

**Before the Environment Court
I Mua I Te Kooti Taiao o Aotearoa**

Christchurch Registry

ENV CHC 2020

Under the Resource Management Act 1991
In the matter of an appeal under clause 14 of Schedule 1
Between **Friends of Nelson Haven and Tasman Bay Inc.**
Appellant
And **Marlborough District Council**
Respondent

**Notice of appeal against decisions on the proposed Marlborough
Environment Plan**

Topic 5: Natural character and landscape

Topic 6: Indigenous biodiversity

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To: The Registrar
Environment Court
Christchurch

1. Friends of Nelson Haven and Tasman Bay Inc. (**Friends**), an incorporated society having its registered office at 29 Bronte Street, Nelson 7010, appeals against decisions/parts of decisions of the Marlborough District Council on the proposed Marlborough Environment Plan (**MEP**), a combined regional policy statement, regional coastal plan, regional plan and district plan for the Marlborough District. The MEP was publicly notified on 9 June 2016 and decisions on submissions made on the MEP were released on 21 February 2020.
2. Friends made submissions on the MEP.
3. Friends is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Friends received notice of the decisions on 21 February 2020.
5. The decisions were made by the MEP Hearing Panel, acting under delegated authority from the Marlborough District Council.
6. The decisions/parts of the decisions that Friends is appealing and a summary of the reasons are set out in Appendix 1 (natural character and landscape) and Appendix 2 (indigenous biodiversity) attached to this notice of appeal.
7. By way of general summary, the decisions/parts of decisions that are the subject of this notice of appeal do not sufficiently recognise and provide for relevant matters of national importance prescribed in section 6 of the Act; are not in accordance with and do not give effect to the New Zealand coastal policy statement; do not achieve integrated management of the natural and physical resources of the Marlborough District, or integrated management of the effects of use development and protection of land and associated natural and physical resources; do not control the effects of the use, development or protection of land, water and associated natural and physical resources of the Marlborough District so as to give effect to the Act; and do not maintain indigenous biodiversity. The decisions do not meet the purpose of the Act.

8. The relief sought by Friends is set out in Appendix 1 and 2. In granting the relief sought, it may also be appropriate for the Environment Court to consider issuing directions under section 293(1) of the Act.

Dated 6 May 2020



JC Ironside
Counsel for Friends of Nelson Haven and Tasman Bay Inc.

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Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal. To become a party to the appeal, you must -

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submissions and the decisions appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.

APPENDIX 1: NATURAL CHARACTER AND LANDSCAPE

GENERAL REASONS FOR APPEAL

1. The natural character chapter of the proposed MEP (as confirmed by decisions of the Hearing Panel – **the DV**) fails to give effect to RMA s6(a) and NZCPS Policy 13 *Preservation of natural character*, in that it fails to adequately provide for the preservation of the natural character of the coastal environment of the Marlborough Sounds and to protect it from inappropriate subdivision, use, and development.
2. The landscape chapter of the DV fails to give effect to RMA s6(b) and NZCPS Policy 15 *Natural features and natural landscapes*, in that it fails to adequately provide for the protection of the natural features and natural landscapes (including seascape) of the coastal environment of the Marlborough Sounds from inappropriate subdivision, use, and development.
3. It is evident from the BML (2014) coastal natural character study, the BML (2015) Marlborough landscape study, and the BML s42A reports on natural character and landscape, that within the marine environment of the Marlborough Sounds, the presence of aquaculture has played a significant role in influencing the rating of coastal natural character and the assessment of outstanding natural features and landscapes (ONFL). Tensions between aquaculture development and the identification of ONFL and coastal natural character are also evident in a significant number of submissions on the proposed MEP as notified.
4. In circumstances in which aquaculture development, and the protection of natural features and natural landscapes (including seascape), and the preservation of the natural character of the coastal environment are so inextricably connected, and associated planning provisions so contested, the DV has failed to address these conflicts.

SPECIFIC REASONS FOR APPEAL

Natural character provisions of the DV based upon flawed assessment of natural character

5. The coastal natural character provisions of the DV derive from the BML (2014) study, *Natural Character of the Marlborough Coast*. This study applied a flawed conceptualisation and definition of natural character to the assessment process. In particular, the model of natural character applied to the assessment does not sufficiently differentiate between landscape and natural character, with the implications that experiential factors are given undue prominence in the rating of natural character. At paragraph 22 of the Natural Character topic decision, the Panel notes; “*Addressing the wording of the phrase ‘experiential attributes’ in NZCPS Policy 13(2)(h), the panel considers the wording applied in the subclause appears opaque (and may require further explanation in the future)...*”, yet experiential factors appear to have had an undue influence on the assessment of natural character.
6. The inclusion of experiential attributes as one of three groups of factors applied to the overall consideration of natural characteristics diminishes the reliability of the coastal natural character assessment, and compromises the utility of the natural character provisions of the DV, and in particular, Appendix 2, *Values contributing to high, very high and outstanding coastal natural character*. Characteristics that contribute to ratings of high, very high and outstanding natural character must have their basis in the perception of natural elements, patterns and processes, and not an undefined range of evaluative and affectively based experiences.
7. Reference to *experiential attributes* is retained in a number of policies, including Policy 6.2.4, Policy 6.2.6 (explanation), Policy 6.2.9 (explanation), 6AER.2. Given the ambiguity surrounding the term, and the undefined range of factors that might be considered within the broad field of experiential attributes, the inclusion of this term renders policies and explanations as opaque and uncertain as the term itself.
8. Appendix 2 *Values contributing to high, very high and outstanding coastal natural character*, is a critical component of the MEP, providing users with

the definitive basis for the identification of the natural character ratings that the MEP seeks to preserve and protect. If these characteristics are incorrectly or inadequately identified and described, then the plan will fail to give effect to NZCPS Policy 13. The DV Appendix 2 is deficient in failing to identify in specific terms, the key characteristics that determine an area's natural character rating, and that are sought to be protected through the plan. The court in *Matakana*¹ at [166] further proposes that “...*the text should break down the elements so that the particular adverse effects which are to be avoided can be readily identified*”.

9. The BML (2014) coastal natural character study applied a novel, flawed, ambiguous and untested definition and approach to the identification of outstanding natural character.
10. The Panel has deleted Policy 6.2.3, *Where natural character is classified as high or very high, avoid any reduction in the degree of natural character of the coastal environment or freshwater bodies*. The retention of this policy is considered essential in giving effect to NZCPS Policy 13(1)(a) & 13(1)(b).

Landscape provisions of the DV based upon flawed landscape assessment practise

11. The process of landscape assessment that has informed the DV is based on methods developed circa 2006. The methods applied have failed to adequately reflect principles of good assessment practice that have emerged in decisions of the Environment Court since the Supreme Court NZKS decision (in 2014).
12. In particular, the methodology adopted by Boffa Miskell Ltd (BML) does not follow the accepted 3 stage sequence for the assessment of ONFL: (1) identification of the landscape/s or feature (2) determination of whether a landscape or feature can be regarded as a natural landscape or feature, and if so, how natural (referring to a 7-range scale of natural character), (3) assessment of whether any landscape or feature as a natural landscape or feature is also outstanding.

¹ Western Bay of Plenty DC v Bay of Plenty RC [2017] NZEnvC 147

13. These stages are endorsed in many decisions of the court on the identification of ONFL. The failure of the BML studies to follow these stages as part of a clearly articulated methodology has resulted in the failure of the studies - and consequently the DV - to adequately identify the ONFLs of the Sounds as required by s6(b) and NZCPS Policy 15.
14. The BML (2009 & 2015) assessment process leading to the NV failed to adequately define and differentiate between features and landscapes. The Panel erred (para.185) in their decision in failing to require any differentiation between ONF and ONL on the overlay ONFL maps. While the text of Appendix 1 makes some distinction between features and landscapes the concepts remain ill-defined, confused and ambiguous with respect to their mapped location and extent.
15. The notion of *nested landscapes* that emerged during the post-hearing review of the notified version of the landscape provisions, and the separate overlay of ONFL is inconsistent with NZCPS Policy 15 in failing to give adequate protection to the seascapes, particularly of the inner Sounds. The analysis of ONFL fails to give effect to the principle that seascape and landscape combine to form an integrated, perceptual whole. This approach was endorsed by the Environment Court in *KPF Investments Ltd v Marlborough District Council* ([2014] NZEnvC 152 at [56]).
16. The BML landscape assessments have applied an inappropriately high threshold of natural character (or naturalness) in responding to the question of whether a landscape or feature can be regarded as a *natural* landscape or feature. The BML (2015) landscape assessment appears to rely upon the findings of the BML (2014) coastal natural character assessment for data on natural character ratings for features and landscapes, yet the coastal natural character study rated no areas below high on a seven range scale of natural character. A natural character rating of high has never been regarded as an appropriate threshold of natural character for determining whether a feature or landscape is a natural feature of landscape. The application of high as the threshold for whether a landscape or feature is sufficiently natural has resulted

in significant areas of the inner Sounds being excluded from evaluation as ONFL.

17. Aesthetic value is a key perceptual quality or value bearing on the significance of the natural landscapes/seascapes and natural features of the Sounds. To the extent that aesthetic quality has been considered, a flawed, inadequate and now outdated aesthetic assessment framework, has been applied to the task. It is a significant failing of the BML studies that the aesthetic evaluation of the Sounds should be undertaken with respect to a wholly invalid and unreliable method. Aside from the flaws in the method applied to assessing aesthetic value, the findings appear to have been accorded little salience in the identification of the outstanding landscapes and features of the Sounds.
18. The Appendix of landscape values is a critical component of the MEP, providing users with the definitive basis for the identification of characteristics and valued landscape attributes that the MEP seeks to preserve and protect. If these valued attributes are incorrectly or inadequately identified and described, then the plan will fail to give effect to NZCPS Policy 15. The DV Appendix 1 *Landscape Schedule of Values* is deficient in failing to identify in specific terms, the values and attributes that that make an area outstanding, and that are sought to be protected through the plan. As stated earlier, the court in *Matakana* at [166] further proposes that “...*the text should break down the elements so that the particular adverse effects which are to be avoided can be readily identified*”.

Changes to the landscape assessment initiated by the Hearing Panel post-hearing of submissions

19. The overall assessment process has been compromised by a series of post-hearing memos (in particular, Memos 9 and 15) from the Panel to BML that have resulted - through a review of the conceptualisation of Sounds landscapes - in the introduction of significant changes to the delineation of Sounds landscapes and features. None of these changes have been subject to public submission or critique from other landscape experts who presented evidence before the panel.

20. At paragraph 17 of the Landscape topic decision, the Panel acknowledge the 3-stage assessment process, yet the BML review in response to Memos 9 and 15 fails to follow this process.
21. Following criticism from landscape experts, and on instructions from the Panel (Memos 9 & 15), the landscape character areas identified in the NV were reconceptualised as “nested landscapes” (21 in total). While this new analysis resulted in a marginal increase in the number of landscape character areas (up to 21 from 18), they were all subject to the original (2015) evaluation of ONFL that exists as a separate overlay above the mapping of nested landscapes.
22. To reflect the reconceptualisation of landscape character areas, Appendix 1, *Landscape Schedule of Values* was restructured for the purpose of re-allocating identified values to the new conceptualisation of landscapes. At no stage was the revised landscape schedule of values made available to submitters’ landscape experts for comments.
23. The nested landscape concept that the Panel adopted had its genesis in the 2009 BML Marlborough Landscape Study. As this study had been superseded by the 2015 study, and this version in turn informed the notified version, the 2009 study was not the subject of expert evidence before the Panel, and is largely untested.
24. The revised landscape characterisation (Map 2, Appendix 1 of the Decisions version) and the accompanying Appendix 1 Landscape Schedule of Values are the product of an ad hoc approach to landscape assessment that again, fails to follow the three stage approach to landscape assessment identified above. The outcome represents a significant change to the maps and schedule in the notified version of the MEP, but were never made available for public submission or expert critique.
25. The notion of nested landscapes (in fact, landscape character areas) and the ONFL overlay exist as two separate streams of analysis. The nested landscapes emerging from the interchange of memos between the Panel and assessors (BML) have not been assessed as landscapes according to well established procedures, and as such they are not outstanding natural landscapes in the

sense understood in the context of s6(b) and NZCPS Policy 15. Many nested landscapes, particularly within the inner Sounds, are a mosaic of ONFL, and large areas deemed not to be sufficiently natural, nor outstanding.

The failure of the DV to address inherent conflicts between aquaculture, and the protection of natural features and natural landscapes and the preservation of the natural character of the coastal environment

26. At paragraph 206 of the DV, following a discussion on conflicts between the identification of ONFL and marine farming, the Panel considered the appropriateness of leaving the Landscape chapter to await the release of the aquaculture component. However, at paragraph 207 the Panel determined not to do this.
27. The potential cumulative adverse effects of aquaculture on the natural character of the marine environment is potentially greater than adverse effects on ONFL, particularly given the failure of the DV to identify any significant extent of ONFL within the seascapes of the inner Sounds. Natural character is pervasive throughout the entire Sounds, yet the Panel's decision on the natural character topic makes no reference to the appropriateness of dealing with this topic in connection with the aquaculture chapter, as it does for the Landscape topic.
28. In determining the landscape and natural character provisions, yet deferring any possible resolution of these conflicts until the preparation of the aquaculture chapter of the MEP, the DV fails to provide for the sustainable development of the Marlborough Sounds, and does not give effect to Policies 4, 6, 7, 8, 13 and 15 of the NZCPS.

The outcome of both the landscape and natural character provisions of the plan lack transparency and plausibility

29. The DV fails to provide certainty, clarity and lack of ambiguity to administrators and users regarding:
 - 29.1. the definition, assessment and mapping of outstanding natural features, outstanding natural landscapes,

- 29.2. the identification and scheduling of valued attributes and natural characteristics
- 29.3. the rating and mapping of coastal natural character and outstanding natural character
30. Users and administrators of the plan and the community generally, expect certainty and clarity when applying the plan and the provisions of the NZCPS. The MEP should provide users with the most definitive statement of landscape and natural character provisions, in plain language that lay users can comprehend. The provisions of the plan should also correspond largely with community perceptions of landscape significance. Natural character provisions should be premised upon a valid and reliable approach to assessment. Both landscape and natural character assessments should be the product of valid and reliable assessments, such that the findings are plausible and trustworthy. The BML landscape and natural character studies do not meet the tests of validity and reliability and as a consequence, the DV landscape and natural character provisions cannot be regarded as plausible and trustworthy by the community.

RELIEF SOUGHT

31. **To establish, through a process to be determined by, and facilitated by the Court, principles and theoretical and methodological frameworks for reliable and valid methods to be applied to natural character and landscape assessment for the purposes of NZCPS Policies 13, and 15.**
32. **Through the application of those principles and frameworks, and through a process to be determined by the Court, to identify the ONFL of the Marlborough Sounds.**
33. **The results of the analysis shall be presented in the form of a revised map of the ONFL of the Marlborough Sounds. Appendices on landscape values and coastal natural character attributes should identify those attributes, values and characteristics that are the basis of 'outstanding-ness' or High/Very High natural character ratings. Further, threats (in terms of what might constitute inappropriate subdivision, use and development) to those values and characteristics must be identified also.**

- 34. Policy amendments, new policies and any consequential amendments necessitated by the revised analyses shall be drafted as necessary.**
- 35. The Court shall consider and determine whether in accordance with Parts 4 and 5 of the RMA, the process shall be carried out in conjunction with the preparation of the aquaculture chapter, with the amendments to the landscape and natural character provisions to be prepared concurrently with the aquaculture chapter so as to give full effect to the relevant policies of the NZCPS.**

Appendix 2: Indigenous biodiversity

Appeal point 1: Introduction

Plan Provision	Submission	Decision Sought
Introduction	This introduction is supported. In view of the importance of ecological values within the coastal environment in Marlborough there should be reference in this explanatory introduction to Objective 1 and Policies 11, 13 and 14 of the NZCPS 2010. Of particular relevance is that Objective 1 includes as one aspect of safeguarding the integrity, form, function and resilience of the coastal environment the protection of representative or significant natural ecosystems. To give effect to Policy 14 of the NZCPS the last paragraph should refer to the Council wherever possible providing objectives, policies and methods directed at restoration or rehabilitation.	Add reference to Objective 1 and Policies 11, 13 and 14 of the NZCPS 2010.

Due to the significant shortcomings of the existing Plan to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems¹ Friends maintain their position that apart from:

‘to recognise and provide for as a matter of national importance the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (Section 6(c))’

...a reference to following objective and policies is required to give effect to the requirement to protect significant natural areas and habitats to maintain indigenous biological diversity:

¹ Marlborough District Council 2015. State of the Environment Report 2015. Our Land, our Water, Our Place – Page 150.

- Objective 1 NZCPS – 2010
- Policy 11 NZCPS – 2010
- Policy 13 NZCPS - 2010
- Policy 14 NZCPS – 2010

Reasoning:

By way of general observation, the proposed MEP policy framework takes a narrow approach to protection of biodiversity in the coastal environment. Such protection is limited to vulnerable ecological significant marine sites (e.g. Policy 8.3.8). However, the authors of the report for marine significant sites² refer to the incompleteness of identification of such sites of significance. Such incompleteness is due in part to the large spatial area of Marlborough's marine environment. A consequential policy response is required to acknowledge the incompleteness of the survey.

Such a narrow approach to protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna does not achieve the purpose of the Act which requires recognising and providing for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance (RMA s6c).

A single focus on marine significant sites based on an incomplete survey does not incorporate the precaution required to address the relatively poor state of the Marlborough Sounds marine biodiversity.

There are significant issues in the Marlborough Sounds with fewer fish, not as many species, serious loss of biogenic habitats (including tubeworm beds), sedimentation in estuaries smothering thousands of hectares of seabed, and biosecurity incursions. Improvements in the policy framework, mapping and rules for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna are required.

² Davidson, R., Duffy, C., Gaze, P., Baxter, A., DuFresne, S., Courtney, S., Hamill, P. 2011. Ecologically Significant Marine Sites in Marlborough, New Zealand. Marlborough District Council and Department of Conservation.

Increasing anthropogenic pressures upon the marine environment threaten marine ecosystems, especially marine benthic habitats, and thus a well-planned approach to managing the protection and use of marine areas is essential in order to achieve sustainability³. This has not occurred in the Marlborough Sounds, as reflected in the significant decline in biodiversity. Of essence in achieving sustainable management is the maintenance of biodiversity. It is necessary to work through theoretical principles and translate them into practical measures. New Zealand is committed to maintaining its biodiversity. The purpose of the Biodiversity Strategy 2000⁴ was to establish a strategic framework for action, to conserve and sustainably use and manage New Zealand's biodiversity with a particular focus on protecting New Zealand's indigenous biodiversity. The strategy presented a number of desired outcomes to be achieved for 2020:

- *New Zealand's natural marine habitats and ecosystems are maintained in a healthy functioning state. Degraded marine habitats are recovering. A full range of marine habitats and ecosystems representative of New Zealand's indigenous marine biodiversity is protected.*
- *Rare or threatened marine species are adequately protected from harvesting and other human threats, enabling them to recover.*
- *Marine biodiversity is appreciated, and any harvesting or marine development is done in an informed, controlled and ecologically sustainable manner.*

Such outcomes have not been achieved and the narrow approach to protection through the proposed MEP is inadequate. Full reference to relevant provisions of the NZCPS in the introduction to chapter 8 is important, and has a bearing on other relief sought through this appeal.

Relief sought:

Include appropriate references in introduction to:

- *Objective 1 NZCPS – 2010*
- *Policy 11 NZCPS – 2010*
- *Policy 13 NZCPS-2010*

³ Salomidi, M., Katsanevakis, S., Borja, Á., Braeckman, U., Damalas, D., Galparsoro, I., Mifsud, R., Mirto, S., Pascual, M., Pipitone, C., Rabaut, M., Todarva, V., Vassilopoulou, V., Vegafernandez, T.. 2012. Assessment of goods and services, vulnerability, and conservation status of European seabed biotopes: a stepping stone towards ecosystem-based marine spatial management. *Medit. Mar. Sci.*, 13/1, 2012, 49-88

⁴ The New Zealand Biodiversity Strategy February 2000, ISBN 0-478-21919-9

- Policy 14 NZCPS – 2010

Appeal point 2: Introduction

<p>Paragraph middle page 8-1: In addition, there are specific roles and functions in relation to protecting significant natural areas and habitats and maintaining indigenous biological biodiversity.</p>	<p>Objective One of NZCPS requires safeguarding the integrity, form, functioning and resilience of the coastal environment and sustaining its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:</p> <p>protecting representative <u>or</u> significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand’s indigenous coastal flora and fauna;</p>	<p>Change: <i>“In addition, there are specific roles and functions in relation to protecting representative <u>or</u> significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand’s indigenous coastal flora and fauna and indigenous biological biodiversity to preserve New Zealand its own recognisable character”.</i></p>
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The RMA places particular emphasis on preserving the natural character of the coast, where natural character includes the natural processes, elements and patterns which are present in the coastal environment. Objective 1 of NZCPS requires safeguarding the integrity, form, functioning and resilience of the coastal environment and sustaining its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- **protecting representative or significant natural ecosystems** and sites of biological importance and maintaining the diversity of New Zealand’s indigenous coastal flora and fauna.

The concept of representativeness was discussed in a decision on the Reserves Act 1977 with the following goal:⁵

⁵ In West Coast Regional Council v Friends of Shearer Swamp (CIV-2010-409-002466): Reserves Act 1977, s 3(l)(b).

Ensuring, as far as possible, the survival of all indigenous species or flora and fauna, both rare and commonplace, in their natural communities and habitats and the preservation of representative samples of all classes of natural ecosystems and landscape which, in the aggregate originally, gave New Zealand its own recognisable character.

In CIV-2010-409-002466, the purpose of the representative criterion was:

...to provide for the maintenance and persistence of biological diversity in the West Coast.

Relief sought: As per the table above.

Appeal point 3: Marlborough Sounds Important Bird Area

A network of marine and coastal areas for threatened and internationally significant seabird populations has been proposed as Important Bird Areas in New Zealand⁶ (the IBA programme). Seaward extensions of feeding areas is critical for the survival of threatened seabirds and has been strongly promoted in this nationwide assessment:

‘.....include those parts of the marine environment which are used by the colony for feeding, maintenance behaviours and social interactions’.

The overlap of the concepts promoted in the IBA report is consistent with the broader context of issues identified in chapter 8 of the proposed MEP. Under the heading ‘Marine Environments’ (page 8-3 MEP):

Marlborough’s marine environment supports a significant diversity of sea birds, most of which rely on the area for breeding, raising young or for feeding [emphasis added]. Of particular note is the king shag, which is endemic to the Marlborough Sounds.

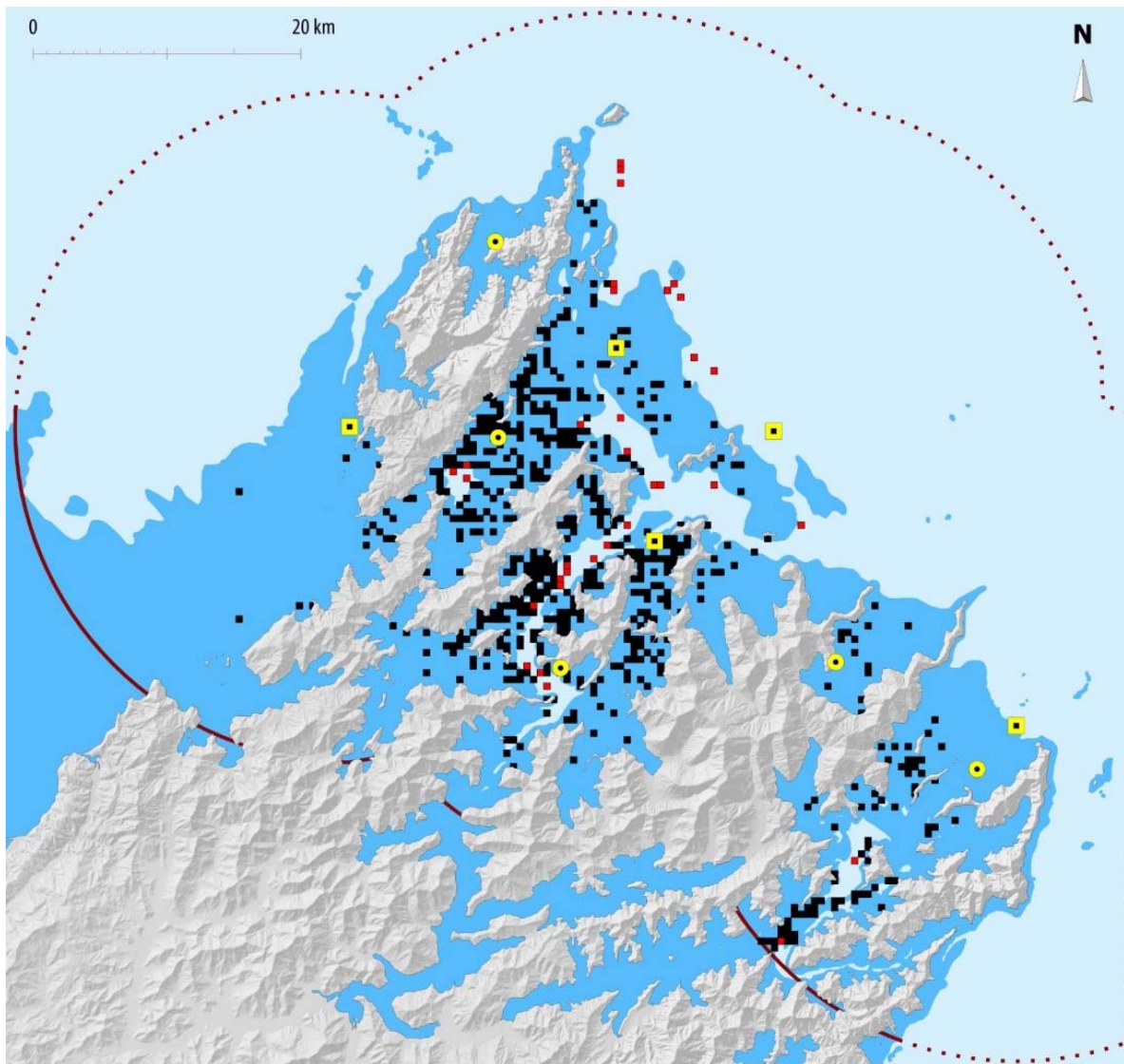
Regional Councils are responsible for appropriate state of the environment monitoring and reporting in a timely manner, which includes significant marine habitats for indigenous fauna (as required by the

⁶ Gaskin, Ch. 2014. Important Areas for New Zealand Birds. Report prepared for Forest and Bird.

RMA and NZCPS 2010). Mapping biodiversity hotspots, including seabird foraging areas and associated habitats is fundamental for the management and conservation of seabirds.

The region-wide assessment to identify 'Ecologically Significant Marine Sites in Marlborough' refers to king shag feeding areas: 'Greater detail about the ecology, distribution, breeding, feeding, threats and status of this important species is on the Marlborough District Council's website'. However, the only information on the king shag appears to be Appendix B: Schedule of Areas of Ecological Value (of the current MSRMP), listing a subset of the overall 'King Shag feeding habitat' based on surveys of birds from the Duffers Reef colony in 1991/1992.

Successive data collated since the early 1990's of feeding king shags in the waters of the outer Marlborough Sounds identified a feeding area for king shag of about 1,300 km² based on waterdepth, distance from the colony and direction from the colony. Recognition of feeding areas of the king shag is consistent with Objective 1 and Policy 11 of NZCPS 2010.



607 grid squares (500m) where foraging King Shags have been observed: ■ ≤ 50 m, ■ >50 m (5% of all grids). Red circle: 25km radius from the main colonies (>50 birds). Dark blue ≤ 50 m: 130.000ha.

The king shag is assessed to be ‘Nationally Endangered’ under the New Zealand Threat Classification⁷. Objective 1 and Policy 11 of NZCPS requires the protection of indigenous biological diversity in the coastal environment.

⁷Robertson, H.A.; Baird, K.; Dowding, J.E.; Elliott, G.P.; Hitchmough, R.A.; Miskelly, C.M.; McArthur, N.; O’Donnell, C.F.J.; Sagar, P.M.; Scofield, R.P.; Taylor, G.A. 2017: Conservation status of New Zealand birds, 2016. *New Zealand Threat Classification Series 19*. Department of Conservation, Wellington. 23 p.

The criteria of the IUCN for threatened species has identified king shag as “VULNERABLE”, where this “*species is facing a high risk of extinction in the wild in the medium-term future*”. The status of this bird is based on the internationally applied criteria of the IUCN⁸:

- *Area of occupancy estimated to be less than 2000 km².*
- *King shags are known to exist at no more than 9 localities within the Marlborough Sounds.*
- *The population is estimated to be less than 1000 mature individuals.*

In New Zealand, the conservation status of king shag is ‘NATIONALLY ENDANGERED’ based on its small population of between 250-1000 individuals. Low numbers and a very small distribution area highlight major concerns for the survival of this species.

The average total population of king shags is estimated to be about 800 birds and 200 breeding pairs.

King shag is one of the trigger species for which a seaward extension from seabird breeding colonies has been strongly promoted in a nationwide assessment for Important Bird Areas. The boundaries have been extended to include foraging range, depth and/or habitat preferences of the species concerned. The IBA programme proposed a focus to facilitate conservation action for a network of sites that are significant for the long-term viability of naturally occurring bird populations, for which a site-based approach is appropriate.

Friends observe that king shag feeding habitats are poorly defined and a number of colonies and roosts have been omitted from the Ecologically Significant Sites maps. New policy 8.3.5 does not adequately protect feeding and foraging areas. The proposed MEP does not give effect to Objective 1 and Policy 11 of NZCPS - 2010. Criteria for identifying Ecologically Significant Marine Sites involving seabirds and in particular king shag need to be augmented and able to incorporate identified IBAs.

⁸ BirdLife International. 2016. *Phalacrocorax carunculatus*. The IUCN Red List of Threatened Species 2016: e.T22696846A95222664. <http://dx.doi.org/10.2305/IUCN.UK.2016-3.RLTS.T22696846A95222664.en>. Downloaded on 28 January 2018.

A site will qualify as an IBA when one or more of the following IBA internationally recognised criteria has been shown to be met for one or more species:

A1. More than threshold numbers of one or more globally threatened species

A2. More than threshold species complements of restricted-range species

A3. More than threshold species complements of biome-restricted species

A4. More than threshold numbers of one or more congregatory species, including:

A4i >1% of the biogeographic population of waterbirds (includes waders/shorebirds)

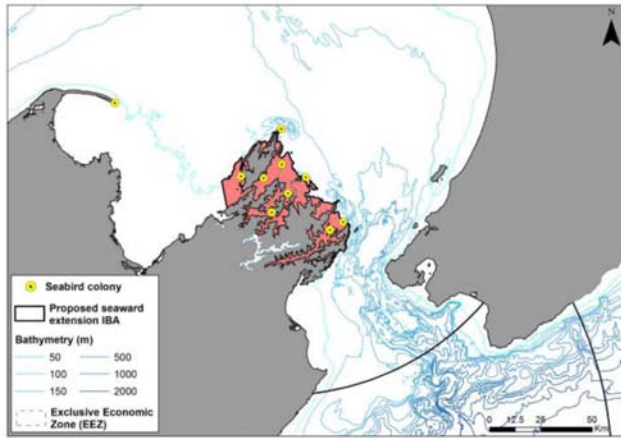
A4ii >1% global population of seabirds

A4iii >10,000 pairs, seabirds or 20,000 individuals, waterbirds (includes waders/shorebirds)

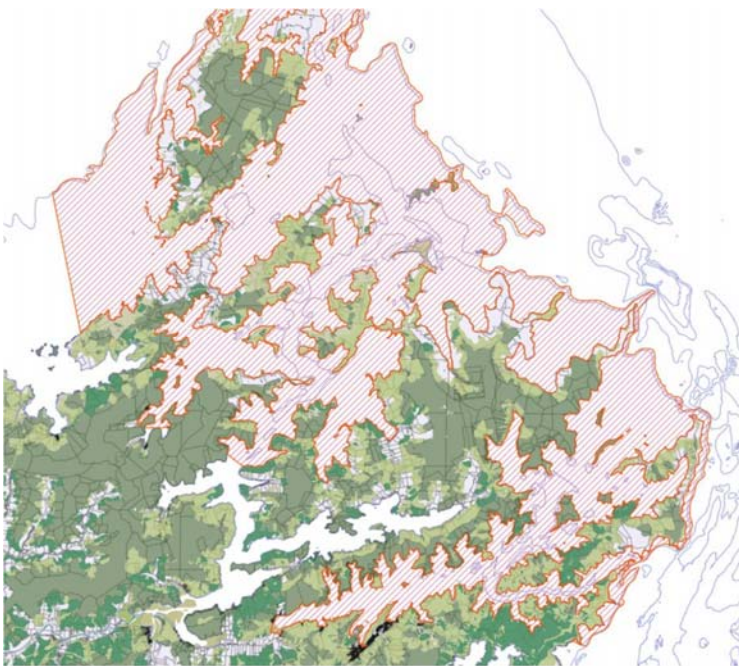
A4iv >Threshold numbers at migration bottleneck sites.

A marine IBA is primarily defined by the regular presence of globally threatened species, and congregations of >1% of biogeographic or global population. The Marlborough Sounds IBA is part of a network of global sites that represent seabird biodiversity hotspots. Qualifying trigger seabird species, include:

- King shag - foraging range 25km, bathymetry limit (50m); more than threshold numbers of one or more globally threatened species; entire global population
- Fluttering shearwater (on the basis of more than 1% of the global population – approximately 5-10%)
- Also, for significant populations of fairy prion (Takapourewa, Stephens Island) and Australasian gannet (multiple colonies).



Marlborough Sounds IBA is part of a network of global sites that represent seabird biodiversity hotspots



Detailed map Marlborough Sounds IBA

The IBA for Marlborough Sounds (1,358 km²) has also included areas where NZ king shag and other seabirds will not regularly feed because of seasonal or annual variability in prey abundance and at times because of limited foraging opportunities through reduced prey availability from natural environmental conditions (e.g. stormy weather) or anthropogenic activities (e.g. disturbance of seabed from benthic trawling for flatfish). The proposed marine habitat is significant for the threatened NZ king shag given its small and fragmented population and dependency on the breeding colonies found only in the Marlborough Sounds.

Relief sought:

Inclusion of a new Ecologically Significant Marine Sites planning map showing the Marlborough Sounds Important Bird Area. Incorporate this relief in conjunction with the relief sought in relation to appeal point 4.

Appeal point 4: Amendments to Policy 8.3.5; amendments to Ecologically Significant Marine Sites planning maps and criteria in Appendix 3; inclusion of king shag breeding and roosting sites in Appendix 27; and consequential amendments to Rules 16.6.6 and 16.7.6.

New policy 8.3.5 of the proposed MEP states - *Take into account that king shag could feed in the coastal marine area within 25km of the breeding sites recorded as Ecologically Significant Marine Sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9.* The explanation states: *King shag are endemic to the outer Marlborough Sounds. The breeding and roosting sites of king shag are recognised as Ecologically Significant Marine Sites within the Plan (sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9 in Volume 4). The limited number of king shag and the restricted breeding sites make king shag vulnerable. King shag leave the breeding and roosting sites to forage for food in the coastal marine area. The foraging can occur up to 25km from sites. It is therefore important to consider the potential for adverse effect on king shag feeding as part of the exercise of assessing the actual or potential adverse effects of activities in the coastal marine area.*

However, such an assessment is only necessary within 25km of sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9. It will also be important to take into account that land topography can limit the ability of king shag to access some areas of the coastal marine area within such a distance.

Friends consider this new policy to be insufficient for the protection of this threatened species for the following reasons:

- Protection of king shag feeding habitats is a matter of national importance under section 6(c) of the RMA: 'the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna' and is a requirement of Policy 11 NZCPS 2010. An IBA for the Marlborough Sounds has been identified as per the IUCN protocol. The policy and explanation for the policy is insufficient for the protection of a threatened species of 800 individuals.
- The proposed ecological assessment criteria in Appendix 3 do not sufficiently identify king shag feeding areas as required by RMA (Section 6(c)) and Objective 1 and Policy 11- NZCPS 2010.
- All king Shag feeding and foraging habitats are necessary for the species to survive. IBA's provide the necessary scale, and location for these habitats.

Relief sought:

- Some criteria used to establish 'Ecological Significance' may not be suitable to manage threatened seabird species such as the king shag. Instead, IBAs have been established through IUCN criteria and should be integrated into the Appendix 3 criteria for identifying marine sites that are significant for seabird populations.
- In the Ecologically Significant Marine Sites listed in Appendix 27 not all king shag roosts/colonies are listed. King shag roosts/colonies are also missing from Queen Charlotte Sound and Pelorus Sound. Friends propose amendments to the list of Ecologically Significant Marine Sites, their inclusion on the relevant Ecologically Significant Marine Sites planning maps and their inclusion in Appendix 27 as per the Table below. Friends also note that site 3.9 is included as a breeding site for the king shag, which is incorrect (the reference should refer instead to site 7.9).
- Further, a new map shall be included in Volume 3: Ecologically Significant Marine Sites showing the full extent of the Marlborough Sounds IBA (see also appeal point 3).

- Policy 8.3.5 shall be amended to state: *To protect king shag by avoiding adverse effects of activities on king shag foraging and feeding habitat within the area shown on the Ecologically Significant Marine Site planning map as **Marlborough Sounds Important Bird Area** in addition to protecting the breeding and roosting sites recorded as Ecologically Significant Marine Sites 1.6, 2.11, 2.14, 2.21, 3.3, 7.9 and [to be included] 4.26 (Blumine Island), 2.35 (Hunia Rock), 2.20 (Haystack), 3.22 (Tawhitinui Reach), 2.1 (Squadron Rocks), Ruakaka Point, Bottle Rock Point and The Twins.*

Breeding/Roosting site New Zealand King Shag	Sub Area Marlborough Sounds.	In App 27 as marine significant site (but king shag not necessarily mentioned)	To be included in App 27 as significant site for King Shag.
Tekuru Kuru/ Stewart Island	Admiralty Bay	2.14	
a) Kuru Pongi/ North Trios and b) Kuru Pongi/ South Trios	Admiralty Bay	2.11	
Duffers Reef	Pelorus	3.3	
Moturaka/ The Haystack	Pelorus		2.20
Sentinel Rock	Pelorus	2.21	
Tawhitinui	Pelorus		3.22
Hunia	Port Gore	2.35	
Oruawairua/ Blumine	Queen Charlotte	4.26	
Raukaka	Queen Charlotte		Not Recorded as ESMS
The Twins	Queen Charlotte		Not Recorded as ESMS
White Rocks	Queen Charlotte	7.9	
Bottle Rock Point	Queen Charlotte		Not Recorded as ESMS
Rahuinui	Tasman Bay	1.6	
Squadron Rocks	Tasman Bay		2.1

- The explanation to be redrafted: *King shag are endemic to the outer Marlborough Sounds. Their low population, restricted foraging areas and limited number of breeding sites highlight their vulnerability and threatened status. The feeding and foraging habitat and breeding and roosting sites are recognised as Ecologically Significant Marine Sites within the Plan. It is important to avoid adverse*

effects of activities on feeding and foraging areas as well as breeding and roosting sites, in accordance with objective 1 and policy 11 of the NZCPS 2010, which this policy and the accompanying planning maps seek to give effect to.

- Inclusion of the sites shown in the Table above (and map below) in Appendix 27 Category A with a buffer of 100m for each site and to avoid anchoring and disturbance activities within the buffer.

- Amendment to rule 16.6.6 to state:

*Any dredging, bottom trawling, deposition or reclamation within the buffer for any Ecologically Significant Marine Site specified in **Category B** of Appendix 27: **or within the Marlborough Sounds Important Bird Area identified on the relevant Ecologically Significant Marine Sites planning map.***

- Amendment to rule 16.7.6 to state:

*Dredging, bottom trawling, anchoring, deposition and reclamation within any Category A Ecologically Significant Marine Site **and the buffer for that site** listed within Appendix 27.*

Relief sought for all appeal points:

- Such other or consequential relief as is necessary to give full effect to the reasons for this appeal.

