

**Tasman Resource Management Plan  
Efficiency and Effectiveness Evaluation**

## **Chapter 22: Aquaculture**

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## Executive Summary

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This report reviews the effectiveness and efficiency of the provisions in Chapter 22 'Aquaculture' in the Tasman Resource Management Plan (TRMP).

The chapter is concerned with a number of key issues, including balancing the benefits of aquaculture development with the potential costs, managing demand for space and competing interests in the Coastal Marine Area (CMA), and ensuring natural, ecological, amenity and cultural values are protected.

The TRMP aquaculture provisions have been highly influenced by evolving RMA requirements and Court decisions on appeals. The consequence has been the identification of three Aquaculture Management Areas (AMAs) within the CMA that have been sited to reduce effects on the marine and adjacent coastal environments, and at the same time provide viable locations for aquaculture activities to be carried out. An additional aquaculture area identified in the TRMP provides for spat catching and holding in Wainui Bay. The rest of the CMA is an 'aquaculture exclusion area'.

Each of the four aquaculture areas have been further divided into between six and 17 sub-zones and within each sub-zone specific aquaculture activities are provided for, including spat catching (both mussel and scallop) and marine farming of mussels, scallops and additive species (i.e. fish farming, such as for king salmon). To date there has been little interest in marine farming for additive species.

The TRMP framework encourages a cautious approach; aquaculture activities have been staged to enable the effects to be identified and assessed before more intensive development is allowed. Council staff report that this approach has worked well and the TRMP aquaculture provisions are straightforward to implement.

As of December 2019 there was a total of 2310ha in development for mussel farming in Golden Bay. A further 578ha is in use for seasonal spat catching and another 68ha for year round spat catching. In Tasman Bay, 897ha is in development for mussel farming, 1362ha is in use for seasonal rotational mussel spat catching, and 1970ha is available for seasonal rotational scallop spat catching.

Monitoring data indicates that the current marine farms are causing no more than minor adverse effects, such as depletion of the water column and nutrient enrichment. Effects tend to be localised, variable, and of low concern when considered over the entire coastal area. This will need to be regularly reviewed as more aquaculture activities are consented and the AMAs become more intensively used.

Overall, the existing provisions would benefit from a 'fit for purpose' assessment, to address both current and future drivers. For instance, as more AMA's enter stage two development there may no longer be a need for stage one provisions. Additional provisions may be needed to guide development of new aquaculture species and activities, and to provide for new technologies. Provisions may also need to be amended in line with the proposed National Environment Standard for Marine Farming to provide flexibility for aquaculture activities having the same or similar effects. As well, stronger provisions on pollution and amenity control could be considered.

The chapter also needs to be updated to give effect to NZ Coastal Policy Statement 2010 requirements and to ensure a strategic planning approach is taken to the identification and management of aquaculture activities (particularly in relation to Wainui Bay), as directed by the Environment Court.

## Recommendations

Objective set	Recommendations
<p><b>General</b></p>	<ol style="list-style-type: none"> <li>1. <b>Review</b> policy framework to ensure consistency with NZCPS 2010 requirements for preservation of natural character and landscapes.</li> <li>2. <b>Ensure</b> the identification of AMAs meets the NZCPS requirement for strategic planning, particularly in relation to Wainui Bay.</li> <li>3. <b>Undertake</b> a ‘fit for purpose’ assessment to ensure the Chapter’s provisions take account of current and future drivers of aquaculture.</li> <li>4. <b>Give effect to</b> the National Environmental Standard for Marine Farming when it is finalised.</li> <li>5. <b>Review</b> definition of ‘aquaculture activities’ in TRMP to ensure consistency with the RMA, and that it captures all relevant activities to be guided by provisions in the TRMP.</li> </ol>
<p><b>Objective 22.1.2</b> Aquaculture developed in a manner that maintains, enhances, or protects the natural and physical resources of the coastal environment, including the life-supporting capacity of marine ecosystems and the natural character, landscape, ecological, public access, recreational and amenity values, and the values important to the tangata whenua iwi, while avoiding, remedying or mitigating adverse effects.</p>	<p><b>Review:</b> this is a big objective, which needs to be broken down into more specific aims.</p>
<p><b>AMAs</b></p>	
<p><b>Policy 22.1.3.1</b> To enable the AMAs to be used as discrete locations where aquaculture may occur in a way that adequately manages adverse effects on the natural and physical resources of the coastal environment, and on its life-supporting capacity, natural character, landscape, ecological, public access, recreational and amenity values, and the values important to the tangata whenua iwi.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.2</b> To provide for and map a discrete area where a resource consent may be sought for mussel spat catching and spat holding in recognition of the favourable characteristics of this area for spat catching and its contribution to the aquaculture industry.</p>	<p><b>Review</b> as part of the Environment Court decision requiring a strategic planning approach to aquaculture management in Wainui Bay.</p>
<p><b>Policy 22.1.3.3</b> To prohibit aquaculture activities outside the locations identified in policies 22.1.3.1 and 22.1.3.2.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.4</b></p>	<p><b>Retain</b></p>

Objective set	Recommendations
To limit aquaculture activities in subzones (a) – (d) of AMA 2 Puramakau and subzones (a) – (d) of AMA 3 Te Kumara to seasonal and rotational catching of scallop spat.	
<p><b>Policy 22.1.3.5</b></p> <p>To limit aquaculture activities in subzones (e) – (k) of AMA 2 Puramakau and subzones (e) – (h) of Te Kumara, to seasonal and rotational catching of mussel spat.</p>	<p><b>Retain intent, but review</b> need for rotational catching as this hasn't happened and there may be no desire for it. It was relevant when the scallop fishery was in operation.</p>
<p><b>Policy 22.1.3.6</b></p> <p>To provide for the use of subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara for aquaculture that:</p> <p>(a) safeguards the life-supporting capacity of the environment;</p> <p>(b) is compatible with and does not adversely affect existing aquaculture activities; and</p> <p>(c) avoids as far as practicable adverse effects on the environment, and where complete avoidance is not practicable, ensures that adverse effects are remedied or mitigated.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.7</b></p> <p>To promote efficient utilisation of the AMAs for aquaculture activities.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.8</b></p> <p>To maintain public access to coastal space and resources (except where access is managed under other statutes).</p>	<p><b>Review need for this policy:</b> the relationship with aquaculture is not clear, and public access to CMA is addressed in Chapter 21. Consider rewording to make relevant, e.g. "To maintain public access through and around marine farming structures".</p>
<b>Tangata Whenua Iwi</b>	
<p><b>Policy 22.1.3.9</b></p> <p>To recognise and provide for the relationship of iwi and their customs and traditions with their ancestral lands, waters, sites, wāhi tapu, and other taonga.</p>	<p><b>Review:</b> wording simply quotes RMA; incorporate more specific / directive wording.</p>
<p><b>Policy 22.1.3.10</b></p> <p>To protect sites of significance to iwi, including wāhi tapu and wāhi taonga, in providing for aquaculture.</p>	<p><b>Review:</b> this policy may be redundant given that aquaculture can only establish within AMAs. Presumably the creation of AMAs took into account sites of significance to iwi.</p>
<p><b>Policy 22.1.3.11</b></p> <p>To provide for continued customary access to traditional coastal resources (except where access is managed under other statutes).</p>	<p><b>Retain</b>, but consider moving to a more appropriate section/chapter. The connection with aquaculture is not clear.</p>
<b>Adaptive Management</b>	
<p><b>Policy 22.1.3.12</b></p> <p>To adopt a cautious and adaptive approach to aquaculture in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara, limiting the extent</p>	<p><b>Retain</b></p>

Objective set	Recommendations
of development until the significance of any adverse ecological effects of aquaculture is better known.	
<p><b>Policy 22.1.3.13</b></p> <p>To allow successive stages of mussel farming development when Council is satisfied that the risk of adverse ecological effects is manageable.</p>	<p><b>Retain</b>, but consider broadening to cover aquaculture activities other than mussel farming.</p>
<p><b>Policy 22.1.3.14</b></p> <p>To manage aquaculture involving filter feeding bivalves (excluding mussels) and/or other extractive species in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara, by requiring that any development be staged through:</p> <p>(a) authorising a first stage of development, with requirements to monitor and report on environmental effects resulting from farming the space at the full intensity of development allowed for that stage;</p> <p>(b) allowing successive stages of development under the same consent, when Council is satisfied that the risk of adverse ecological effects is managed in accordance with policy 22.1.3.6.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.15</b></p> <p>To manage the development of aquaculture involving additive species by using tendering to allocate authorisations to apply for coastal permits to occupy space in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara.</p>	<p><b>Review:</b> the current provisions cannot be used unless Council initiates a tendering process; AMA conditions have been identified as not suitable for additive species.</p> <p>Need to reconsider whether and how additive species can be provided for within aquaculture framework.</p>
<p><b>Policy 22.1.3.16</b></p> <p>In accordance with policy 22.1.3.15, to tender a combined total of up to 280 hectares of space, for which consent applications can be made to occupy space for the purpose of aquaculture involving additive species.</p>	<p><b>Review, as above</b></p>
<p><b>Policy 22.1.3.17</b></p> <p>Subject to policy 22.1.3.16, to determine the actual area to be tendered using information from investigations into physical conditions (such as depth and current) for aquaculture activities and any scientific investigations undertaken into environmental limits on aquaculture involving additive species.</p>	<p><b>Review, as above</b></p>
<p><b>Policy 22.1.3.18</b></p> <p>Subject to policies 22.1.3.15 and 22.1.3.16, to:</p> <p>(a) limit the extent of development of aquaculture involving additive species to 10 hectares as a first stage of development under any consent until the significance of any adverse ecological effects is better known;</p> <p>(b) allow successive stages of development (up to the total area held under an authorisation issued pursuant to policy 22.1.3.15) under the same consent, when Council is</p>	<p><b>Review, as above</b></p>



Objective set	Recommendations
satisfied that the risk of adverse ecological effects is managed in accordance with policy 22.1.3.6.	
<p><b>Policy 22.1.3.19</b></p> <p>To provide for the monitoring of actual and potential effects of aquaculture in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara, on species, habitats, and ecological processes within Tasman Bay/Te Tai o Aorere and Golden Bay/Mohua so that any individual and cumulative ecological effects are better understood.</p>	<p><b>Retain:</b> supports rules and consent conditions requiring monitoring / adaptive management.</p>
<p><b>Policy 22.1.3.20</b></p> <p>To provide for the integrated management of natural and physical resources within the AMAs by requiring applicants for consent (other than for seasonal spat catching) to provide an ecological management plan over the entire subzone to which the application relates.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.21</b></p> <p>To provide for a formal review mechanism within consents issued for aquaculture in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara, so that feedback and learning from monitoring can be utilised to review the appropriateness of conditions of consent.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.22</b></p> <p>To ensure the integrated management of ecological effects of aquaculture in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.23</b></p> <p>To establish Ecological Advisory Group(s) to advise the Council on appropriate staging and development of aquaculture in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara.</p>	<p><b>Retain intent of EAG,</b> but reword to reflect it has already been established.</p>
<p><b>Policy 22.1.3.24</b></p> <p>To fund the activities of Ecological Advisory Group(s) through charges applied to consents for aquaculture in subzones (a) – (d) of AMA 1 Waikato, (l) – (q) of AMA 2 Puramakau, and (i) – (l) of AMA 3 Te Kumara.</p>	<p><b>Retain</b></p>
<b>Spat Catching</b>	
<p><b>Policy 22.1.3.25</b></p> <p>To provide locations where spat catching can be carried out either seasonally or permanently.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.26</b></p> <p>To maintain a distinct season free from any form of aquaculture structures or occupation, in specific spat catching subzones.</p>	<p><b>Retain</b></p>
<p><b>Policy 22.1.3.27</b></p> <p>Where appropriate, to limit the space used for spat catching in any spat catching season, in order to mitigate adverse effects on the natural and physical resources of the coastal environment.</p>	<p><b>Review:</b> intent unclear; consent would have been given to occupy and use the whole area.</p>

Objective set	Recommendations
<b>Miscellaneous</b>	
<p><b>Policy 22.1.3.28</b> To avoid or mitigate significant adverse effects of mussel farming development in AMA 2 on natural character values in central Golden Bay/Mohua.</p>	<p><b>Review</b> on basis of landscape and natural character assessment.</p>
<p><b>Policy 22.1.3.29</b> To ensure that navigation risks from aquaculture structures are adequately avoided or mitigated.</p>	<p><b>Retain</b> and cross reference with Chapters 20 and 21. <b>Consider additional policy</b> to support co ordinated AMA management e.g. navigational lighting.</p>
<p><b>Policy 22.1.3.30</b> To ensure that aquaculture activities are managed to minimise:</p> <ul style="list-style-type: none"> <li>(a) the risk of incursion, predation and disease transmission;</li> <li>(b) introduction of biosecurity risk organisms;</li> <li>(c) genetic risk to wild stock.</li> </ul>	<p><b>Retain</b></p>

# 1. Purpose Statement

The purpose of this evaluation of the TRMP is to determine the effectiveness and efficiency of the provisions contained within it. It helps us understand if the TRMP provisions are doing what they're meant to do.

This evaluation process is a fundamental step in the policy review cycle and a requirement of the Resource Management Act. It informs good quality plan-making and helps maintain confidence and integrity in the process.

The results of this evaluation will inform the review of the Tasman Resource Management Plan.

## What do the terms mean?

**Effectiveness:** *“assess the contribution ... provisions make towards achieving the objectives and how successful they are likely to be in solving the problem they were designed to address”*

**Efficiency:** *“measures whether the provisions will be likely to achieve the objectives at the lowest total cost to all members of society, or achieves the highest net benefit to all of the society”*

(Ministry for the Environment s.32 Guidance)

## Key Evaluation Questions

### What we need to keep in mind

- ✓ Are we focused on the right issues?
- ✓ Have we done what we said we'd do?
- ✓ Have we achieved what we said we'd achieve?
- ✓ How do we know our actions led to the outcome observed?
- ✓ Have we achieved that outcome at reasonable cost (could we have achieved it more cheaply)? (Enfocus, 2008)

## 2. Scope

### 2.1 Regional Plan Provisions Reviewed

The Tasman Regional Coastal Plan is made up of the following parts / chapters of the TRMP:

- Part III 'Coastal Marine Area'1 (Chapters 20-26);
- Part V 'Water' (parts of Chapters 30 and 31) relating to taking, diverting, using or damming coastal water); and
- Part VI 'Discharges' (Chapter 35 and part of Chapter 36) relating to coastal marine discharges).

Chapter 22 is the third chapter in Part III of the TRMP and deals with aquaculture management in the CMA. In providing for aquaculture activities a number of key issues have to be addressed:

1. Balancing the significant social, cultural and economic benefits for the District from aquaculture development with the changes it will bring in the CMA.
2. Managing the demand for space, and the wide range of competing interests and values.
3. Avoiding, remedying or mitigating adverse effects on matters of national importance, including natural character, landscape, ecological values, public access and iwi values.
4. Recognising the significance of the coastal area of Golden Bay/Mohua and Tasman Bay/Te Tai o Aorere to iwi, while also recognising that iwi have interests as existing and potential future participants in aquaculture.
5. Recognising Wainui Bay as a nationally important site for collection of mussel spat, providing almost 50 percent of the spat used for mussel farming in the top of the south of NZ.

One objective and 30 policies have been adopted in addressing the chapter issues (Table 1 below).

**Table 1: Scope of the Evaluation**

Chapter 22	Objective	Policies
22.1 Protection of Values	22.1.2	22.1.3.1 – 22.1.3.30

The objective seeks:

*Aquaculture developed in a manner that maintains, enhances, or protects the natural and physical resources of the coastal environment, including the life-supporting capacity of marine ecosystems and the natural character, landscape, ecological, public access, recreational and amenity values, and the values important to the tangata whenua iwi, while avoiding, remedying or mitigating adverse effects.*

The policies deal consecutively with:

- The identification of Aquaculture Management Areas (AMAs) and Wainui Bay as discrete locations within which aquaculture activities can take place, and prohibition of aquaculture activities outside of these areas;

1 The coastal marine area extends seaward of the line of mean high water springs to 12 nautical miles offshore and includes all foreshore, seabed and sea in that area and the air space above it

- Recognition and provision for the relationship of iwi with the coastal environment, including protection of sites of significance and ensuring continued customary access to resources;
- Promotion of adaptive management through staged development of aquaculture within the AMAs with ongoing monitoring and review of aquaculture activity and effects; and
- Establishment of the location and controls for spat catching activities in Wainui Bay.

Regulatory methods adopted in the TRMP to implement the policies include:

- TRMP rules (set out in Chapter 25) that (a) limit the area available for aquaculture activities; (b) require provision of information about aquaculture effects in both consent applications and through monitoring conditions; and (c) allow progression of aquaculture development over time only where monitoring data indicates effects are manageable.
- Establishment of Ecological Advisory Group(s) (EAG) to advise TDC on ecological effects of aquaculture in specified subzones.
- Requirements for financial contributions and other charges to assist in managing effects of aquaculture.

In support of the chapter's objective, a number of non-regulatory methods are set out:

- Education and advocacy to: (a) support industry self-regulation to manage effects on the environment (e.g. through national guidelines and codes of practice); (b) encourage allocation of Government funding for investigating effects of aquaculture activities; and (c) make monitoring data and results publicly available.
- Investigation and monitoring of effects of aquaculture activities on the coastal environment.

The environmental outcomes sought from implementation of the chapter rules and methods are:

1. Development of aquaculture with limited adverse effects on the coastal environment overall.
2. Social, cultural and economic benefits are gained from aquaculture, without unacceptable environmental costs.

## 2.2 Timeframe of Evaluation

The evaluation was conducted from July 2019 to February 2020.

## 2.3 Summary of Methodology

Broadly, the methodology of this evaluation follows the Plan Outcomes Evaluation process. Plan Outcome Evaluation involves:

1. An examination of the outcomes being sought – what are the objectives trying to achieve?
2. Tracking how the plan has been designed to affect the outcomes – do the intentions in the objectives get carried through to the rules and methods? Are the provisions efficient?

3. Assessing if the provisions have been implemented – what evidence is there that the provisions are being applied to relevant activities?
4. Assessing relevant environmental trends and ‘on the ground’ data to conclude if the Plan has been successful in achieving its intentions. This includes consideration of the external factor influences such as legislative changes, national policy statements, case law, significant economic changes, demographics etc.

Throughout the evaluation, there is an emphasis on attributing the activities enabled or controlled by the TRMP to observed outcomes. However, attributing outcomes to the TRMP must always be viewed in the wider context of changes. These are noted where known, but it is beyond the scope of this evaluation to capture all changes and influences that affect outcomes in our communities and environment.

Limitations with the Plan Outcome Evaluation approach also arise where environmental outcome data is poor, or where there are multiple factors driving outcomes. Time, resourcing and quality of data also affects the comprehensiveness of the evaluation.

To address some of these limitations, the evaluation process has included a ‘rapid assessment’ technique. The technique draws on the combined knowledge and expertise of local TDC staff, residents, community leaders, and topic experts to create an understanding of plan implementation, efficiency and outcomes. The rapid assessment outputs are supplemented with:

- environmental data or expert reports where available
- Council data (e.g. monitoring reports required by consent condition)
- mapping and imagery (e.g. GIS, aerial imagery, LiDAR)
- information or reports prepared during plan change processes

The data sources that have been used for evaluating Chapter 22 are shown in Table 2 below:

**Table 2: Information Sources Used in Evaluation**

Data source/s	Details and Notes
Rapid Assessment	<ul style="list-style-type: none"> <li>• Meeting with policy staff on 26<sup>th</sup> September 2019</li> <li>• Meeting with monitoring staff on 6<sup>th</sup> December 2019</li> <li>• Workshop with council staff on 12<sup>th</sup> December 2019</li> <li>• Meeting with consent staff on 28<sup>th</sup> January 2019</li> </ul>
Councillor input	<ul style="list-style-type: none"> <li>• Workshop was held on 20<sup>th</sup> May 2020</li> </ul>
External reports	<ul style="list-style-type: none"> <li>• Legal report for s35 review, Tasman Law, June 2019</li> <li>• Iwi management plans</li> <li>• NIWA (2011). Tasman aquaculture: guidance on farming additive species - Stage 2.</li> <li>• Newcombe et al. (2015). Assessing the State of the Marine Environment in Tasman Bay and Golden Bay.</li> </ul>
Council reports	<ul style="list-style-type: none"> <li>• TRMP Policy Mapping (Leusink-Sladen, 2019)</li> <li>• Council report. 2012. Aquaculture Fish Farming, REP12-06-05</li> <li>• Stage 2 of TRPS Efficiency and Effectiveness Review: Statutory Obligations (Mason, 2019)</li> </ul>
Council records (MagicBR/NCS/databases)	<ul style="list-style-type: none"> <li>• MagiQ BI – Resource consents data</li> </ul>

## 2.4 Summary of Consultation

The following consultation has been undertaken during the preparation of this evaluation.

### 2.4.1 Tasman District Councillors

A workshop with elected Councillors was held on 20 May 2020 discussing key issues and recommendations identified for this chapter.

No additional matters were raised.

### 2.4.2 Tasman Environmental Policy Iwi Working Group

The iwi of Te Tau Ihu, as tāngata whenua, have a unique relationship with Tasman District Council. There are a number of legislative requirements which oblige us to engage more collaboratively with iwi and Māori - including provisions in the Resource Management Act, Local Government Act and Treaty of Waitangi settlement legislation. To support this a separate section 35 report with a focus on iwi/Māori provisions has been prepared. Please refer to that report for a record of consultation undertaken.

## 3. Effectiveness and Efficiency Evaluation

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### 3.1 Context

The primary legislation affecting Chapter 22 is the Resource Management Act (RMA). The purpose of this Act is to promote the sustainable management of natural and physical resources (s5, RMA). Several matters of national importance under the RMA (set out in s6), which all councils must 'recognise and provide for', relate directly to aquaculture activities:

- *s6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- *s6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- *s6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- *S6(g) the protection of protected customary rights.*

In support, the council must 'have particular regard to' several relevant matters in RMA s7:

- *s7(c) the maintenance and enhancement of amenity values:*
- *s7(d) intrinsic values of ecosystems:*
- *s7(f) maintenance and enhancement of the quality of the environment:*

The RMA defines the Coastal Marine Area as meaning:

*the foreshore, seabed, and coastal water, and the air space above the water—  
(a) of which the seaward boundary is the outer limits of the territorial sea:*

*(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—*

*(i) 1 kilometre upstream from the mouth of the river; or*

*(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.*

Under RMA s68A councils are not allowed to provide for aquaculture activities in the CMA as permitted activities. In other words, rules are needed in the regional coastal plan to require resource consent for a proposed aquaculture activity or to prohibit aquaculture altogether.

Other relevant RMA provisions are contained in Part 6a 'Aquaculture moratorium', Part 7 'Coastal Tendering' and Part 7A 'Occupation of common marine and coastal area'.

### 3.1.1 Legislation Changes

There have been a number of amendments to the RMA relating to aquaculture, with subsequent amendments often superseding or significantly amending the provisions of previous amendments.

#### **Resource Management (Aquaculture Moratorium) Amendment Act 2002**

This imposed a two year moratorium on the granting of coastal permits, with certain existing applications being exempted. Enabled regional councils during the moratorium to establish 'Aquaculture Management Areas' (AMAs) where they were satisfied the provisions would "avoid, remedy or mitigate the adverse effects (including the cumulative effects) of aquaculture activities on the environment, including fishing and other uses of the coastal marine area". Regional Councils could also identify other areas in which aquaculture would be prohibited.

#### **Resource Management Amendment Act (No 2) 2004**

This amendment created a single process for aquaculture planning and consents. It gave regional and unitary councils clearer direction and responsibilities for managing all environmental effects of aquaculture, including effects on fisheries and other marine resources. Marine farms could only occur in zoned areas, known as Aquaculture Management Areas (AMAs).

It enabled a regional council and the Minister of Conservation to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate: (a) the effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities; and (b) the effects on fishing and fisheries resources of aquaculture activities.

However, it prevented a regional council and the Minister of Conservation from controlling the harvesting or enhancement of aquatic organisms for the purpose of conserving, using, enhancing, or developing any fisheries resources controlled under the Fisheries Act 1996.

#### **Resource Management Amendment Act (No 2) 2011<sup>2</sup>**

The 2011 changes simplified the approval process established above by removing the need for AMAs and the ability for regional coastal plans to authorise aquaculture activities in the coastal marine area as permitted activities. Applications for new aquaculture activities could now be made, subject

2 See also MPI. 2011. *Aquaculture Legislative Reforms 2011 Guidance Note 1 Aquaculture Planning and Consenting*. <https://www.fisheries.govt.nz/dmsdocument/15940/direct>; other relevant guidance notes are available at <https://www.fisheries.govt.nz/growing-and-harvesting/aquaculture/resources/#councilguidance>



to the provisions of the relevant regional coastal plan. New s68A required that a resource consent application is always made before new aquaculture activities are established.

Councils can still identify areas where aquaculture activities cannot occur, and include provisions in their regional coastal plans to manage aquaculture. Part 7A amendments provided new tools for managing demand in the coastal marine area, including situations of high and competing demand.

### **Māori Commercial Aquaculture Claims Settlement Act 2004 (and Amendment Act 2011)<sup>3</sup>**

This Act and its later amendment allowed for settlement of Māori claims to commercial aquaculture by allocating 20 percent of AMAs. Since the need for AMAs was removed from aquaculture legislation in 2011 (as above), settlement has instead been reached through regional agreements. The Crown must use its best endeavours to negotiate and enter into regional agreements within 2 years after the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011 for the Tasman region (s11(s)(a)(iii)).

This means that regional councils will need to consider the 20 percent allocation for the settlement during their marine spatial planning. When developing any 'go zones' for aquaculture, regional councils should consider and plan for which 20 percent of the zone will be used for the settlement. The selected space must be representative. The regional council will not receive any income from the tendering of the allocated area nor will any cost be imposed onto the trustee for the transfer of the authorisations.

Within aquaculture settlement areas, authorisations will be created giving iwi the exclusive right to apply for consent for aquaculture activities in that space. Authorisations will be provided by the regional council as directed by the Minister responsible for Aquaculture (s. 13(2)).

### **RMA Amendment: Protected Customary Marine Title Areas**

A new matter of national importance, s6(g) "*The protection of protected customary rights*", was added to the RMA following the enactment of the Marine and Coastal Area (Takutai Moana) Act (MACA) in 2011.<sup>4</sup> RMA ss61(2A) and 66(2A) were also amended to require regional councils to be 'recognise and provide for' relevant matters relating to customary marine title areas in regional policy statements and plans.

RMA S85A was amended so that plans must not permit activities that would have a 'more than minor' adverse effect on a recognised customary activity. Additionally, RMA S104(3)(c) was amended to restrict councils from granting a resource consent that would impact on wāhi tapu or cause 'more than minor' adverse effects on the exercise of a protected customary right (without written approval from the customary rights group).

Nine applications in the Tasman District have been made under MACA to have customary marine rights formally recognised. Decisions on these applications are pending. The effects of aquaculture activity and related structures on approved customary marine title areas may need to be included as a consideration under the TRMP provisions.

3 See also MPI. 2011. *Aquaculture Legislative Reforms 2011 Guidance Note 6 Delivering on the Māori Commercial Aquaculture Settlement*. <https://www.fisheries.govt.nz/dmsdocument/8437/direct>

4 MACA also repealed the earlier Resource Management (Foreshore and Seabed) Amendment Act 2004.

## RMA Amendment: Coastal Occupation Charges

The Resource Management Amendment Act 1997 added a new RMA s64A, which sets out requirements for regional councils when considering whether to impose coastal occupation charges (e.g. for structures used for aquaculture). A statement must be included in the Regional Coastal Plan outlining whether or not a coastal occupation charging regime is being imposed and to date the TRMP is silent on the matter.

The Act directs that *“Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area”* (s64A(5)). Coastal occupation charges could therefore be included as a method in the TRMP to enhance outcomes relating to the effects of aquaculture activities the environment.

The TRMP needs to be updated to include details about the councils’ coastal occupation charge regime, or to state that no regime will be imposed.

### 3.1.2 National Directives

#### NZ Coastal Policy Statement 2010 (NZCPS)

National policy statements are instruments issued under the RMA. The NZCPS is the only mandatory national policy statement and is prepared by the Minister of Conservation. It sets out general objectives and policies for the sustainable management of New Zealand’s coastal environment, which the TRMP is required to give effect to (i.e. implement). The TRMP was notified prior to the current NZCPS and for that reason only partially gives effect to the objectives and policies of the NZCPS.

The NZCPS requires a balance between potentially conflicting objectives, particularly the enabling of economic development using coastal resources and protecting the natural qualities of, and social and cultural values associated with, the coastal environment.

Relevant objectives and policies in the NZCPS 2010 that must be ‘given effect to’ in the TRMP are listed in Table 3.<sup>5</sup> The important contribution aquaculture makes is explicitly recognised in Policy 8 and Policy 6 further identifies the importance of the use and development of the CMA for economic activities that rely on coastal resources. At the same time, the NZCPS has strong requirements to minimise risks from the spread of harmful aquatic organisms (Policy 12), preserve natural character, features and landscapes (Policies 13-15), ensure provision of public open space (Policy 18), enhance coastal water quality (Policy 21), and provide for tangata whenua involvement in the management of the coast. Policy 7 requires councils to plan strategically for aquaculture activities, which has been identified by the Environment Court as a weakness in the TRMP provisions (discussed in section 3.1.4 below).

**Table 3: NZCPS Provisions Relevant to Aquaculture**

NZCPS Objectives	
1.	To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land.

5 NZCPS provisions are paraphrased here; for the full text see <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement-2010.pdf>

2.	To preserve the natural character of the coastal environment through recognising the characteristics and qualities that contribute to natural character.
3.	To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment.
4.	To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment.
6.	To enable people and communities to provide for their social, economic, and cultural wellbeing, recognising that some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the wellbeing of people and communities.
<b>NZCPS Policies</b>	
2.	<i>The Treaty of Waitangi, tangata whenua and Māori heritage</i> , which requires taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) and kaitiakitanga, in relation to the coastal environment.
6.	<i>Activities in the Coastal Environment</i> , which recognises (amongst other matters): the contribution that use and development of the CMA can have to social, economic and cultural wellbeing; that some activities have a functional need to be located in the CMA; and that public open space and recreational qualities and values of the CMA need to be maintained and enhanced.
7.	<i>Strategic Planning</i> , which requires consideration of where, how and when to provide for activities in the coastal environment, and to manage cumulative effects (e.g. by setting thresholds or specifying limits).
8.	<i>Aquaculture</i> , which recognises the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities, including provisions in plans, the need for high water quality, and the need for land-based facilities associated with marine farming.
12.	<i>Harmful aquatic organisms</i> , which requires the control activities that risk causing harmful aquatic organisms to be released or otherwise spread in or near the CMA.
13.	<i>Preservation of Natural Character</i> , which requires avoiding adverse effects of activities on the natural character of the coast.
15.	<i>Natural Features and Natural Landscapes</i> , which requires avoiding adverse effects of activities on natural features and landscapes (including seascapes) of the coastal environment.
18.	<i>Public Open Space</i> , which recognises the need for public open space, including for recreation, that is compatible with the natural values of the coastal environment.
21.	<i>Enhancement of Water Quality</i> , Give priority to improving coastal quality where it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities.

### Proposed National Environmental Standard for Marine Aquaculture<sup>6</sup>

Cabinet has recently approved final policy provisions for the drafting of a national environmental standard for marine aquaculture. National Environment Standards (NES) are regulations issued under s43 of the RMA, which prescribe standards for environmental matters, and they must be enforced by councils.

The proposed NES seeks to:

6 For more details see: <https://www.mpi.govt.nz/dmsdocument/36294-national-environmental-standard-for-marine-aquaculture-policy-approval-and-agreement-to-draft-regulations-cabinet-paper>; and <https://www.mpi.govt.nz/news-and-resources/consultations/proposed-national-environmental-standard-for-marine-aquaculture/>

- Provide a more efficient and certain consent process for managing existing marine farms within environmental limits; and
- Implement a nationally-consistent framework for biosecurity management on all marine farms.

Following drafting of the new regulations, the NES will be put to Cabinet for a final decision in early 2020. The revised TRMP will need to take account of any relevant requirements of the NES when it is finalised. Through the draft NES, it is proposed that the Tasman AMA’s and Wainui Bay will largely be exempt from the new NES provisions, except for the requirements for biosecurity management, as outlined in the Cabinet Paper:

*The biosecurity management proposal would apply to all existing farm replacement consent applications and new marine farm consent applications.*

*...the proposed standard would apply to most, but not all, replacement consent applications. The replacement consenting standards would not apply to marine farms in... the Tasman Aquaculture Management Areas and Wainui Bay (in the Tasman district).*

*In the case of... Tasman Aquaculture Management Areas, this is to recognise the significant planning processes undertaken for aquaculture in those areas to date. In the case of the Wainui Bay spat catching farms, it is to allow for strategic planning to be undertaken by Tasman District Council, as was directed by the Environment Court in 2018.*

### 3.1.3 Relevant Plan Changes

The TRMP has had a constant programme of rolling reviews (variations and plan changes) since it was first notified. The changes have been introduced to address unintended outcomes, new issues, new priorities and legislative requirements. The plan changes relevant to this topic are outlined in the Table 4 below.

Where a plan change has been recently introduced (i.e. <3 years) its impact will be difficult to determine with any accuracy as:

- there may have been limited uptake of the plan provisions (i.e. not many activities undertaken that trigger the new rule set) and/or
- the impact of existing use rights and previously consented activities continue
- the impacts may not be highly visible until there is a cumulative uptake of the provision (e.g water permit renewals to include new provisions).

For those reasons, the implementation of plan changes less than 3 years old (from operative date) have not been fully assessed for effectiveness or efficiency.

**Table 4: Plan Changes Relating to Chapter 22**

Plan Change or Variation	Description of change and key matters
<p><b>Private Plan Change 61: Wainui Bay Spat Catching</b> Notified 12<sup>th</sup> March 2016; Decisions notified 10 December 2016; Operative 14 December 2019</p>	<p>Wainui Bay Spat Catching group requested a change to the TRMP. This private plan change sought to provide the marine farming industry with certainty that spat catching farms in Wainui Bay can continue beyond the current term of consent (2024). To achieve this certainty, the private plan change proposed to rezone the eight spat catching sites to a newly created zone - AMA 4 - Wainui.</p> <p>Within this zone mussel farming, including mussel spat catching and mussel spat holding, is a discretionary activity. Amended policy and text</p>

	<p>recognise the national and regional importance of the area for spat catching. No new space or activities are proposed.</p> <p>The existing farms are consented until 2024 and the plan change provisions will have no effect until that time, unless the consent holders seek early renewal.</p>
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### 3.1.4 Relevant Case Law<sup>7</sup>

Since 1996 there have been a number of challenges and Court decisions regarding the allocation of space in the Coastal Marine Area in Tasman and Golden Bays and competing uses of the same. A recent decision supports the ability of regional councils to control fisheries activities for the purpose of maintaining and enhancing biodiversity.

#### **Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38, (2014) 17 ELRNZ 442, [2014] 1 NZLR 593, [2014] NZRMA 195**

King Salmon proposed to establish and operate nine additional salmon farms in the Marlborough Sounds and applied concurrently for the necessary plan changes and resource consents to be heard by a Board of Inquiry. The Board found that one of the farm locations would have high to very high adverse effects on the outstanding natural character and outstanding natural landscape of that location. As a consequence, policies of the NZCPS would not be given effect to, notably Policies 13(1)(a) and 15(a), which require councils to “avoid” adverse effects of activities on natural character, outstanding natural features and outstanding natural landscapes in the coastal environment.

Despite that finding, the Board approved the plan change application because it found that the NZCPS contained objectives and policies that pull in different directions, and applying an overall broad judgment pursuant to Part 2 of the RMA, the Board considered that (overall) the proposal would be appropriate and achieved the RMA's purpose.

The Environmental Defence Society appealed the Board’s decision to the Supreme Court. The Supreme Court granted the appeal and overturned the Board’s decision.

The key findings of the Supreme Court is that Part 2 of the RMA can no longer be resorted to as part of a broad overall judgement, to ‘soften’ those policies in the NZCPS which are ‘directive’. In addition the Court found that words mean what they say. For example, when using words like ‘avoid’ this means what it says, that is, do not do something.

#### **Golden Bay Marine Farmers & Others v Tasman District Council**

Four substantial reports were prepared by the Environment Court and signed off by the Minister of Conservation in Golden Bay Marine Farmers v Tasman District Council.<sup>8</sup> These decisions established a new aquaculture planning framework in the region, providing for spat catching and mussel farming

7 Information in this section has come from a TDC commissioned report: Tasman Law (June 2019). *Legal Report for Section 35 TRMP Review*; and also Atkins, H. (2019). *Review of implications for planning practice of the Supreme Court King Salmon decision and its impact on the interpretation of the New Zealand Coastal Policy Statement*. <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/king-salmon-guidance-note-full.pdf>

8 Golden Bay Marine Farmers & Ors v Tasman District Council W42/2001 (First Interim Report); W19/2003 (Second Interim Report); W10/20004 (Third Interim Report); and W89/2004 (Final Report); collectively the Golden Bay Marine Farmers reports (Kenderdine J presiding).

within specified AMAs in Golden and Tasman Bays and prohibiting aquaculture elsewhere (with the exception of Wainui Bay, see below). The AMAs were identified well offshore to manage effects of the aquaculture activities, particularly those related to landscape, natural character and amenity. They were also subject to adaptive management and co-ordinated monitoring of effects (as discussed under 'Scope' section above, p.10).

### **Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council**

Subsequent decisions made by the Environment Court in Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council (Interim and Final Decisions)<sup>9</sup> related to appeals of Private Plan Change request (PC 61, as above) granted by the TDC in respect of spat catching farms at Wainui Bay. The Environment Court upheld the appeals in part and declined them in part.

The Court noted a policy gap in the overall strategic approach to aquaculture in the TRMP that did not satisfy directives of Policy 7 NZCPS. In particular, the Court was faced with an area within the CMA of Golden Bay that had not been zoned either AMA or Aquaculture Exclusion Area (AEA), but, as the site of a long established and strategically important aquaculture activity of mussel spat catching and spat holding, had no strategic policy base against which an application for the activity to continue could be evaluated.

The court directed that a new Policy (22.1.3.2) be included to alter the planning framework for consideration of a mussel (spat) farming consent application in Wainui Bay. The changes made it clear that Wainui Bay sits outside of the AMA framework. Additionally, in the Final Decision, the Court deleted 10 matters of discretion in Rule 25.1.4.4, finding this was a necessary and consequential amendment to the fully discretionary nature of the rule which required all relevant matters to be considered and weighed appropriately. The Court noted TDC will need to provide more guidance on matters to be considered when granting marine farming consents in its policy statement and plan when it next reviews them.

### **Attorney-General v The Trustees of the Motiti Rohe Moana Trust & Ors [2019] NZCA 532 [4 November 2019]**

The Court of Appeal considered whether regional councils may prohibit fishing in specified parts of the coastal marine area to maintain indigenous biodiversity when the biodiversity concerned includes fish species the taking of which is separately regulated under fisheries legislation for a different purpose: their sustainable utilisation. It followed a judgment of the High Court which held that RMA s30(2) does not prohibit the Council from acting to maintain indigenous biodiversity in the coastal marine area if it acts: a) for the purpose of protecting indigenous biodiversity; and b) only to the extent strictly necessary to perform that function.

Under RMA s30(1)(d) the functions of regional councils and the Minister in the coastal marine area include control of (i) land and associated natural and physical resources, (ii) the occupation of space in and extraction of natural materials from the coastal marine area, and (vii) activities in relation to the surface of water. However, under s30(2) a regional council and the Minister of Conservation "must not perform" these three s 30(1)(d) functions "to control the taking, allocation or

9 Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council [2018] NZEnvC 130 (Final Decision) and 047 (Interim Decision) (Kirkpatrick J presiding).

enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996”.

RMA s30(1)(ga) also assigns to regional councils the function of establishing, implementing and reviewing objectives, policies and methods for maintaining indigenous biological diversity in their regions. That function extends to the coastal marine area. It is not among those expressly subject to the jurisdictional limit in s30(2).

Supported by the Attorney-General, the Council contended that it may prohibit fishing in specified parts of the coastal marine area so long as its purpose is that of maintaining indigenous biodiversity rather than that of managing fishing for the Fisheries Act objective of sustainable utilisation.

The Fishing Industry Parties responded that regional councils have no authority to control fishing to maintain indigenous biodiversity, for to do so is to manage fishing resources controlled under the Fisheries Act. Other interested parties, including the Motiti Rohe Moana Trust and Marlborough District Council, promoted a wider interpretation of a regional council’s powers, saying the RMA and Fisheries Act are complementary, each serving in different ways to protect the environment.

The Court of Appeal found that a regional council may control fisheries resources in the exercise of its s30 functions, including the listed s 30(1)(d) functions, provided it does not do so to manage those resources for Fisheries Act purposes. It also found that the RMA does not specify that the function of maintaining indigenous biodiversity in s30(1)(ga) is subject to s30(2). It is not the case that a regional council may exercise this function only when strictly necessary when dealing with fisheries resources controlled under the Fisheries Act. But any controls imposed under s 30(1)(d)(i), (ii) or (vii) are subject to s 30(2). Section 30(1)(ga) policies can be subject to s 30(2) where specified s 30(1)(d) functions are also invoked.

### 3.1.5 Relevant Iwi Management Plan Provisions

Both the RMA (s66(2A)) and NZCPS 2010 (Policy 2) require TDC to “take into account” any relevant iwi planning document recognised by the appropriate iwi authority (or hapū under the NZCPS) and lodged with the council, to the extent that its content has a bearing on resource management issues in the district.

Three Iwi Management Plans (IMPs) have been lodged with TDC by Iwi having interests in the Tasman District:<sup>10</sup>

1. Ngati Koata No Rangitoto Ki Te Tonga Trust Iwi Management Plan (2002)
2. Te Rūnanga O Ngāti Kuia, Pakohe Management Plan (2015)
3. Ngāti Tama ki Te Waipounamu Trust Environmental Management Plan (2018)

Two other IMPs prepared by Iwi with an interest in Tasman have been lodged with Nelson City Council:<sup>11</sup>

4. Nga Taonga Tuku Iho Ki Whakatu Management Plan (2004)
5. Te Ātiawa Ki Te Tau Ihu Iwi Environmental Management Plan (2014)

10 <https://www.tasman.govt.nz/my-region/iwi/iwi-management-plans/>

11 <http://www.nelson.govt.nz/council/plans-strategies-policies/strategies-plans-policies-reports-and-studies-a-z/iwi-management-plans>

Relevant provisions in the IMPs will need to be taken into account when the TRMP is updated following the present review. Examples of IMP provisions relating to aquaculture are shown in Appendix 1 (p.29).

## 3.2 Internal Consistency of Provisions

Overall, the internal consistency of the Chapter 22 provisions has been assessed as **strong-variable** as shown in Table 5 below.<sup>12</sup> The chapter is all about aquaculture management, and the effects of various marine farming activities on character and amenity, coastal processes, navigation safety and marine habitats and ecosystems. As a chapter, it is unusual in that it is single-activity focused. However, it is recognised that aquaculture may have the potential for significant social, economic and cultural benefits, as well as environmental consequences. Amenity and character effects associated with aquaculture activity, and physical structures on and in the water are the key resource management issues, with marine ecosystem health and public access also addressed within the policy set.

**Table 5: Chapter 22 Summary of Internal Consistency**

Objective	Internal Consistency	Comment
<p><b>Objective 22.1.2</b> Aquaculture developed in a manner that maintains, enhances, or protects the natural and physical resources of the coastal environment, including the life-supporting capacity of marine ecosystems and the natural character, landscape, ecological, public access, recreational and amenity values, and the values important to the tangata whenua iwi, while avoiding, remedying or mitigating adverse effects.</p>	<p><b>Strong-variable</b></p>	<p>This is a very broad objective, attempting to cover all of the potential effects of aquaculture, and issues associated with its management. It is implemented by 30 policies. These policies vary in specificity and cover a wide range of issues.</p> <p>That said they are, overall, well connected, with specific rules clearly implementing specific policies. The policy set has a history with court and government influence, and this is evident in the high degree of prescription provided for in policies and correlation with rule sets.</p> <p>The ‘variable’ reference as overall comment relates to poorly connected policies that relate to tendering (for which there are no specific rules to implement them), and less clearly implemented iwi management concepts.</p>

In strengthening the internal consistency of Chapter 22 provisions, the following actions are recommended:

- Question the degree of detail contained in policies as appropriate for policy, and consider a review of policy with the objective of re-homing valuable detail and content into resource consents frameworks via schedules, spatial mapping and other tools.
- Consider breaking the single objective down, to focus on the key objectives of aquaculture management, and simplify policies.

12 Information in this section has come from a TDC commissioned report: Leusink Sladen, S. (Dec 2019). *Tasman Resource Management Plan Policy Mapping - Review of the Internal Consistency and Integrity of Plan Objectives, Policies and Rules Parts III – VI*.



### 3.3 Evidence of Implementation

In implementing the RMA’s aquaculture provisions, and following the significant input from the Courts in settling appeals to the TRMP, three AMAs and one aquaculture area in Wainui Bay were established to provide for the development of marine farming activities in Tasman District.<sup>13</sup>

The coastal plan anticipates the effects of marine farming in these areas and provides guidance for decision makers via the controlled and restricted discretionary activity rules for the use and occupation of the coastal marine area and a discretionary activity rule for the temporary discharge of contaminants (naturally occurring material from the longlines) during harvest.

The long-term and cumulative effects of the use of these sites were uncertain when the appeals on the proposed plan rules were being considered by the Environment Court. An adaptive management regime was therefore provided to enable the development of the AMAs in a staged manner, subject to a comprehensive monitoring programme and review of the monitoring results by Council with advice from the EAG.

As shown in Table 6 below, the three AMAs established under the TRMP are Waikato (AMA 1), Puramakau (AMA 2) and Te Kumara (AMA 3). AMAs 1 and 2 are located in Mohua/Golden Bay, with AMA 3 being located in Te Tai o Aorere/Tasman Bay. The sizes of the AMAs vary considerably with AMA 2 and 3 being the largest and AMA 1 the smallest (see pp. 26 and 27).

Each AMA has been further divided into between six and 17 sub-zones and within each sub-zone specific aquaculture activities are provided for, including spat catching (both mussel and scallop) and marine farming of mussels, scallops and additive species (i.e. fish farming, such as for king salmon). The TRMP rules prohibit aquaculture activities outside of the AMAs.

**Table 6: Aquaculture Management Areas (AMAs) in the Tasman District**

AMA	Location	Activities Provided For	No. of Sub-zones
AMA 1 Waikato	Mohua/Golden Bay	Spat catching & marine farming	4 (a) - (d)
AMA 2 Puramakau	Mohua/Golden Bay	Marine farming, mussel spat catching, scallop spat catching	17 (a) - (q)
AMA 3 Te Kumara	Te Tai o Aorere/Tasman Bay	Marine farming, mussel spat catching, scallop spat catching	12 (a) - (l)

Despite provision being made for farming scallops and additive species, all aquaculture activities in Golden and Tasman Bays are currently focused on mussels.<sup>14</sup>

#### 3.3.1 Consented Aquaculture Activities

A large number of marine farms have consent to operate in the three AMAs, including 8 consented farms in Wainui Bay. The maps on the following pages show the current status of the three AMAs and

13 Some of the sub-zones in the AMA’s have since been deleted due to failing the fisheries determination. Section 44N of the Aquaculture Reform (Repeals and Transitional Provision) Act 2004 requires TDC to remove any area from the TRMP which is subject to a reservation. For instance, in AMA 1 Waikato, sub-zones were reserved to avoid effects on fish stock managed under the quota management system.

14 Other aquaculture related activities are being undertaken, e.g. scallop spat collection at the same time as the mussel spat is used, but this does not meet the definition of ‘aquaculture activities’.

Wainui Bay, and the aquaculture activities that have been consented.

In Golden Bay, a total of 2310ha is in development for mussel farming. A further 578ha is in use for seasonal spat catching and another 68ha for year round spat catching.

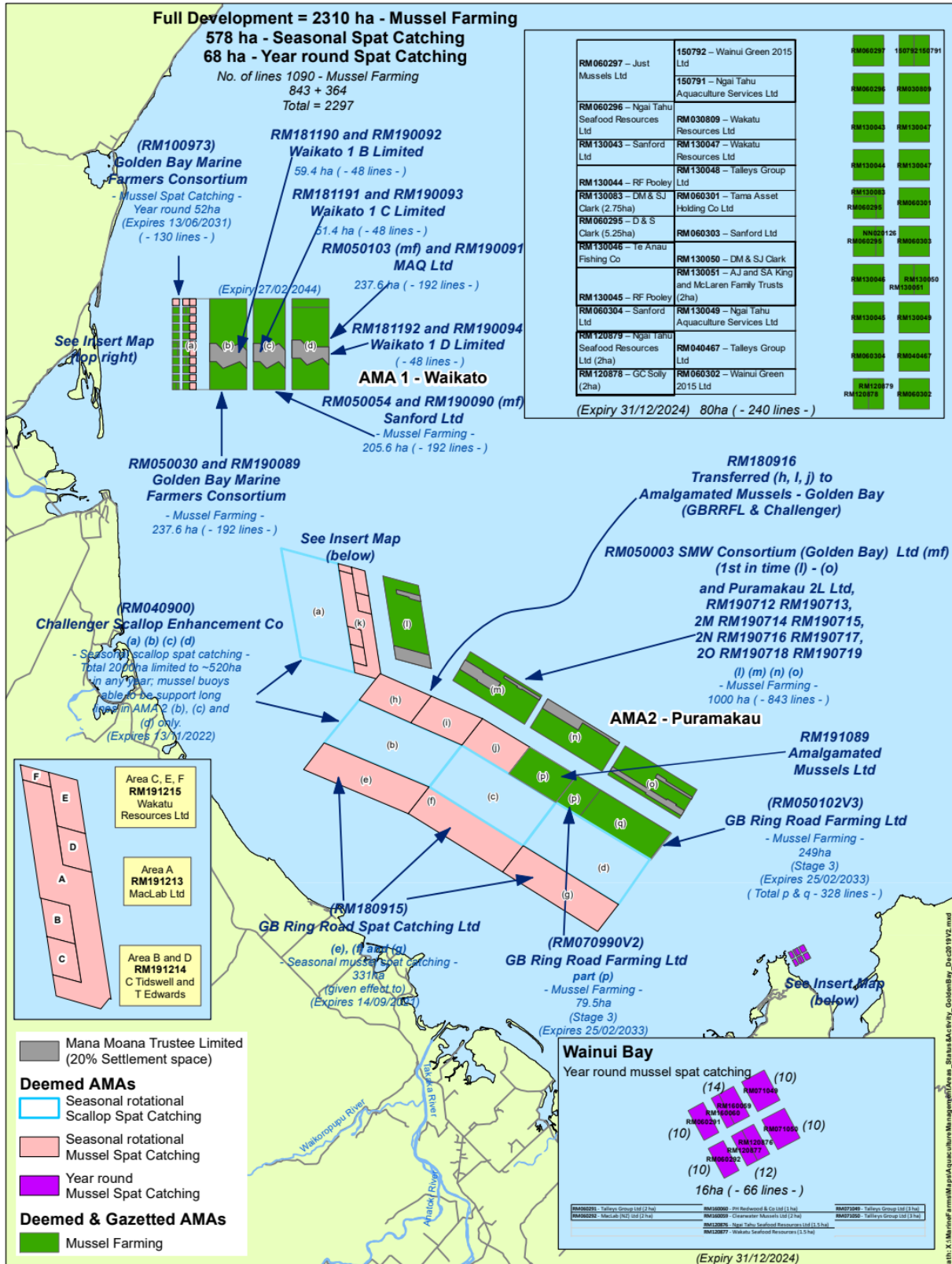
In Tasman Bay, 897ha is in development for mussel farming and 1362ha is in use for seasonal rotational mussel spat catching. A total of 1970ha is available for seasonal rotational scallop spat catching, but this is limited to one out of four sub-zones in any year.

Key matters that require consideration when deciding on resource consent applications include:

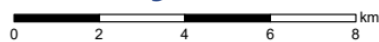
- Ecological effects, including benthic, water column, marine mammals, seabirds; managing risks of incursion, disease, biosecurity risk organisms, and genetic risk to wild stock;
- Degree of exclusive occupation;
- Treaty values;
- Type, size and scale, location, layout, density, and integrity of structures;
- Navigation, including the form of compliance with Maritime New Zealand guidelines for the marking and lighting of aquaculture structures;
- Effects if discharges.

Consent staff report that the TRMP's objective-policy-rule framework for aquaculture is clearly written and provides effective guidance when assessing resource consent applications (see Appendix 2, p.32) for a summary of the aquaculture rules). They state that the staged development approach has worked well as does the role of the EAG, which has been established to provide technical advice to assist the Council in managing any ecological effects of aquaculture, including peer review of assessment of environmental effects accompanying resource consent applications. As a consequence, staff do not consider Chapter 22 and its associated rules need significant change as part of the review process.

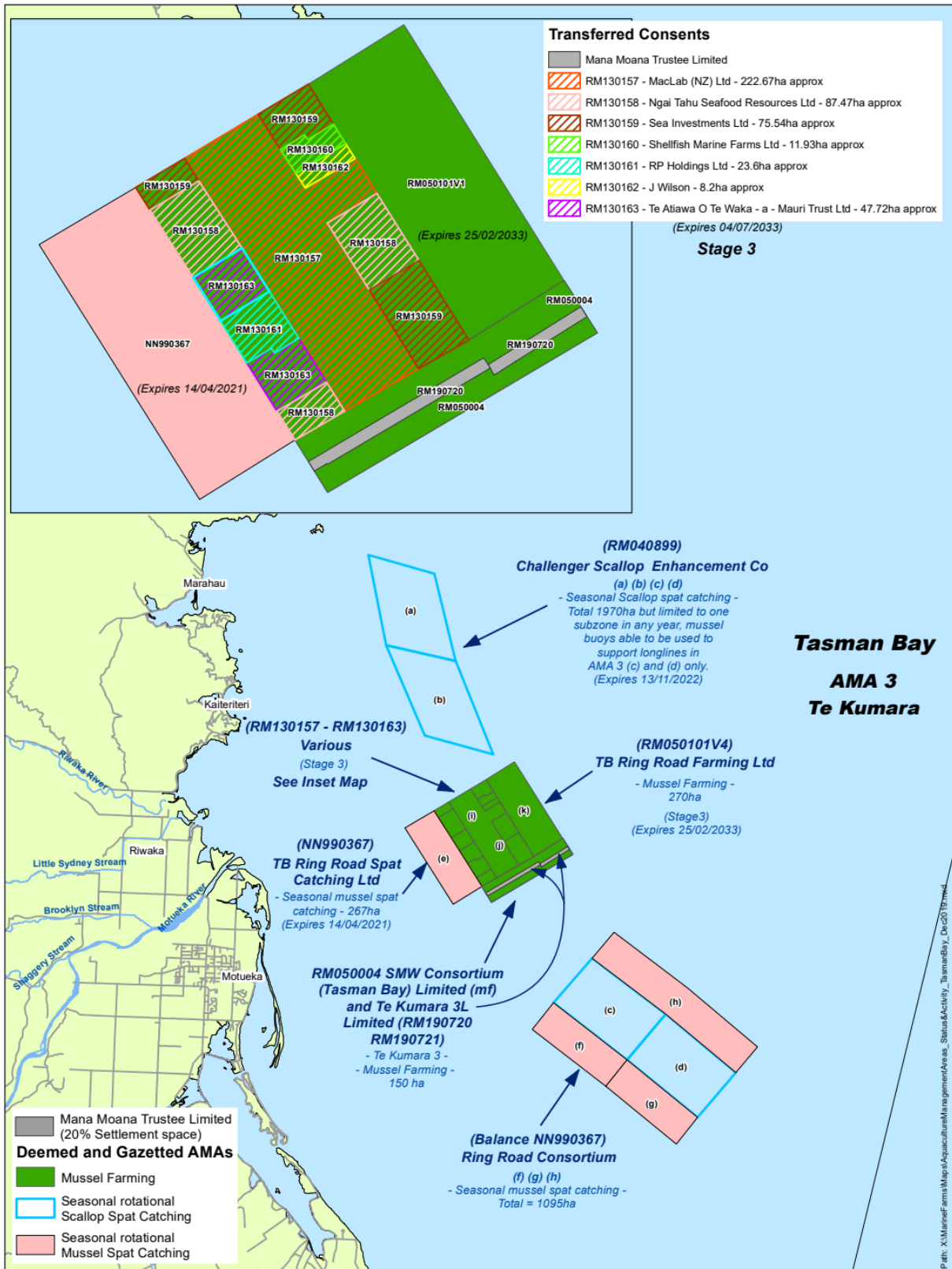
Overall, the existing provisions, which were written partially in an absence of knowledge (and thus leading to the adaptive management approach) would benefit from a 'fit for purpose' assessment, to ensure the provisions continue to address both current and future drivers. For instance, as more AMA's enter stage two development (some are already at stage three), there may no longer be a need for stage one provisions, including adaptive management policy and rules. As well, additional policies and rules may be needed to guide development of new aquaculture species (e.g. seaweed) and activities (e.g. enhancement and experimental), and to provide for new technologies (e.g. subsurface seaflex structures). Provisions may need to be amended in line with the proposed NES for marine farming to provide flexibility for aquaculture activities having the same or similar effects. Additionally, stronger provisions on pollution control (e.g. ropes and buoys, and noise emissions) could be considered.



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As well as the general 'fit for purpose' assessment, key matters that require attention include:

- Updating the chapter to give effect to the NZCPS 2010 requirements for preservation of natural character and landscape, and to ensure a strategic planning approach is taken to the identification and management of AMAs (particularly in relation to Wainui Bay).
- Reviewing the prescriptive rules around seasonal spat catching, which is currently restricted to 1 November – 30 April each year. Staff report that marine farmers are wanting more flexibility because spat now fall outside this time period.
- Reviewing the need for a tendering process for additive species (discussed next) due to the unsuitable conditions in Tasman and Golden Bays and a lack of interest in fish farming.

### 3.3.2 Additive Species

An amendment to the RMA in 2011 extended the range of species for which consent could be sought for marine farming in the AMAs of the TRMP. This included "additive" species, such as king salmon and hāpuka, which require material to be added to the water column, or directly to stock, such as feed and therapeutants.

NIWA was engaged to provide guidance to the Ministry of Fisheries Aquaculture Unit on the potential suitability of AMAs 1 - 3 for farming of additive species.<sup>15</sup> They found that Tasman and Golden Bays are not well suited for fish farming because of the relatively shallow water, low current speeds and degree of sedimentation. They were also unsure about the potential effects of fish farming on the aquaculture activities that had already been provided for in the TRMP (i.e. mussel and scallop farming / spat catching). NIWA concluded that:

*The Nelson Bays AMA sites appear to be marginal for fish farm development, with muddy substrates and low current speeds on the seabed and water column. Water depths below the cages are shallow at some of the proposed sub-zones, which reduce dispersion, and therefore mineralisation, of waste...*

*We recommend staged development, should fish farming proceed in Nelson Bays. We recommend that the proposed sites be evaluated prior to development to provide baselines of natural environmental state and variability. The search for indicators, trigger levels and management responses to trigger level breaches needed to monitor and manage environmental performance at the sites will require further research, modelling and consultation (pp.8-9).*

The TRMP anticipates taking a cautious approach to applications for additive species, including limiting the amount of space available to a maximum of 280 hectares within sub-zones of AMA 1-3, dependant on the results of investigations into physical conditions (such as depth and current) and any scientific investigations into environmental limits for additive species. The development would also need to be staged, with no more than 10 hectares developed initially under any consent. Further expansion would then be dependent on the results of monitoring.

The TRMP policies (22.1.3.15-18) paved the way for a tendering process along these lines to convert existing farms or establish new farms for additive species.

However, following NIWA's investigation into the suitability of Tasman Bay and Golden Bay, the Council resolved in 2012 not to offer space in the AMAs for tender for authorisations until there was known interest in additive species and confidence that fish farming and mussel farming are

15 NIWA (2011). *Tasman aquaculture: guidance on farming additive species - Stage 2*. A report prepared for the Ministry of Fisheries Aquaculture Unit.  
[https://www.tasman.govt.nz/document/serve/Tasman\\_stage\\_2.PDF?path=/EDMS/Public/Other/Environment/Coastal\\_Marine/Aquaculture\\_and\\_Fisheries/000000217377](https://www.tasman.govt.nz/document/serve/Tasman_stage_2.PDF?path=/EDMS/Public/Other/Environment/Coastal_Marine/Aquaculture_and_Fisheries/000000217377)

compatible within the AMA sub-zones.<sup>16</sup> Consequently, the TRMP currently lacks the rules needed to implement the tendering process and this aspect of the TRMP remains unused and untested.

### 3.3.3 Monitoring Results

Monitoring by marine farms shows generally acceptable effects on the environment. Changes due to marine farming include:

- Development of hard substrate beneath farms (from shells).
- Water column depletion of phytoplankton,
- Changes in eco-fauna due to nutrient discharges from the mussels resulting in enrichment of sediment beneath the farms, as well as shading of the seafloor by farm structures.
- Aggregation of fish around marine farms.
- Lack of disturbance of the seabed under the farms from trawling.

Any negative effects tend to be localised, variable between mussel farms, and dependant on the time of the year, tides etc. Overall the effect of aquaculture activities on Tasman and Golden Bays is considered to be minor at this stage of development.

Table 7 below shows characteristics of the seabed and communities under mussel farms in comparison to areas with no mussel farming.<sup>17</sup> This information summarises data from mussel farm monitoring in Tasman Bay and Golden Bay. The sites reported on are the Stage 1 development areas; i.e., sites that have been farmed for several years.<sup>18</sup>

**Table 7: Comparison of Characteristics between Areas of Mussel Farming vs No Mussel Farming**

	Tasman Bay (AMA 3)	Golden Bay (AMA 2)
Sediments	More gravel-sized material	More gravel-sized material
Diversity in sediments (no. of taxa)	Similar or higher	Generally higher
Abundance of animals in sediments	Similar or more abundant	Substantially more abundant
Community composition	Slight more diverse	More diverse
Mussel cover	Present only under farmed areas	Present only under farmed areas

The table indicates that biological communities under mussel farms have some differences in community structure compared to those in un-farmed, fished sites. Higher diversity may occur in both surface and sub-surface communities. This is likely a combination of the lack of fishing activity, and the fact that a range of animals regularly fall from the farms' structures on to the seabed below. Fallen mussels also provide a substantial food source for predators such as starfish.

The material that falls from mussel farms to the sea floor constitutes a notable difference in benthic communities under farms compared to areas not impacted by aquaculture. It may be, however, that

16 Council report to Environment and Planning Committee. 2012. *Aquaculture Fish Farming*; REP12-06-05

17 pp.47-48; Newcombe E, Clark D, Gillespie P, Morrisey D, MacKenzie L 2015. *Assessing the State of the Marine Environment in Tasman Bay and Golden Bay*. Prepared for Nelson City Council and Tasman District Council. Cawthron Report No. 2716. 70 p. plus appendix. <https://www.cawthron.org.nz/publication/science-reports/assessing-state-marine-environment-tasman-bay-and-golden-bay/>

18 The authors' caution that the data are often highly variable, and the differences noted here are not necessarily statistically significant.

this creates an environment similar to the natural biogenic habitat created by shellfish beds and reefs, which were historically far more widespread than they are today.

### 3.4 Effectiveness and Efficiency

This section provides an analysis of the efficiency and effectiveness of Chapter 22 of the TRMP. It focuses on the achievement of objectives contained within the chapter. The analysis draws on the information from earlier sections, including environmental data, council records, and the opinion of experienced plan users.

#### 3.4.1 Protection of Values

Objective	Analysis	Rating of Achievement
<p><b>Objective 22.1.2</b></p> <p>Aquaculture developed in a manner that maintains, enhances, or protects the natural and physical resources of the coastal environment, including the life-supporting capacity of marine ecosystems and the natural character, landscape, ecological, public access, recreational and amenity values, and the values important to the tangata whenua iwi, while avoiding, remedying or mitigating adverse effects.</p> <p>Policy set 22.1.3.1 – 22.1.3.30</p>	<p>The TRMP aquaculture provisions have been highly influenced by the evolving RMA requirements and Court decisions on appeals.</p> <p>The consequence has been the identification of AMAs that have been sited to reduce effects on the marine and adjacent coastal environments, and at the same time provide viable locations for aquaculture activities to be carried out.</p> <p>The TRMP framework has enabled a cautious approach to be taken; aquaculture activities have been staged to enable the effects to be identified and assessed before more intensive development is allowed. Consent staff report that this approach has worked well.</p> <p>Additionally, the role of the Ecological Advisory Group in providing expert input into the assessment of aquaculture consent applications has further supported the implementation of TRMP provisions.</p> <p>Monitoring data indicates that the current marine farms are causing no more than minor adverse effects, such as depletion of the water column and nutrient enrichment. Effects tend to be localised, variable, and of low concern when considered over the entire coastal area. This will need to be regularly reviewed as more aquaculture activities are consented and the AMAs become more intensively used.</p> <p>Overall, the existing provisions would benefit from a ‘fit for purpose’ assessment, to address both current and future drivers.</p> <p>The chapter also needs to be updated to give effect to NZ Coastal Policy Statement 2010 requirements. In particular, the Environment Court noted the TRMP has not given effect to the NZCPS 2010 requirement for strategic planning. This was in relation to an established spat catching site in Wainui Bay that had not been zoned for aquaculture, and for which the TRMP failed to provide a strategic policy base against which an application for the activity to continue could be evaluated.</p> <p>The Court’s advice was <i>“When the TRMP is reviewed, or should there be a comprehensive change proposed to the aquaculture provisions, then that framework can be revisited, and, perhaps, a new framework proposed”</i>.<sup>19</sup></p>	<p>Partial achievement</p>

19 Friends of Nelson Haven and Tasman Bay Incorporated v Tasman District Council Interim Decision, at [119 (Kirkpatrick J presiding)].

## Appendix 1: Iwi Management Plan Provisions Relating to Aquaculture

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Examples of provisions from Te Tau Ihu Iwi Management Plans relevant to the matters addressed in Chapter 22 are shown below. For the full text please refer the individual plans.

### Aquaculture Issues

Lack of information about the cumulative environmental effects of marine farming, including on: water quality and the mauri of coastal waters; changes to hydrological conditions, flow changes and sedimentation; modification of the benthic (seafloor) habitat; and changes in marine biodiversity.

The ongoing depletion and loss of kaimoana beds and mahinga kai which has reduced the ability of tangata whenua to maintain their customs and tradition associated with nga taonga tuku iho (the treasured resources).

Restricted or loss of access to mahinga kai caused by marine and/or other reserves being established over customary food gathering places, and the establishment of marine farms on customary fishing grounds. This too directly impacts on the ability of tangata whenua to practise their customs and traditions.

Opportunities for sustainable resource use, including customary, commercial and recreational fishing and marine farming activities.

### Desired Outcomes

Recognition of the role of tangata whenua as rangatira and kaitiaki of nga taonga tuku iho.

Tangata whenua, as kaitiaki, will be effective in ensuring that the mauri or essential life principle of the natural world within the rohe is maintained and enhanced.

Maintenance or enhancement of water quality in the CMA at a level that enables the gathering or cultivating of shellfish for human consumption.

Culturally sensitive coastal marine environments are protected from the adverse effects of marine farming activities.

Mahinga kai (food gathering) populations and associated habitats are healthy and able to provide sustenance to tangata whenua.

Tangata whenua have access to culturally important mahinga kai.

Tangata whenua enjoy in a wide range of opportunities for their personal and commercial use and development of natural and physical resources.



## Appendix 2: Summary of TRMP Aquaculture Rules

Aquaculture Management Rules	Description
<b>Occupation and Disturbance by Structures for Spat Catching in: AMA 1 Waikato, sub-zones (a) – (k) AMA 2 Puramakau and sub-zones (a) – (h) of AMA 3 Te Kumara</b>	
25.1.3.1 Controlled Activities (Spat Catching)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the CMA by structures, and the use of those structures, for scallop spat catching or mussel spat catching</li> </ul> Provided it complies with the specified rule conditions.
25.1.3.2 Restricted Discretionary Activities (Spat Catching)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures for mussel spat catching and scallop spat catching.</li> </ul> That do not comply with the controlled activity rule conditions.
25.1.3.3 Prohibited Activities (Spat Catching)	<ul style="list-style-type: none"> <li>Scallop and mussel spat catching in sub-zones (a) – (k) of AMA 2 Puramakau and sub-zones (a) – (h) of AMA 3 Te Kumara.</li> <li>The catching of spat of species other than scallops or mussels in sub-zones (a) – (k) of AMA 2 Puramakau and sub-zones (a) – (h) of AMA 3 Te Kumara.</li> <li>Aquaculture other than the catching of scallop or mussel spat in sub-zones (a) – (k) of AMA 2 Puramakau and sub-zones (a) – (h) of AMA 3 Te Kumara.</li> </ul>
<b>Occupation and Disturbance by Structures for Aquaculture in: Subzones (a) – (d) AMA 1 Waikato, sub-zones (l) – (q) AMA 2 Puramakau and sub-zones (i) – (l) Te Kumara</b>	
25.1.4.1 Controlled Activities (Aquaculture involving Filter Feeding Bivalves, including Mussels)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for aquaculture involving filter feeding bivalves (including mussels)</li> </ul> Provided it complies with the specified rule conditions.
25.1.4.2 Restricted Discretionary Activities (Aquaculture involving Filter Feeding Bivalves, including Mussels)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for aquaculture involving filter feeding bivalves (including mussels).</li> </ul> That do not comply with the controlled activity rule conditions.
25.1.4.3 Discretionary Activities (Aquaculture Involving Extractive Species)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for:               <ul style="list-style-type: none"> <li>(i) aquaculture involving filter feeding bivalves (including mussels), that does not comply with condition (d) of rule 25.1.4.2; or</li> <li>(ii) aquaculture involving other extractive species;</li> </ul> </li> </ul> Provided it complies with the specified rule conditions.
25.1.4.4 Discretionary Activities (Mussel Farming at Wainui Bay)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for mussel farming, including mussel spat catching and mussel spat holding</li> </ul> Provided it complies with the specified rule conditions.
25.1.4.5 Discretionary Activities (All Other Aquaculture)	<ul style="list-style-type: none"> <li>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for:               <ul style="list-style-type: none"> <li>(i) aquaculture involving additive species; or</li> <li>(ii) aquaculture involving filter feeding bivalves (including mussels) that does not comply with condition (b) of rule 25.1.4.3; or</li> <li>(iii) aquaculture involving extractive species that does not comply with condition (b) of rule 25.1.4.3;</li> </ul> </li> </ul> Provided it complies with the specified rule conditions.

Prohibited Activities (Aquaculture other than Spat Catching)	<ul style="list-style-type: none"> <li>• Aquaculture that would otherwise be a restricted discretionary activity or a discretionary activity that does not comply with the necessary conditions.</li> </ul>
25.1.4.7 Prohibited Activities (Aquaculture Exclusion Area)	<ul style="list-style-type: none"> <li>• The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for aquaculture in the Aquaculture Exclusion Area.</li> </ul>
<b>Schedules Relating to Aquaculture Rules</b>	
Schedule 25E	<ul style="list-style-type: none"> <li>• Ecological Management Plans and Monitoring Requirements for Aquaculture Activities involving Extractive Species</li> </ul>
Schedule 25F	<ul style="list-style-type: none"> <li>• Ecological Management Plans and Monitoring Requirements for Aquaculture Activities involving Additive Species, or Aquaculture Activities involving Additive and Extractive Species in the Same Sub-zone</li> </ul>
Schedule 25H	<ul style="list-style-type: none"> <li>• Protocol for Tasman District Council Ecological Advisory Group (EAG) – Mussel Farming</li> </ul>
Schedule 25I	<ul style="list-style-type: none"> <li>• Protocol for Tasman District Council Ecological Advisory Group (EAG) – Aquaculture involving Extractive or Additive Species (excluding mussels)</li> </ul>