

**BEFORE THE COMMISSIONERS  
IN WAIMATE**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of an application for resource consent for construction of a 7.5 km pipeline and discharge of treated wastewater into the coastal marine area

**BETWEEN** **OCEANIA DAIRY LIMITED**  
Applicant

**AND** **ENVIRONMENT CANTERBURY REGIONAL COUNCIL**  
Consent Authority

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**LEGAL SUBMISSIONS OF ACTION STATION AOTEAROA LIMITED**

Dated 22 July 2020

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**Barrister acting**  
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## SUMMARY / INTRODUCTION

1. Action Station and its 6309 petitioners<sup>1</sup> oppose the application to construct a 7.5km pipeline and discharge of treated wastewater up to 10 million cubic metres<sup>2</sup> per day into the coastal marine area (**CMA**) and proposed South East Marine Protection Area (**proposed SEMP**). Action Station say that the proposal will result in adverse effects to the CMA and potential adverse effects to a number of threatened species in breach of policy 11 of the New Zealand Coastal Policy Statement (**NZCPS**). The proposal is contrary to the proposed SEMP and will undermine its application before it even starts.
2. Key issues raised by the Action Station Petition and addressed in these submissions are:
  - Adverse effects to the coastal marine area, including to the South East Marine Protected Area (SEMPA);
  - Adverse effects to national threatened and endangered species;
  - Cumulative effects from multiple discharges into the CMA;
  - Application of the NZCPS including the precautionary principles; and
  - Consideration of alternatives.
3. Action Station members support the position of Arowhenua Rūnanga.

## RELEVANT PLANNING INSTRUMENTS

4. The proposal involves erection and placement of structures, occupation of seabed, disturbance to seabed, deposition of material on the seabed and discharge of contaminants to the Coastal Marine Area. The bundled application is for a discretionary activity under the Regional Coastal Environment Plan for Canterbury Region (RCEP).
5. These submissions focus specifically on the application of the NZCPS to this proposal and do not propose to go through the other regional planning instruments.

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<sup>1</sup> Action Station has made a submission on behalf of 6309 members who all signed a petition (found at action stations website) which was concerned with the effects to the marine environment from the proposal. 1500 of the petitioners<sup>1</sup> are based in the Canterbury region.

<sup>2</sup> Section 4 and 5 of the Application and at [8], s 42A report.

## ADVERSE EFFECTS

6. The primary concerns of Action Station are in relation to water quality and ecosystem health that will result from the discharge of contaminants into the CMA and proposed SEMP. Discharges to the CMA will be due to both the excavation and disturbances to the foreshore and offshore environment during the construction period, and from the discharge of treated wastewater during the operational phase.<sup>3</sup>
  
7. The applicant states the discharge is expected to be fully dispersed within 50 metres of the diffusers<sup>4</sup>. Although fish are likely to move away from the mixing zone, the loss of habitat is considered insignificant compared to the wider Canterbury Bight area.<sup>5</sup> A similar approach is taken to effects to breeding grounds which may be altered.<sup>6</sup> At paragraph [178] the s42A report states “There are however some likely effects to benthic biota”.<sup>7</sup> In conclusion the AEE and s42A reports have found that there are some adverse effects to fish and benthos in the immediate area but the applicant states this will result in only negligible effects<sup>8</sup> to other marine mammals and seabirds.
  
8. Benthos and marine fish are important components of the habitat provided for in the proposed SEMP and threatened species found in the area<sup>9</sup> which includes Hector's dolphins which are (nationally vulnerable), NZ fur seals (not threatened) and a number of seabirds.<sup>10</sup> The AEE and s42A report fail to consider the relevance of these breeding grounds and benthic habitats to the proposed SEMP, its interconnection and buffer roles for proposed marine protected area B1 and the wider MPA network (discussed further below) and inadequately considers the importance of the proposed SEMP and B1 to nationally threatened species.

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<sup>3</sup> At [91] s42A report.

<sup>4</sup> At [115], s 42A report.

<sup>5</sup> At [173], s 42 A report.

<sup>6</sup> At [174], s42A report.

<sup>7</sup> At [197] s 42A report.

<sup>8</sup> At [182], s42A report.

<sup>9</sup>

<sup>10</sup> In Technical Report: Coastal Bird Assessment:  
Intertidal-nearshore

- a. Black-billed gull (Threatened-Nationally critical),
- b. Bullers shearwater (At risk-naturally uncommon)
- c. Red billed gull (At risk-declining)
- d. South Island pied oystercatcher (At risk-declining)
- e. White-fronted tern (At risk-declining)

Offshore

- a. Bullers shearwater (At risk-naturally uncommon)
- b. Sooty shearwater (At risk-declining)

## South East Marine Protection Area- Site C1-Waitaki MPA

9. The proposed outfall and discharge fall squarely within the proposed SEMP C1 site, proposed “Waitaki North” (an area of 254 square kilometres). This is a proposed Type 2 Marine Protection Area which protects important recruitment areas and nursery habitats, with restrictions on commercial but not recreational fishing and prohibits effects to the seafloor. Area C1 contains foraging habitat for National endangered Hector’s Dolphins and Hoiho<sup>11</sup>. It also “provides a buffer”<sup>12</sup> for the marine reserve at B1. The proposed activity also falls within the proposed Kelp Protection Area under the SEMPA proposal.<sup>13</sup>
10. The proposed South East Marine Protection Forum’s proposed “Site C1”-Waitaki MPA” is a relevant consideration that Action Station submits should be taken into account under s104(1)( c) RMA. Action Station submits that weight should be placed on the purpose and intention of the SEMP, the ecological values identified and its proposed prohibition of activities which impact the seafloor.
11. The SEMP Forum was established in 2014 to “design an MPA network consistent with the MPA Policy”. The Forum region was prioritised because “the regional is the largest stretch of New Zealand’s coast that has no MPAs”<sup>14</sup> and therefore under pressure ecologically. The proposed network has been approved by cabinet for public consultation and submissions close on 3 August 2020. The process overall has included an extensive consultation and engagement process and review of the relevant science.
12. In the Forum’s Recommendation report to the Minister of Conservation and Minister of Fisheries<sup>15</sup>, the forum stated the following in regard to Waitaki Offshore Site – C1 (Type 2) :

*The use of the area by seabirds and mammals is an indicator of its high biodiversity values and associated habitats. The proposed MPA would assist in the maintenance and recovery of biodiversity values by prohibiting impacts on the*

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<sup>11</sup> Ibid at [78](t).

<sup>12</sup> At [84] cabinet doc

<sup>13</sup> At [78](s), s 42A report.

<sup>14</sup> At [22] document to cabinet

<sup>15</sup> Dated February 2018, found at

<https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/semf/semf-recommendations-report.pdf> at 2.4.4.

*seafloor, reducing fishing pressure, and decreasing risks to seabirds and mammals.*<sup>16</sup>

*It should be noted that there are currently mitigation measures on commercial vessels, which are reducing the negative impacts on seabirds and dolphins. The proposed MPA will further reduce bycatch of seabirds in the vicinity, which are still being recorded. The seaward boundary of the site was drawn at 10 km (5.4 NM) to avoid displacing trawl fishery effort. However, this decision is likely to reduce the site's effectiveness in protecting the habitat of seabirds and dolphins. The site establishes a link in the MPA network along the Forum region's coastline and provides replication of some habitat types that are present at Site A1.*

13. The Joint Department of Conservation (DOC) and Fisheries New Zealand advice to the Ministers on the Forum's recommendations paper of 19 October 2018 sets out the following in regard to proposed site C1:

*The waters around the Waitaki River are thought to hold some regionally unique habitats due to the influence of freshwater and riverine sediments on the marine environment. Although unstudied, anecdotal evidence indicates that the cobble and gravel substrate found in this area supports several biogenic habitats of high biodiversity value such as kelp and rhodolith (hard calcified red algae) beds. Should these habitats exist, these are likely to provide habitat for juvenile fish species.*<sup>17</sup>

*In terms of the MPA habitat classification, the agencies consider that Site C1 includes five habitat types that contribute to the representation of those habitats in the network (Table 13).*<sup>18</sup>

*Historically, some of the densest concentrations of squat lobster (*Munida gregaria*), an important food source for fish, marine mammals and birds, have been found around the Waitaki River mouth. Squat lobsters are now at a very low abundance which is assumed to have an impact on trophic linkages.*<sup>19</sup>

14. In regard to a prohibition of bottom impacting methods the report states the following:

*Site C1 is recommended in the Report to prohibit mobile, bottom impacting methods. The agencies consider that these are the minimum required to meet part (a) of the protection standard, particularly to protect the physical features that support biodiversity.*<sup>20</sup>

15. The prohibition of mobile, bottom impacting methods captures the effects of construction of the pipeline and its ongoing discharge which will result in a plume

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<sup>16</sup> At 2.4.4.2

<sup>17</sup> At [87], Joint (DOC and Fisheries New Zealand) advice to the Ministers on the Forum's recommendations (19 October 2018), found at <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/semf/semf-joint-agency-advice.pdf>

<sup>18</sup> Ibid, at [90]

<sup>19</sup> Ibid, at [88]

<sup>20</sup> Ibid, at [91]

which eventually comes to rest on the seabed. This is aligned with MPA guidelines which contain commentary on how protection of the seabed is to be interpreted, and include that activities that cause significant damage to the seabed and associated biodiversity should be prohibited in a MPA.<sup>21</sup>

16. The s 42A report comments that “Using Ministry for Environment (1994) factors as a guideline, the applicant notes that the receiving water around the outfall is managed as general open marine waters and does not have any specific ecological values or recreational uses”<sup>22</sup> . This approach completely ignores the last six years of research and review by the SEMP Forum and set aside the particular values identified by that Forum.

### **CUMULATIVE EFFECTS**

17. There are already a number of consented outfalls<sup>23</sup> in close proximity to the proposal:

- Fonterra Limited holds consent CRC172001 to discharge up to 24,000 cubic metres of treated wastewater per day from a milk processing factory at Studholme, located 14 kilometres north of the applicant’s proposed outfall. This consent is inactive.
- Silver Ferns Farms holds active consent CRC191930, currently operating under s124 of the RMA, to discharge up to 12,000 cubic metres of meat processing effluent, located approximately 40 kilometres north at Pareora. A revised application for the renewal, CRC203305 was received in February 2020 and is currently in process.

18. The AEE and s42A report have inadequately assessed the cumulative adverse effects of these discharges on the receiving environment and its biodiversity.

### **NEW ZEALAND COASTAL POLICY STATEMENT**

19. Relevant objectives and policies include but not limited to:

- |           |                                 |
|-----------|---------------------------------|
| Policy 3  | Precautionary Approach          |
| Policy 4  | Integration                     |
| Policy 11 | Indigenous Biological Diversity |

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<sup>21</sup> At [78](c), s42A report

<sup>22</sup> At [144], s42A report.

<sup>23</sup> Fonterra limited holds consent CRC172001 to discharge up

20. Action Station says the precautionary approach is relevant for the reasons identified in the s42A report but also do to the failure to adequately consider cumulative effects and the importance of the area as a habitat in the network of MPAs providing for marine resilience and threatened species.
21. The proposed SEMP is relevant in regard to integrated management. Coming first in time means this application is not assessed against the values, purpose and intentions of the proposed SEMP. Action Station says that it should be and would avoid a situation where the proposed application could undermine a marine protected area years in the making.
22. There are a number of threatened species in the area including Hector's Dolphins, NZ fur seals and threatened seabirds. Policy 11 of the NZCPS requires an avoid policy for adverse effects to threatened species. Under *King Salmon* avoid means avoid. The proposal includes adverse effects to fish and benthic species within the proposed SEMP, an area of 5 different habitats including for threatened species. The application has failed to consider the importance of these habitats to threatened species as a SEMP.

**22 July 2020**



**Ruby Haazen**  
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