

UNDER the Fast-track Approvals Act 2024 (**Act**)

IN THE MATTER an application for approvals for the Hananui
Aquaculture Project – a listed project described in
Schedule 2 of the Act

BY **NGĀI TAHU SEAFOOD RESOURCES LIMITED**
Applicant

**APPLICANT'S RESPONSE TO COMMENTS ON CONDITIONS:
SUBMISSIONS OF COUNSEL FOR NGĀI TAHU SEAFOOD RESOURCES
LIMITED**

23 July 2026

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MAY IT PLEASE THE PANEL

Introduction

1. On 9 July 2026 the Panel released its draft conditions for comment by the parties together with its draft decision. Minute 7 that accompanied those documents invited the Applicant and commenting parties to provide any comments on the Panel's draft conditions by 17 July 2026, and provided for the Applicant to make any final comment on comments (pursuant to section 70(4) of the Act) by 24 July 2026.
2. This memorandum provides the Applicant's final comments on comments in accordance with that invitation.
3. On 15 July 2026 the Panel received from Fisheries New Zealand (a division of the Ministry for Primary Industries) the Chief Executive's recommendation for a determination on the aquaculture decision the Panel needs to make. While not strictly relevant to the comments on draft conditions process established by the Panel, the Chief Executive's recommendation is helpful in that it indicates that the proposal will not have an undue adverse effect on recreational, customary or commercial fishing. On that basis no different or new conditions are required to ensure the proposal meets the test in the Fisheries Act.¹
4. Comments on the draft conditions were made by the Applicant, Environment Southland, Te Rūnanga o Ngāi Tahu, Te Ao Mārama Inc (on behalf of Ngā Rūnanga ki Murihiku) and the Department of Conservation (**DOC**).
5. As an overarching comment, I submit the relatively small number of commenting parties that wished to address conditions, and the small number of conditions subject to comments reflects the strong and helpful process the Panel adopted to the development of conditions. That process built on the Applicant's earlier work with key stakeholders and has ensured that the parties have had several opportunities to consider the conditions, to the point

¹ Schedule 5, clause 15(5) of the FTAA

where few issues remained outstanding by the time the Panel had to produce its draft conditions.

6. No substantive response to the comments on conditions made by Environment Southland, Te Rūnanga o Ngāi Tahu, and Te Ao Mārama Inc are required, and the Applicant records its appreciation for the constructive engagement of those parties throughout the process. The Applicant does have a response to DOC's comments on conditions, particularly in relation to management plan certification. The Applicant (supported by Te Rūnanga o Ngāi Tahu and Te Ao Mārama Inc) has a different view from DOC regarding what the conditions should require.
7. DOC's comments on conditions address:
 - a. A request to insert a condition in the wildlife authority requiring certification of the shark and seabird management plans by DOC (Schedule 2, condition 2).
 - b. A request to change the name of the DOC official and address to which reports of seabird interactions and monitoring must be sent under the wildlife authority (schedule 2, condition 8)
 - c. A request for a new condition on the wildlife authority requiring recording and reporting of all shark incidents/interactions and a separate requirement to report incidents with protected sharks.
 - d. A request for a new condition on the wildlife authority in relation to compliance with DOC guidance concerning avian influenza (bird flu).
 - e. A request to change the panel's proposed wording of the condition relating to the commencement of the resource consent (condition 6).
8. I respond to each of matters (a) – (d) below. Matter (e) concerning the commencement date of the resource consent is the subject of Minute 9 of the Panel dated 23 July 2026, and the Panel has asked the Applicant to consider

that matter further and provide a response by 28 July 2026. Accordingly, in this memorandum I do not address DOC's comment on the commencement date for the consent.

Dual certification of the seabird and shark management plans

9. The seabird management plan (**SBMP**) and shark management plan (**SMP**) are to be certified by Environment Southland pursuant to the resource consent conditions. DOC makes no comment about that.
10. DOC seeks a condition on the wildlife authority that would require the Applicant to **also** obtain certification of these same management plans by DOC.
11. The Applicant opposes this request. Dual certification creates an unnecessary compliance burden on the Applicant, is inherently inefficient, fails the test in section 83 of the Act which prohibits a panel from imposing a condition on an approval that is more onerous than necessary to address the reason for which the condition is set, and runs the risk of putting the Applicant in a difficult position if the certifying agencies are not in agreement. When the Panel queried DOC as to what would happen if certifying agencies had different views about a plan's content the suggested solution was to resort to the Courts. I submit that is unsatisfactory.
12. Certification of management plans is not a general legal requirement. It is a technique that is used in appropriate circumstances whereby a competent authority – in this case Environment Southland – exercises an administrative/technical function to ensure that a management plan under which the holder of an authorisation intends to operate properly addresses the matters required of it.
13. In this case, the proposed resource consent conditions that all parties (including DOC) are happy with sets out the objectives and minimum information requirements of the SBMP (conditions 44 and 45) and SMP (conditions 51 and 52). Environment Southland must certify that those requirements are met (conditions 42 and 50, referring to the certification process requirements described in condition 2).

14. The **exact same conditions** regarding the objectives and minimum information requirements of the SBMP and SMP are repeated in the wildlife authority (conditions 4 and 5 in relation to the SBMP and conditions 10 and 11 in relation to the SMP).
15. For DOC to suggest that somehow Environment Southland's certification process will not address matters in which DOC is interested under the Wildlife Act is disingenuous. DOC asserts that *"While there is some overlap, the management plan serves different functions under the two statutory regimes"* and uses that assertion to support its request to have a separate certification role in relation to the same plans. That assertion rings hollow. The conditions against which Environment Southland needs to assess the management plans for certification purposes are clear. There is a single management plan for seabirds and a single management plan for protected sharks. DOC's request is that the Panel should duplicate Environment Southland's certification role in relation to these two plans by requiring the Applicant to also obtain certification from DOC of exactly the same plans, certified against exactly the same criteria. When boiled down, DOC's position can only be that it either does not consider Environment Southland to be competent to certify the management plans, or that it wishes to retain an ability to argue that the management plans should address matters in addition to (or different from) those required by the conditions. Neither position is tenable.
16. If DOC is inferring that Environment Southland cannot be relied upon to discharge the certification role responsibly, the Applicant entirely rejects that assertion. Throughout the approvals process for the Hananui Aquaculture Project Environment Southland has exercised its role and responsibilities in a timely, consistent, responsible, and responsive way. The Applicant has confidence in Environment Southland to undertake the role of certifier of management plans in a fair and consistent way. Certification of management plans is a common requirement under resource consents and is one with which Environment Southland is familiar. Environment Southland has confirmed to the Panel that it is able to discharge the function.

17. The same cannot be said of DOC. The Applicant's experience in dealing with DOC is that, despite the no doubt earnest endeavours by several DOC officials, as an organisation DOC consistently demonstrates an inability to respond in a timely way, and a consistent ability to surprise by bringing up new matters and generally acting in unpredictable ways. The Applicant has no confidence that DOC would exercise a plan certification role fairly and reasonably.
18. In the alternative, if DOC is suggesting that Environment Southland's certification role is fine, but that in exercising a separate certification role in relation to the SBMP and SMP DOC may be looking for different matters to be addressed, I submit that is entirely inappropriate. The conditions clearly set out what the management plans need to include. They either include those matters in a sensible way (in which case the plans must be certified) or they don't (in which case the plans will need to be amended so they can be certified). The Applicant is concerned that DOC is working under the misapprehension that somehow the certification function provides an opportunity for it to demand additional matters be included in the certified plans. That is simply wrong.
19. Further to this, condition 2(b)(iii) of the resource consent is relevant, and requires that, subject to limited exceptions, the plans submitted to Environment Southland for certification must be in general accordance with the draft plans provided to the EPA on 1 July 2026. It is also relevant that in relation to both the SBMP and SMP DOC has confirmed to the Panel that it is comfortable with the content of the 1 July 2026 drafts, and the Applicant is still required to seek feedback on the contents of those plans from DOC, and to faithfully report how that feedback has or has not been addressed in the final SBMP and SMP submitted to Environment Southland for certification.²
20. DOC comments that it has maintained the view that dual certification requirements should be imposed when resource consents and wildlife authorities are both in play throughout the fast-track process, including on projects where certification arrangements have been contested. That may be

² Conditions 48 (SBMP) and 55 (SMP)

true, but what DOC's comments do not report is that such an approach has not always been accepted by panels.

21. Counsel understands the position regarding management plans and certification to be variable across different fast-track processes, with no one approach taken by all panels. Final outcomes include:

- a. Wildlife management plans being attached to the wildlife authority as granted. This is consistent with the approach DOC habitually takes when issuing wildlife authorities outside of the fast-track process. This approach is not suitable in this instance because the SBMP and SMP also address management of those wildlife for resource management purposes, and attaching a management plan to the wildlife authority would mean that any amendment to either management plan would have to be certified by the Council and be the subject of a formal variation of the wildlife authority. This is dual certification by another name and is inherently inefficient.
- b. Dual certification requirements, as DOC contends for in this case.
- c. Certification of management plans by Council under the resource consent, with the wildlife authority subject to a condition that requires it to be exercised in accordance with those certified management plans – the approach the Panel has proposed in this instance, supported by the Applicant and accepted as workable by Environment Southland. This is the position taken in the Waitaha Hydro decision³ and the Waihi North Project mining decision (in part). These outcomes in other fast-track contexts were not challenged by DOC.

22. For the avoidance of doubt, I submit:

³ This approach was taken in the Waitara Hydro Scheme decision – see https://www.fasttrack.govt.nz/data/assets/pdf_file/0024/26673/REISSUED-Waitaha-Decision-Te-18-o-Mei-2026.pdf at paragraphs 1155 - 1169

a. Dual certification is not required as a matter of law. It may be permissible (i.e., it is not necessarily unlawful) but the Panel would need to be satisfied it was a reasonable and necessary approach having regard to the obligation not to impose onerous conditions contained in section 83. To satisfy itself on this matter I submit the Panel would need to conclude that for some reason Environment Southland is an unsafe certifier of the SBMP and SMP having regard to the consent conditions that set out the objectives of the plans and what each plan must include. There is no evidence to support such a conclusion. The potential need to engage an expert to advise on certification has been identified by Environment Southland but is not a disqualifying factor. Councils engage experts all the time for this and other purposes without difficulty, and there is no certainty that DOC will retain employed staff that will be available to certify the SBMP and SMP throughout the term of the approvals.

b. DOC's comment in relation to this matter is extraordinary. DOC says:

DOC also notes ES's submission that, if responsible for certification of these plans, ES may need to engage external technical specialists to support its decision-making. This highlights the specialist nature of the subject matter and the limited availability of suitably qualified experts. Where that expertise already exists within DOC, it is more efficient and appropriate for DOC to retain a certification role in relation to matters falling within its area of regulatory responsibility.

c. The prospect that Environment Southland may need to engage an external expert to assist it does not highlight the specialist nature of the subject matter and the limited availability of suitable experts. All it does is indicate that Environment Southland may not have suitable experts on staff.

- d. More importantly, DOC's suggestion does nothing to address any certification challenge Environment Southland may face. The Council must still certify the plans. All that DOC's suggestion does is compound any issues by adding an additional certification process so that each plan would need to be separately certified by two certifiers. How could that possibly be more efficient and appropriate than the Panel's proposed approach? And to further compound the problem, the consent conditions still require engagement with DOC and reporting of DOC's feedback and how it is addressed when the plans are submitted to Environment Southland for certification.
- e. There is a real risk that dual certification requirements could lead to conflict, additional inefficiency, additional cost, delay for no real benefit, and potentially the need to somehow resort to the Courts to break a certification deadlock.⁴
- f. The approach taken in the Panel's draft conditions is not novel. It has been adopted elsewhere and not challenged by DOC.
- g. Environment Southland has indicated it is able to discharge the role as sole certifier of the SBMP and SMP if that remains the Panel's preference.

23. Finally in relation to this matter, the Applicant has low confidence in DOC's ability to discharge the role of certifier of the SBMP and SMP in a timely and efficient way. As the Panel will be aware, the Applicant adopted a process leading up to the lodging of its substantive application under the FTAA, and subsequent to lodgment, of extensive engagement with key stakeholders⁵. By far the most challenging party to work with was DOC. While there were several positive interactions with DOC the engagement was also characterised by delays in response because of expert unavailability, and unexpected twists and turns as different DOC personnel contributed their input, including DOC raising

⁴ It is unclear what process would need to be taken in this regard – perhaps declaratory relief or judicial review.

⁵ Manawhenua, Environment Southland, DOC and MPI

new substantive matters when previous communications and advice to the Panel Convener had indicated that only minor matters remained outstanding. This resulted in, at times, a high level of frustration for the Applicant and a need to 'reset' the engagement process with DOC.

24. This history makes the Applicant nervous about DOC having an ongoing formal role as plan certifier and reinforces the Applicant's preference that Environment Southland remain the sole management plan certifier.
25. I further submit that the Panel should also keep in mind that systemic issues with DOC's ability to discharge functions in a timely and transparent way are well known. The Panel will recall the letter from New Zealand King Salmon dated 6 May 2026⁶ (included as Attachment J to the Applicant's response to comments on the substantive application dated 7 May 2026) in which NZKS (at paragraph 19) refers to the process for renewal of a permit granted by DOC in relation to seal interactions which was indicated to require 3 months (which in itself seems a generous timeframe to renew a permit) but which, as at the date of the letter, had taken more than 11 months, without resolution.
26. It will not be lost on the Panel that one of the benefits of the FTAA is that it allows parties such as the Applicant to secure in a transparent and timely way the approvals it would otherwise need from DOC. In my submission care needs to be taken not to impose certification conditions that effectively invite the same frustrations that the FTAA seeks to resolve. DOC proposes a certification role that aligns with its usual operating philosophy - no accompanying timeframe within which it must work, no transparency as to the process it will follow, and no real opportunity for the Applicant to do anything other than submit a plan, and hope that DOC might turn it around in a reasonable timeframe, even though history would suggest this may not occur.

⁶ https://www.fasttrack.govt.nz/__data/assets/pdf_file/0019/26137/Attachment-J_NZKS-letter.pdf

Monitoring and reporting

27. The Applicant has no issue with DOC's requested changes to Schedule 2, condition 8 of the wildlife authority concerning the preferred addresses for DOC notification/reporting.
28. The Applicant has no issue in principle with the NEW reporting condition requested by DOC in relation to shark incidents/interactions, but notes that the condition should be limited to the shark species covered by the permit – white sharks and basking sharks, not all shark incidents/interactions with the marine farm as DOC's wording proposes.

Bird Flu

29. DOC seeks a new condition on the wildlife permit requiring the Applicant to comply with DOC guidance on avian influenza as published on a nominated DOC web page. DOC also proposes a series of additional consent requirements around reporting and handling sick or dead birds and other wildlife.
30. The Applicant opposes this suggested new condition.
31. DOC comments that its proposed new condition is intended to address the risks posed by avian influenza in New Zealand. It is unclear whether DOC is concerned about human health and safety, transmission of the virus to other wildlife generally, or some specific (and undisclosed) risk related to the Hananui Aquaculture Project. In the absence of this information it is difficult to make much sense of the condition.
32. Biosecurity issues are managed by MPI. MPI has not requested this condition. As the nominated DOC website notes, MPI (and not DOC) is the lead government agency for New Zealand's response to bird flu. The Applicant will of course comply with lawful biosecurity directions from MPI (or DOC if it has statutory responsibility), but is not willing to accept this novel condition with uncertain intent and unknown operational impacts that is now being suggested by DOC. The Applicant does not know who is maintaining the nominated

website, and the provenance of any content that might be posted on it (and in particular whether it is approved by MPI).

33. Further, the wildlife approval relates to seabirds and protected sharks, and yet DOC is proposing a condition that also addresses other wildlife not subject to the approval and extending the Applicant's responsibility to "on or near the authorised site" – whatever that means.

34. In relation to the three listed management requirements a-c in DOC's proposed condition the Applicant says:

- a. The Applicant must comply with any mandatory reporting requirements that sit outside the wildlife authority, and saying this as a condition of the authority adds nothing.
- b. Avoiding handling a sick or dead bird unless directed to do so by MPI or DOC is likely in conflict with Schedule 2, conditions 6 and 7 of the wildlife permit relating to euthanasia of birds, and the requirements of the SBMP (section 6.0 Seabird Interactions) which DOC has indicated it is comfortable with.
- c. The Applicant will follow MPI's biosecurity guidance, and DOC's guidance if it is approved by MPI.

Dated 23 July 2026



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