

## FTC#241 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Joint Stage 2 decisions

### Application 2023-153 Reimagining Aquaculture – Trials of Novel Aquaculture Structures Project

Date submitted:	25 May 2023	MfE#: BRF-3095	DOC#: 23-B-0235
Security level	In-Confidence	MfE priority: Urgent	DOC priority: Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations	To be advised
To Hon Willow-Jean Prime, Minister of Conservation	Decisions on recommendations	To be advised

Actions for Ministers' Office staff	Return the signed briefing to MfE and DOC <b>(Environment only)</b> Send attached notice of decisions letter (if signed).
Number of appendices: 6	<p>Appendices:</p> <ol style="list-style-type: none"> <li>1. Reimagining Aquaculture – Trials of Novel Aquaculture Structures application documents and further information received (Databox link)</li> <li>2. Stage 1 Briefing Note and decisions (Databox link)</li> <li>3. Statutory Framework for making decisions (Databox link)</li> <li>4. Letter (notice of decision) to The New Zealand Institute for Plant and Food Research Limited</li> <li>5. Section 17 Report (Databox link)</li> <li>6. Comments received from Ministers and Marlborough District Council (Databox link).</li> </ol>

### Contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
<b>Ministry for the Environment</b>			
Principal Author	Zen Gerente		
Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	s 9(2)(a)	
<b>Department of Conservation</b>			
Principal Author	Geoff Deavoll		
Responsible Manager	Trevor Ellis	s 9(2)(a)	✓
Director	Steve Taylor	s 9(2)(a)	

## **FTC#241: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Joint Stage 2 decisions**

### **Key messages**

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1. This briefing seeks your final joint decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from The New Zealand Institute for Plant and Food Research Limited to refer the Reimagining Aquaculture – Trials of Novel Aquaculture Structures Project (project) to an expert consenting panel (panel). A copy of the application is in Appendix 1.
2. A copy of the application is in Appendix 1. This is the second briefing on this application. The first (Stage 1) briefing (BRF-2854 and 22-B-0122) with your initial decisions annotated is in Appendix 2.
3. The project is to install structures for open-ocean finfish aquaculture and conduct trials involving fish contained within those structures at several locations within the boundary of a consented 450-hectare marine farm operated by Wakatū Incorporation and located in Tasman Bay, approximately 6 kilometres to the west of Sauvage Point, D'Urville Island. Each set of structures will temporarily occupy an area of approximately 3.6 hectares, and only one set of structures will be installed at any one time.
4. The project will occur wholly in the coastal marine area (CMA), and you must therefore make decisions on the referral application jointly, in accordance with section 16(1)(a) of the FTCA.
5. The project will involve activities such as:
  - a. installing structures for finfish aquaculture, including fish enclosures, moorings, mooring lines, anchors, feeding buoys, navigational aids and lights, in the CMA
  - b. disturbing (including by excavating or drilling and fixing structures to) the seabed
  - c. occupying the common marine and coastal area with structures for finfish aquaculture
  - d. conducting aquaculture trials in the CMA including:
    - i. introduction of exotic fauna
    - ii. deposition of material in or on the seabed
    - iii. discharges of water and contaminants to water
  - e. any other activities that are –
    - i. associated with the activities described in paragraphs 'a' to 'd'
    - ii. within the project scope described in paragraph 3.
6. The objective of the trials is to test the physical suitability of fish enclosures and fish species in an exposed environment, to progress development of an open ocean aquaculture system that is designed for New Zealand's conditions. The project is funded by the Ministry of Business, Innovation and Employment's (MBIE) Endeavour Fund and Strategic Science Investment Fund.
7. The project will require a coastal permit under the Marlborough Sounds Resource Management Plan (MSRMP). The proposed activities have overall non-complying activity status under the MSRMP as this plan defines the proposed trials as a new marine farm. Under the Proposed Marlborough Environment Plan (PMEP) decision version which has legal effect, the proposed activities would have discretionary activity status.

8. Neither the relevant local authority, Marlborough District Council, s 9(2)(f)(ii), s 9(2)(g)(i) who responded to your invitation to comment, opposed project referral.
9. We recommend you accept the referral application under section 24 of the FTCA and refer the project to a panel for fast-track consenting. We seek your joint decision on this recommendation and notification of your decisions.

### Assessment against statutory framework

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10. The statutory framework for your decision-making is set out in Appendix 3. You must apply this framework when you are deciding whether or not to accept the application and when deciding on any further requirements or directions associated with project referral.
11. Before accepting the application, you must consider the application and any further information provided by the applicant (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from Ministers (in Appendix 6). Following that, you may accept the application if you are satisfied that it meets the referral criteria in section 18 of the FTCA. We provide our advice on these matters below.
12. We have also considered if there are any reasons for declining the project, including the criteria in section 23(5) of the FTCA, and provide our advice on these matters to assist your decision-making.

### Further information provided by applicant

13. You did not request any further information from the applicant under section 22 of the FTCA.

### Section 17 Report

14. The Section 17 Report indicates that there are eight iwi authorities, four Treaty settlements and 10 Treaty settlement entities considered to be relevant to the project area. Two other parties which may have an interest in the project area and six groups who have applications under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) potentially affected by the project are also identified.
15. The relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the Resource Management Act 1991 (RMA) for this project.

### Comments received

16. Comments were received from s 9(2)(f)(ii), s 9(2)(g)(i) The key points of relevance to your decision are summarised in Table A.
17. s 9(2)(f)(ii), s 9(2)(g)(i)
18. s 9(2)(f)(ii), s 9(2)(g)(i)
19. s 9(2)(f)(ii), s 9(2)(g)(i)
20. The relevant local authority, Marlborough District Council, did not oppose project referral.

## Section 18 referral criteria

21. You may accept the application for project referral if you are satisfied that the project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
22. The project does not include any ineligible activities, as explained in Table A.
23. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA are in Section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We consider the project will help to achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:
  - a. provide approximately 42 direct full-time equivalent (FTE) jobs over a 5-year period and support retention of 60 existing FTE jobs
  - b. contribute to aquaculture production that is resilient to the effects of climate change
  - c. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.
24. We consider any adverse effects arising from the project, together with any proposed mitigation, offsetting or compensation, could be appropriately tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

## Issues and risks

25. Even if the project meets the referral criteria in section 18 of the FTCA, section 23(2) of the FTCA permits you to decline to refer the project for any other reason.

### *Section 23(5) FTCA matters*

26. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and our analysis of these matters is summarised in Table A. Note that you may accept an application even if one or more of those reasons apply.
27. A key consideration for the project is whether it would be more appropriate to go through standard RMA consenting processes which might allow for wider public input than under the FTCA process, particularly in relation to consideration of potential adverse effects and because there has been a significant public interest over recent years in relation to commercial fish farming applications in the Marlborough Region.
28. If you decide to refer the project, a panel can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA) in addition to parties already prescribed by the FTCA. s 9(2)(f)(ii), s 9(2)(g)(i) recommended that if you agree to refer the project you also direct a panel to invite comments from Fisheries New Zealand and Biosecurity New Zealand, both of whom have particular expertise relating to management of aquaculture and biosecurity. We have recommended that if the project is referred, you direct the panel to invite comments from these two parties on consent applications for the project.
29. We consider that a panel would be best placed to decide on any further appropriate consultation with the benefit of a complete resource consent application and note that a panel may also hold a hearing at its discretion. We note that granting of any such consents will not authorise the establishment of any new commercial marine farming operations and the nature of the project involves temporary activities in the CMA which would have much lower stocking density and feed discharges compared to commercial finfish farms. Therefore, we do not consider that you should decline the referral application on the basis that it would be more appropriate for the project to go through the standard consenting process under the RMA

(section 23(5)(b)).

#### *Other matters*

30. The project has non-complying activity status under the MSRMP, meaning that under clause 32 of schedule 6 of the FTCA, a panel is required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the RMA. The project may not be entirely consistent with MSRMP objectives and policies (and therefore may not satisfy the gateway test provided for by section 104D(1)(b) of the RMA), but the applicant considers that the adverse effects will be minor and therefore, the project will pass at least one of the gateway tests under section 104D(1)(a) of the RMA. Therefore, we do not consider that you should decline the referral application on the basis of an inability to satisfy the requirements of section 104D of the RMA.
31. The project proposes to use a small part of the area within the Wakatū Incorporation's consented marine farm, and access to the project site is therefore subject to approval of the consent holder. The applicant confirmed that Wakatū Incorporation has provided a preliminary approval, and the parties are in the process of finalising a legal access agreement. On this basis, we do not consider the need to secure access to the project site presents a significant risk to the applicant's ability to deliver the project in a timely manner. Since project delivery is reliant on the ability of the applicant to access and use the project site, we recommend that if the project is referred, you direct the panel to invite comments from Wakatū Incorporation on consent applications for the project.

## Conclusions

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32. We do not consider that you should decline to refer the project in whole. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
33. If you decide to refer the project, we consider you should specify under section 24(2)(e) of the FTCA that a panel must invite comments on consent applications for the project from following parties:
  - a. Minister for Oceans and Fisheries
  - b. Marlborough Harbourmaster
  - c. Fisheries New Zealand
  - d. Biosecurity New Zealand
  - e. Wakatū Incorporation
  - f. Te Tau Ihu Fisheries Forum
  - g. Ngāti Toa Rangatira ki Wairau Trust.

## Next steps

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34. If you decide to refer the project, you must give notice of your decisions on the referral application, and the reasons for them, to the applicant, anyone invited to comment under section 21, and the persons, entities and groups listed in section 25(2) of the FTCA. We consider you should also give the notice of decisions together with a copy of the application to the parties listed in paragraph 33(c)–(g) together with the six MACAA applicants identified in Attachment 4 of the section 17 report.
35. If you decide to decline project referral, you must give the notice of your decisions, and the reasons for them, to the applicant and anyone invited to comment under section 21.

36. We have attached a notice of decisions letter to the applicant based on our recommendations (refer Appendix 4). Once you have signed the letter, we will assist your offices to copy it to all relevant parties.
37. To refer the project, you must recommend that a referral order be made by way of an Order in Council (OIC). Cabinet has agreed that you can issue drafting instructions to PCO without the need for a policy decision to be taken by Cabinet in the first instance.<sup>1</sup>
38. As required by section 25(3) of the FTCA, you must ensure that your joint decisions on the referral application, the reasons and the Section 17 report are published on the Ministry for the Environment's website. The Ministry for the Environment will undertake this task on your behalf in accordance with your direction.
39. Our recommendations for your decisions follow.

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<sup>1</sup> Following the first OIC, the Minister for the Environment (and Minister of Conservation for projects in the Coastal Marine Area) can issue drafting instructions directly to the Parliamentary Counsel Office. Cabinet has also agreed that a Regulatory Impact Assessment is not required for OIC relating to projects to be referred to a panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

## Recommendations

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40. We recommend that you:

- a. **Note** that section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from The New Zealand Institute for Plant and Food Research Limited unless you are satisfied that the Reimagining Aquaculture – Trials of Novel Aquaculture Structures Project (project) meets the referral criteria in section 18 of the including that it would help to achieve the FTCA's purpose.
- b. **Note** that when assessing whether the project would achieve the FTCA's purpose, you may consider a number of matters under section 19, including the project's economic benefits and costs, and effects on social or cultural well-being; whether it may result in a public benefit (such as generating employment or improving environmental outcomes) and whether it could have significant adverse effects.
- c. **Note** that before deciding to accept the application for project referral under section 24(1) of the FTCA you must consider:
  - i. the application
  - ii. the report obtained under section 17 of the FTCA
  - iii. any comments and further information sought and provided within the required timeframe.
- d. **Note** that if you are satisfied that all or part of the project meets the referral criteria in section 18 of the FTCA you may:
  - i. refer all or part of the project to an expert consenting panel (a panel)
  - ii. refer the initial stages of the project to the panel while deferring decisions about the project's remaining stages
  - iii. still decline the referral application for any reason under section 23(2) of the FTCA.
- e. **Note** that if you do refer all or part of the project you may:
  - i. specify restrictions that apply to the project
  - ii. specify the information that must be submitted to a panel
  - iii. specify the persons or groups from whom a panel must invite comments
  - iv. set specific timeframes for a panel to complete their process.
- f. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.
- g. **Agree** the project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
  - i. provide approximately 42 direct full-time equivalent (FTE) jobs over a 5-year period and support retention of 60 existing FTE jobs
  - ii. contribute to aquaculture production that is resilient to the effects of climate change
  - iii. progress faster than would otherwise be the case under standard Resource

Yes/No



Management Act 1991 process.

Yes/No

- h. **Agree** to refer all of the project to a panel.

Yes/No

- i. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following persons or groups in addition to those specified in clause 17 of Schedule 6 of the FTCA:

- i. Minister for Oceans and Fisheries
- ii. Marlborough Harbourmaster
- iii. Fisheries New Zealand
- iv. Biosecurity New Zealand
- v. Wakatū Incorporation
- vi. Te Tau Ihu Fisheries Forum
- vii. Ngāti Toa Rangatira ki Wairau Trust.

Yes/No

- j. **Agree** to copy the application and notice of decisions to the following parties additional to those specified in section 25 of the FTCA:

- i. Fisheries New Zealand
- ii. Biosecurity New Zealand
- iii. Wakatū Incorporation
- iv. Te Tau Ihu Fisheries Forum
- v. Ngāti Toa Rangatira ki Wairau Trust
- vi. Takutai Moana applicants (applicants seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 4 of the Section 17 Report).

Yes/No

- k. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the project to a panel in accordance with your decisions recorded herein.

Yes/No

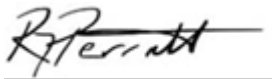


- I. **Minister for the Environment only – Sign** the notice of decisions letter from both Ministers to the applicant (attached in Appendix 4).

Yes/No

## Signatures

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Rebecca Perrett  
**Acting Manager – Fast-track Consenting**  
**Ministry for the Environment**



Trevor Ellis  
**RM Regulatory Delivery Manager**  
**Department of Conservation**

Hon David Parker  
**Minister for the Environment**

**Date:**

Hon Willow-Jean Prime  
**Minister of Conservation**

**Date:**

**Table A: Stage 2 - Project summary and section 24 assessment for projects where the Minister for the Environment and Minister of Conservation are joint decision makers**

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received (Note: for analysis and/or recommended responses to these comments refer to column 7)	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
<p><b>Name</b> Reimagining Aquaculture – Trials of Novel Aquaculture Structures Project</p> <p><b>Applicant</b> The New Zealand Institute for Plant and Food Research Limited</p> <p>c/- Stantec New Zealand</p> <p><b>Location</b> Tasman Bay approximately 6 kilometres to the west of Sauvage Point, D'Urville Island</p>	<p>The project is to install structures for open-ocean finfish aquaculture and conduct trials involving fish contained within those structures at several locations within the boundary of a consented 450-hectare marine farm (Resource Consent U000361 issued to Wakatū Incorporation by Marlborough District Council) located in Tasman Bay, approximately 6 kilometres to the west of Sauvage Point, D'Urville Island. Each set of structures will temporarily occupy an area of approximately 3.6 hectares, and only one set of structures will be installed at any one time.</p> <p>The project will occur wholly in the coastal marine area (CMA).</p> <p>The project will involve activities such as:</p> <p>a. installing structures for finfish aquaculture, including fish enclosures, moorings, mooring lines, anchors, feeding buoys, navigational aids and lights, in the CMA</p> <p>b. disturbing (including by excavating or drilling and fixing structures to) the seabed</p> <p>c. occupying the common marine and coastal area with</p>	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> <li>it does not include any prohibited activities</li> <li>it does not include activities on land returned under a Treaty settlement</li> <li>it does not include activities in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011.</li> </ul>	<p><b>Economic benefits for people or industries affected by COVID-19 (19(a))</b></p> <p>Based on the information provided by the applicants we consider the project may result in the following economic benefits:</p> <ul style="list-style-type: none"> <li>provide 42 direct full-time equivalent (FTE) jobs over a 5-year period and retention of 60 existing FTE jobs.</li> </ul> <p>The existing FTE jobs is part of a wider research of the applicant on open ocean aquaculture. The project provides certainty to these existing jobs.</p> <p><b>Economic costs for people or industries affected by COVID-19 (19(a))</b></p> <ul style="list-style-type: none"> <li>N/A</li> </ul> <p><b>Effect on the social and cultural well-being of current and future generations (19(b))</b></p> <p>The project has the potential for positive effects on the social wellbeing of current and future generations as it will:</p> <ul style="list-style-type: none"> <li>contribute to job creation and flow-on economic benefits</li> <li>contribute to aquaculture production that is climate change resilient through innovative technology.</li> </ul> <p><b>Is the project likely to progress faster by using this Act? (19(c))</b></p> <p>The applicant considers that the fast-track process will allow the project to progress at least 17 months faster than under standard Resource Management Act 1991 (RMA) process due to the likelihood of public notification and appeals.</p> <p><b>Will the project result in a public benefit? (19(d))</b></p> <p>Based on the information provided, the project may result in the following public benefits:</p> <ul style="list-style-type: none"> <li>generating employment</li> </ul>	<p><b>Ministers</b></p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Marlborough District Council did not oppose project referral.</p> <p>All responses received by parties invited to comment are attached in <b>Appendix 6</b>.</p>	<p><b>Section 23(5) matters:</b></p> <p><b>Insufficient information (23(5)(a))</b></p> <p>The applicants have provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p><b>More appropriate to go through standard RMA process (23(5)(b))</b></p> <p>A key consideration for the project is whether it would be more appropriate to go through standard RMA consenting processes which might allow for wider public input than under the FTCA process, particularly in relation to consideration of potential adverse effects of feed discharges because there has been a significant public interest over recent years in relation to commercial fish farming applications in the Marlborough region.</p> <p>If you decide to refer the project, a panel can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA) in addition to parties already prescribed by the FTCA. s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>recommended that if you agree to refer the project you also direct a panel to invite comments from Fisheries New Zealand and Biosecurity New Zealand, both of whom have particular expertise relating to management of aquaculture and biosecurity. We have recommended that if the project is referred, you direct the panel to invite comments from these two parties on consent applications for the project.</p> <p>We consider that a panel would be best placed to decide on any further appropriate consultation with the benefit of a complete resource consent application and note that a panel may also hold a hearing at its discretion. We note that granting of any such consents will not authorise the establishment of any new commercial marine farming operations and the nature of the project involves temporary activities in the CMA which would have much lower stocking density and feed discharges compared to commercial finfish farms.</p>	<p><b>In response to key comments:</b></p> <ul style="list-style-type: none"> <li>s 9(2)(f)(ii), s 9(2)(g)(i)</li> <li>s 9(2)(f)(ii), s 9(2)(g)(i)</li> </ul> <p>We do not consider that you should decline the project on the basis of the risks and issues identified above. We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel for the following reasons:</p> <ul style="list-style-type: none"> <li>the project will provide approximately 42 direct full-time equivalent (FTE) jobs over a 5-year period and retention of 60 existing FTE jobs</li> <li>the project will contribute to aquaculture production that is resilient to the effects of climate change</li> <li>the project will progress faster than would otherwise be the case under standard Resource Management Act 1991 process, provided that the applicant lodges their applications for resource consent in a timely manner following project referral.</li> </ul> <p>We recommend you require a panel to invite comments from:</p> <ul style="list-style-type: none"> <li>Minister for Oceans and Fisheries</li> <li>Marlborough Harbourmaster</li> <li>Fisheries New Zealand</li> <li>Biosecurity New Zealand</li> <li>Wakatū Incorporation</li> <li>Te Tau Ihu Fisheries Forum</li> <li>Ngāti Toa Rangatira ki Wairau Trust.</li> </ul> <p>We recommend you provide a copy of the application and the notice of</p>

	<p>structures for finfish aquaculture</p> <p>d. conducting aquaculture trials in the CMA including:</p> <ul style="list-style-type: none"> <li>i. introduction of exotic fauna</li> <li>ii. deposition of material in or on the seabed</li> <li>iii. discharges of water and contaminants to water</li> </ul> <p>e. any other activities that are –</p> <ul style="list-style-type: none"> <li>i. associated with the activities described in paragraphs 'a' to 'd'</li> <li>ii. within the project scope described in the above paragraphs.</li> </ul>		<ul style="list-style-type: none"> <li>strengthening economic and social resilience, in terms of managing the risks from the effects of climate change.</li> </ul> <p><b>Potential to have significant adverse environmental effects, including greenhouse gas emissions (19(e))</b></p> <p>The applicant considers the project has the potential for adverse environmental effects, including:</p> <ul style="list-style-type: none"> <li>effects of discharge of faeces and uneaten feed pellets</li> <li>vessel traffic effects.</li> </ul> <p>The applicant noted in the application that preliminary technical assessments are in support of their view that the project will not have any significant adverse effects.</p> <p>We note that you do not require a full Assessment of Environment Effects and supporting evidence to make a referral decision and a panel can consider this and any appropriate mitigation, offsetting or compensation to manage adverse effects of the development.</p> <p><b>Other relevant matters (19(f))</b></p> <ul style="list-style-type: none"> <li>There is a significant public interest over recent years in relation to fish farming applications in the Marlborough region.</li> <li>The project will occur within the consented 450-hectare marine farm of Wakatū Incorporation. The applicant has provided preliminary approval from Wakatū Incorporation which enables the applicant to undertake the project within the project site, and not affect existing consents. Since the project delivery is reliant on the approval of Wakatū Incorporation, we recommend that if the project is referred, you direct the panel to invite comments from Wakatū Incorporation on consent applications for the project.</li> <li>The project will involve installation of structures in the coastal marine area. We recommend that if the project is referred, you direct the panel to invite comments from Marlborough Harbourmaster on consent applications for the project.</li> </ul>		<p>We do not consider you should decline the referral application on the basis that it is more appropriate to go through the standard RMA process.</p> <p><b>Inconsistency with a national policy statement (23(5)(c))</b></p> <p>We do not consider the project is inconsistent with any relevant national policy statements.</p> <p><b>Inconsistent with a Treaty settlement (23(5)(d))</b></p> <p>The project does not directly affect any Treaty settlement redress.</p> <p><b>Involves land needed for Treaty settlements (23(5)(e))</b></p> <p>The project site does not include any land needed for Treaty Settlement purposes.</p> <p><b>Applicant has poor regulatory compliance (23(5)(f))</b></p> <p>Marlborough District Council did not provide any comments on the applicant's environmental compliance history. The applicant noted in the application that they have no compliance or enforcement actions.</p> <p><b>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</b></p> <p>The FTCA will be repealed on 8 July 2023, meaning that a referral order must exist for the project by this date if the project's resource consent applications are to be considered by a panel under FTCA process. The timeframe for completing a referral order following a decision to refer the project is dependent on certain statutory obligations, process steps and the capacity and resourcing of officials. This is becoming increasingly time-pressured as the 8 July deadline approaches.</p> <p>At this stage we consider there is still sufficient time for an Order in Council to be considered by Cabinet and (if approved) authorised by the Executive Council, should you decide to refer the project.</p> <p><b>Other issues &amp; risks:</b></p> <p>The project has non-complying activity status under the MSRMP, meaning that under clause 32 of schedule 6 of the FTCA, a panel is required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the RMA. The project may not be entirely consistent with MSRMP</p>	<p>decision to the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> <li>Fisheries New Zealand</li> <li>Biosecurity New Zealand</li> <li>Wakatū Incorporation</li> <li>Te Tau Ihu Fisheries Forum</li> <li>Ngāti Toa Rangatira ki Wairau Trust</li> <li>Takutai Moana applicants (applicants seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 4 of the Section 17 Report).</li> </ul>
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					<p>objectives and policies (and therefore may not satisfy the gateway test provided for by section 104D(1)(b) of the RMA), but the applicants consider that the adverse effects will be minor and therefore, the project will pass at least one of the gateway tests under section 104D(1)(a) of the RMA.</p> <p>The project proposes to use a small part of the area within the Wakatū Incorporation's consented marine farm, and access to the project site is therefore subject to approval of the consent holder. The applicant confirmed that Wakatū Incorporation has provided a preliminary approval, and the parties are in the process of finalising a legal access agreement. Since project delivery is reliant on the ability of the applicant to access and use the project site, we recommend that if the project is referred, you direct the panel to invite comments from Wakatū Incorporation on consent applications for the project.</p>	
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