coastal Marine Zones.

It was agreed by all parties within the meeting that providing for in-water cleaning of ships, moveable structures and navigational aids within the pMEP as a permitted activity is important.

Policy 12 of the NZCPS requires that the Council within its regional policy statements and plans, as far as practicable, controls activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread.

It was agreed that allowing in water cleaning of biofouling to occur within Marlborough, as permitted activity subject to standards, will support, and incentivise, more regular clearing of the under-water parts of ships, moveable structures and navigational aids, thereby reducing the development of macrofouling. As macrofouling develops it becomes more diverse and the risk of containing harmful aquatic organisms that are a biosecurity risk to the Marlborough Region will increase.

Within the Hearing of Topic 11, DOC and MPI presented evidence that included proposed wording for a permitted activity rule to allow for in water cleaning of microfouling (often referred to as "slime layer") and some macrofouling (biofouling growth beyond microfouling).

It was agreed within the meeting by all parties that the permitted activity rule should provide for the clearing of microfouling, including goose barnacles, in water without the need for capture.

In regard to macrofouling, it was agreed by all parties that some in water cleaning of macrofouling should be provided for by the permitted activity. All parties agreed that 'Light fouling' should be allowed to be cleaned but with capture.

DOC and MPI agreed that the term 'light fouling' used within the Marlborough Regional Pest Management Plan 2018 (in accordance within the Biosecurity Act 1993) (MRPMP) is consistent with the wording '*less than or equal to 2 on the Level of Fouling rank (Floerl et al (2005)*' proposed within the evidence by DOC and MPI at the Topic 11 Hearing.

The definition of 'light fouling' the Marlborough Regional Pest Management Plan (RPMP) 2018 being;

> '*means small patches (up to 100 millimetres in diameter) of visible fouling, totalling less than 5% of the hull and niche areas. A slime layer and/or goose barnacles are included in this definition*.'

It is considered that the use of consistent terminology across MDC Plans is preferential, and as such agreement was reached to use the term 'light fouling' within the rule, with a definition of 'light fouling' to be included within Chapter 25 of the pMEP.

Extensive discussion was undertaken within the meeting regarding macrofouling and the potential risk of introducing or spreading harmful aquatic organisms if in-water cleaning of "light fouling" was provided for without the need for capture and removal for disposal. It was agreed that in-water cleaning of "light fouling" could be provided for within the rule if subject to capture and disposal. It was agreed that the rule proposed by DOC and MPI at the hearing, is appropriate, however there was recognition that to 50 micron size referred to in the rule may be difficult for plan users to determine.

DOC, MPI and MDC officers advised that it was likely that most boat owners would be advised to seek specialist advice to determine the nature and level (and size) of macrofouling and how to remove this. Given this information, it was agreed that a 'Note' to the Rule would be appropriate to guide plan users that specialist advice should be sought to ensure compliance with that particular standard of the rule.

I consider that including provisions, namely permitted development rules within the MEP, that provide for ''*In water cleaning of biofouling from ships, moveable structures or navigational aids and associated discharge of contaminants and biological material'* as a permitted activity within the Port, Marine, Port Landing Area and Coastal Marine Zones, will be efficient and effective in achieving the objectives of the Plan and in turn, the purpose of the Act while mitigating the effects of this activity of the environment. The provisions would be efficient in enabling a maintenance activity to be undertaken, that will assist in reducing biosecurity risks to the Marlborough coastal marine area. The standards within the rule will provide sufficient control to ensure the effects on the environment are mitigated. For these reasons, I consider that the recommended changes to the plan would be an effective and efficient in achieving the purpose of the Act, and the objectives and policies of the MEP.

As a result of the discussions with MDC, DOC and MPI representatives it is recommended that a permitted activity is included within the Port, Port Landing Area, Marina and Coastal Environment Zones to read;

(Blue text -Recommended within s42A, Red Text – Recommended within Right of Reply, Grey Shading – Amendments to Right of Reply).

xx.x.x In-water cleaning of biofouling of ships, moveable structures or navigational aids and associated discharge of contaminants and biological material

- *(a) The owner or operator of the ship, structure or navigational aid shall ascertain, and produce on request by an enforcement officer or a biosecurity officer, details of the anti-foul coating used on the ship, structure or navigational aid, the planned service life as specified by the coating manufacturer, and the cleaning method recommended by the coating manufacturer, and*
- *(b) the anti-foul coating on the ~~vessel~~ ship, moveable structure or navigational aid shall not have exceeded its planned service life as specified by the manufacturer, and*
- *(c) the cleaning method shall be undertaken in accordance with the coating manufacturer's recommendations, and*
- *(d) the cleaning of microfouling and goose barnacles may occur without capture, and*
- *(e) any coverage of macrofouling cleaned (other than goose barnacles) ~~(other than goose barnacles)~~ shall be ~~less than or equal to 2 on the Level of Fouling rank (LOF2) and be of Marlborough Origin~~ no more than light fouling, and all biological material greater than 50 microns in diameter dislodged during cleaning shall be captured and disposed of at an approved landfill, and*
- *(g) if any person undertaking or responsible for the cleaning suspects that harmful or unusual aquatic species (including species designated as unwanted organisms or pest species under the Biosecurity Act 1993) are present on the ship, structure or navigational aid, that person shall take the following steps:*
  - *i. any cleaning activities commenced shall cease immediately, and*
  - *ii. the Marlborough District Council and the Ministry for Primary Industries shall be notified without unreasonable delay: and*
  - *iii. the cleaning may not recommence until notified by the Council to do so, or in the event a designated unwanted organisms or pest species is found, notified to do so by the Ministry for Primary Industries.*

Notes

1. *When undertaking cleaning of macrofouling (other than goose barnacles) under this rule, it is recommended that specialist advice is sought in regards to determining that the level of macrofouling on the ship or structure does not exceed "light fouling" and the appropriate method of clearing and capture in order to ensure compliance with this rule.*
2. *International vessels arriving in New Zealand waters have additional obligations under the Craft Risk Management Standard: Biofouling on Vessels Arriving to New Zealand (May 2014).*

3. *For further context and guidance on anti-fouling and in-water cleaning of vessels and structures refer to the Anti-fouling and In-water Cleaning Guidelines (June 2013).*
4. *The plans definition of "light fouling" is in alignment with LOF2 in Floerl et al 2005, a nationally and internationally recognised system of quantifying the extent of biofouling.*

Add to following Definitions to Chapter 25 of the pMEP

Biosecurity officer: means an inspector or authorised person appointed under Section 103 of the Biosecurity Act 1993

Enforcement officer: has the same meaning as in Section 2 of the Act

~~*Goose barnacle: stalked barnacles from the orders Ibliformes, Lepadiformes and Scalpelliformes.*~~

Light fouling: means small patches (up to 100 millimetres in diameter) of visible fouling, totalling less than 5% of the hull and niche areas~~). A slime layer and/or goose barnacles are included in this definition.~~

Macrofouling: any organism or life stages of an organism not included in the definition of microfouling.

Microfouling: a layer of microscopic organisms including bacteria and diatoms and the slimy substances they produce. Often referred to as a 'slime layer', microfouling can usually be removed by gently passing a finger over the surface.

Navigational aid: has the same meaning as in Section 2 of the Maritime Transport Act 1994