

IN THE MATTER OF

MPI DISCUSSION PAPER NO: 2017/04

POTENTIAL RELOCATION OF SALMON FARMS
IN THE MARLBOROUGH SOUNDS – PROPOSAL
TO AMEND THE MARLBOROUGH SOUNDS
RESOURCE MANAGEMENT PLAN TO ENABLE
THE RELOCATION OF UP TO SIX EXISTING
SALMON FARMS BY REGULATIONS MADE
UNDER SECTION 360A OF THE RESOURCE
MANAGEMENT ACT 1991

STATEMENT OF EVIDENCE OF SYLVIA JEAN ALLAN

Prepared for Friends of Nelson Haven and Tasman Bay Inc

and

The Kenepuru and Central Sounds Residents' Association

Dated the 27th day of March 2017

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INTRODUCTION

Qualifications and Experience

- 1 My name is Sylvia Jean Allan. I have a Bachelor of Science (Honours) Degree in physical geography and geology and a post-graduate Diploma in Town Planning. I am a Fellow of the New Zealand Planning Institute (**NZPI**) and am a former President of that professional body. I have more than 45 years experience as a planner, both in New Zealand and in the United Kingdom. I have been awarded both the first Nancy Northcroft Planning Practice Award by NZPI, and an NZPI Distinguished Service Award. I am experienced in most aspects of environmental planning. Amongst my areas of specific expertise are coastal and maritime planning.
- 2 I was initially Chair of the Legislation Committee of NZPI in the late 1980s when various legislative reviews took place which culminated in the development and introduction of the Resource Management Act 1991 (**the RMA**). In 1990 and 91 I was the NZPI President and also independently advising the Ministry for the Environment on aspects of the legislative reform. That experience uniquely qualified me to understand the intent and principles behind the RMA. I have continued a strong interest in the evolving legislation and practice of resource management and planning.
- 3 I am currently an independent planning consultant with my own firm, Allan Planning and Research Ltd. Amongst my clients are central government, district and regional councils, energy and communications companies, port companies, industrial and commercial organisations, community groups, and individuals. I work widely around New Zealand.
- 4 In terms of coastal and maritime experience, I provided planning advice to the port of Wellington for 23 years and the Port of Napier for 20 years. This has involved engagement in numerous coastal plan development and application processes since the late 1980s. I assisted the ports of New Zealand in their combined submission on the proposed New Zealand Coastal Policy Statement in 2008. I also assisted Nelson

City and Tasman District in developing the coastal and maritime provisions in their current Resource Management Plans. I have been involved in a wide range of applications for the use and development of coastal areas, including recreational and community-based developments.

- 5 Throughout the past two decades and more I have been involved both in assisting applicants in seeking to consent aquaculture developments and associated facilities, and in opposing applications by other parties, particularly in the Marlborough Sounds but also in a range of North Island locations. I have assisted the holders of consents for large offshore marine farms in Napier and in the Bay of Plenty (offshore from Opotiki) in seeking consents to broaden the range of species able to be farmed within their consented areas. I have assisted a client with evaluating opportunities to use such space¹ for fin-fish farming, an initiative which is presently deferred.
- 6 I was also extensively involved in the appeals to the Tasman District Plan around the turn of the century on behalf of a consortium known as the SMW Group (Sealords, MacLab and Westhaven Shellfish). As part of an extended process, I was one of a small group of expert advisors who developed and provided expert evidence in relation to the concept of Aquaculture Management Areas and their inclusion in regional coastal plans, along with policies and rules relating to an adaptive management approach to such areas. These concepts were later appropriated for wider application, following the legislative Moratorium on further marine farm development. I understand the final party, Challenger Scallops, has recently withdrawn its final opposition to the Tasman District Plan proposals, so large areas in Tasman and Golden Bay are available for aquaculture development.
- 7 From this experience, I am familiar with the range of types of aquaculture and their associated effects in general terms. I am also familiar with the range of issues associated with such farming in the Marlborough Sounds environment. From the range of applications I have been involved in, I have visited most parts of the Sounds on several occasions. I have observed existing salmon farm operations at Clay Point,

¹ A zoned offshore AMA area within the relevant regional coastal plan.

Otanerau Bay, Waihinau Bay and Forsyth Bay. I have also observed fin-fish farming in the Mediterranean and pond barramundi farming in Queensland.

- 8 In 2010 I provided evidence to the Environment Court in relation to ENV 2009-CHC-152, in which King Salmon Ltd sought to modify consent for an existing (undeveloped) mussel farm into a salmon farm in Waitata Reach. The appeal was successful on legal interpretive grounds² and the proposal was withdrawn. In 2012 I provided evidence to the Board of Inquiry (**BoI**) on the range of new salmon farms proposed by King Salmon Ltd, on behalf of Pelorus Wildlife Sanctuaries and Others, focussing on the proposed new farms in Waitata Reach. This process resulted in a plan change and consents providing for two additional salmon farms in the Pelorus Sound at sites known as Waitata and Richmond³ and one other site. In late 2014 I gave evidence in relation to an appeal on a proposal by KPF Investments, seeking to convert an existing mussel farm at Danger Point to a salmon farm. The Environment Court overturned the Marlborough Council's decision to grant a limited consent⁴. I have also recently been involved in opposing two new mussel farms in Beatrix Bay, both of which have been reviewed by the Environment Court, and one by the High Court⁵. One approval was granted and one declined.

Background Information

- 9 The evidence has been prepared in relation to the sole opportunity for public comment on a proposal by the Ministry for Primary Industries (**MPI**), in the guise of the Minister for Aquaculture, to use regulations under section 360A of the RMA to provide for new salmon farms ("**the proposal**"). It particularly focuses on the Pelorus Sound proposal, but also includes general comments relating to process which have a more generic basis. In preparing this evidence, I have reviewed the various material on the MPI consultation website "Marlborough salmon relocation". As there is a large

² Interim decision of the Environment (Dealing with Jurisdiction Issue) Decision No. [2010] NZ EnvC 411.

³ Final Report and Decision of the Board of Inquiry – New Zealand King Salmon Requests for Plan Change and Applications for Resource Consent; 22nd February 2013. The Richmond site is shown as "Kopaua" on Map 1 of the main MPI "Consultation document".

⁴ Decision No. 2014 NZEnvC 152. The original consent had been restricted to less volume of discharges of salmon food than sought.

⁵ In the latter case, ecological values and the presence of King Shag were key considerations.

volume of material, I cannot confirm with confidence that I have read all the material. However, I have read most of it. In this evidence I refer to specific items as necessary.

- 10 I have also read evidence prepared by Dr Michael Steven and Mr Rob Schuckard on behalf of Friends of Nelson Haven and Tasman Bay and the Kenepuru and Central Sounds Resident's Association.

Acknowledgement of Code of Conduct

- 11 Although this evidence is not prepared for an Environment Court hearing, I have applied the Code of Conduct for Expert Witnesses in the Environment Court 2014 version⁶. Except where I state that I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might detract from the opinions that I express in this statement of evidence.

Scope of Evidence

- 12 My evidence provides:
- the implication and “end point” of the proposal
 - the physical and planning context
 - the acceptability and appropriateness of the method chosen to achieve the “end point”
 - the relevant statutory tests (being the RMA section 360B requirements)
 - Part 2 of the RMA
 - a conclusion
 - a brief commentary on parts of the plan change.
- 13 My evidence is critical of both the process and the potential outcomes of the current endeavour to expand salmon farming in the Sounds. This is based on my

⁶ Included in the Environment Court Practice Note 2014. This is in accordance with paragraph 33 of “Information for the public wishing to make comment”, issued by the Chairperson, 7th March 2017.

understanding and appreciation of the current characteristics and quality of the environment in which virtually all the new sites are proposed to be located, as well as my understanding of the techniques, environmental management, and environmental effects associated with salmon farming. It takes into account my knowledge of the available and “normal” processes for industry expansion through the RMA. It is also based on a concern about the pressures on the local communities and their advisors, and that inquiries and outcomes that appeared to be settled on the basis of an acceptable level of environmental change addressed at national level as recently as four years ago are in the process of again being challenged⁷.

- 14 Having said that, I acknowledge the additional information put forward this time, including recognition of alternative means of farming and/or seabed restoration which were not acknowledged in King Salmon’s last proposal. I also acknowledge the superior cage design and management systems proposed.
- 15 I do not, however, accept the apparent underlying assumption that existing consents with associated limitations based on environmental impacts have an effective right to relocate⁸. The significant financial and support effort which has been made by MPI in association with and to the benefit of King Salmon, and the regulatory method proposed to be used, is in my opinion, out-of-kilter with the only relevant RMA national policy provision, found in the 2010 New Zealand Coastal Policy Statement (**NZCPS 2010**). I am concerned about the emphasis being placed on non-RMA government policy to justify the current approach. These aspects are discussed later in my evidence.

⁷ This being the third time that King Salmon has sought additional marine space for industrial purposes in Waitata Reach that I have had direct experience of.

⁸ Which is a thread which runs through the proposal document.

THE IMPLICATION AND “END POINT” OF THE PROPOSAL

- 16 The intention of the proposal currently put forward for public consultation is for the Minister of Aquaculture to recommend to the Governor-General the use of regulatory powers to provide new areas zoned for salmon farming within the coastal marine area in the Marlborough Sounds. The intention is that currently consented but problematic existing farms will be relocated onto these areas, in a given priority order.
- 17 However, the proposal goes further than that. The proposal, if all sites proceed, would provide for a significant expansion in the total area – of 15.4ha, or approximately 30%⁹ – available for salmon farming. Although the surface structure area is said to be less than at present this is somewhat misleading as the two Crail Bay sites are understood not to be used, and the Forsyth Bay site (and the Waihinu Bay) site are periodically fallowed. The proposal also allows for expansion through monitored intensification of the use of the new areas within specified environmental parameters – thus providing for industry expansion in the Sounds.
- 18 The expansion proposed is very significant – particularly in relation to Waitata Reach in Pelorus Sound, where five of the six proposed new areas are located. This area already contains two of the “new” farms provided for in Coastal Marine Zone 3 by the BoI’s February 2013 decision. Only two of the four sites proposed to be relinquished are located in the vicinity of the Waitata Reach, with two more further south in Crail Bay and the remaining two at Ruakaka and Otanerau in Queen Charlotte Sound.
- 19 The BoI decision limited the two new Waitata Reach farms to a total feed capacity of 10,000 tonnes per annum. The additional feed discharge with new sites in the proposal can reach 23,000 tonnes in the Waitata Reach. Along with the transfer, this is a 4 to 5-fold intensification of activity over that associated with the low-flow sites¹⁰.

⁹ Based on a comparison of the consented low-flow sites with the new sites in the proposal, although I accept that it is intended that the statement on p6 of the proposal document which states “*the amendments would ensure there is no overall increase in total surface structure area used for salmon farming in the Marlborough Sounds*” also applies.

¹⁰ Information from evidence of Mr Schuckard, paragraphs i, 13.

- 20 The proposal thus provides for a somewhat larger area to that currently consented of new coastal marine space (currently used only for transport and transit, fishing and other recreation activities) to be occupied and developed for salmon farming. The sites put forward for consultation are all more prominent in their locations than those they are intended to replace. There is inevitably human activity associated with salmon farms, and this will be more intensive than at the present and more obvious in the wider Pelorus Sound.
- 21 There has always been a question as to whether salmon farming can be truly “sustainable”. Unlike other farmed species in New Zealand, salmon farming relies on very significant protein inputs of fish food. The conversion of the food to saleable salmon requires high food inputs, much of which is lost as waste nutrient products. The output of nutrients into the natural environment through faeces and waste food¹¹ is very substantial. Mr Schuckard’s evidence addresses this in some detail, including the equivalence in terms of nitrogen from input from human waste discharge (equivalent in this case to a medium sized New Zealand city)¹². The waste products need to be “treated” in and by the natural environment. This is clearly an issue in any partially enclosed space, and particularly when contemplating introduction or significant expansion of such activity any environment which has other recognised significant values.

THE PHYSICAL AND PLANNING CONTEXT

- 22 Looking at the cluster of five proposed new salmon farming zoned areas, along with the two new existing¹³ in the Pelorus Sound, it is clear that this area would become a substantial operational area for the salmon farming activities of the King Salmon business if the regulatory process proceeds further. Over time with intensification to the extent available, the area is likely to take on an industrial character due to the intensity of associated human activity as well as the presence of structures scattered

¹¹ I acknowledge the industry’s endeavour to reduce waste, for economic as well as environmental reasons.

¹² Evidence of Mr Schuckard, paragraph 25. This is similar to my own Bol evidence, which relied on a Cawthorn Institute assessment.

¹³ And acknowledging the two to be relinquished at Waihinu Bay and Forsyth Bay assuming they are given sufficient priority or they fail and are abandoned.

over the area, with intervisibility as well as visibility to all those passing through the area. Geographically, and in many other ways, this is at present a very special part of the Sounds.

General Description of the Receiving Environment

- 23 My understanding of the receiving environment is from a geographer/geologist's perspective, informed by evidence from a wide range of commentators, and with a planner's understanding of the variability of effects that are enabled by the social and planning context.
- 24 The Waitata Reach in the Outer Pelorus Sound is a strikingly-defined north-east/south-west orientated passage, some two kilometres wide between main headlands, and some 15 kilometres between the Chetwode Islands at the north and the dramatic pyramid shape of Maud Island at the south. As described and discussed by Dr Steven, this area encompasses the land-sea continuum and its character is unified by the marine environment. It would generally be perceived as a single coherent landscape character area¹⁴, including by people who traverse the area and those who live in or near to it.
- 25 This is the wide expanse of water framed by adjacent land through which craft traverse when passing between the Cook Strait and Havelock, or other locations in Pelorus Sound, Kenepuru Sound, Tennyson Inlet, Tawhitinui Reach and Beatrix and Crail Bays¹⁵. It is remote and wild.
- 26 As part of a drowned ria coastline, the area consists of numerous peninsulas and embayments, with prominent headlands, steeply sloping hillsides and a range of geomorphological features such as the very narrow promontory off Te Akaroa (also

¹⁴ Evidence of Dr Michael Steven, paragraphs 40 and 41, Figure 1.

¹⁵ Recreational and access/transport boating is readily apparent in this remote part of the Sounds. The Waitata Reach provides the only access into the Pelorus Sound.

known as West Entry Point), Boat Point Rock, White Horse Rock and Yellow Cliffs at Reef Point (Kaiaua), and Maud Island itself.

- 27 The “faces” of the hills which front the Waitata Reach are generally very steep. They reach to approximately 400 metres at Te Kopi, behind Post Office Point and at the peak on Maud Island, with a more typical height being 250 metres behind White Horse Rock, Yellow Cliffs, Tapipi and The Reef. The undeveloped faces of the landforms on the north-west at present form an unmodified edge to the Waitata Reach, matched by a similar lack of development on the faces at Te Akaroa to the north and Reef Point and Maud Island each to the south, and on the south-east side of the Reach including all the facing coastline from Post Office Point to Tapipi, The Reef and Te Kaiangapihi. This is a key consideration in terms of the Waitata Reach: along the main axis there is little evidence of any development. Vegetation is now changing from pasture to bush in many parts of the Reach, with a trend to higher levels of naturalness.
- 28 The old planned settlement of Bulwer lies at the end of the road from Admiralty Bay, in Waihinau Bay. This settlement consists of an historic hotel and several scattered houses. There are other small developed pockets in the embayments off Waitata Reach, but these tend to be along the sides or at the heads of bays and not visible from the main Reach.
- 29 While there are numerous marine farms in the nearby wider area, most are relatively inconspicuous in terms of the sea passage of Waitata Reach, being tucked within the embayments rather than adjacent to the main passage of the Reach. The two new salmon farms are existing anomalies in an otherwise very natural landscape.
- 30 I therefore agree with Dr Steven’s evidence on landscape values in the Waitata Reach, including his criticisms of Mr Hudson’s landscape assessment and the preceding Boffa Miskell Ltd landscape assessments¹⁶. I agree with Dr Steven that the Waitata Reach

¹⁶ Boffa Miskell Ltd were also the primary planning consultants to King Salmon Ltd assisting with the private plan change introducing the CZM3 zone.

landscape is an outstanding natural landscape, worthy of identification and protection in terms of the NZCPS Policy 15a¹⁷.

- 31 The natural character of Waitata Reach also puts it at the outstanding end of the spectrum. Natural character values encompass aspects of an area that are not picked up in landscape evaluations and require a more holistic approach and understanding of an area than the essentially visual and experiential analysis undertaken for landscape assessment¹⁸. Dr Steven similarly recognises the limitations of expertise which have been applied in the natural character assessments of the Waitata Reach¹⁹ and criticises the Boffa Miskell, Hudson and Williams assessments accordingly.
- 32 Dr Steven notes the findings of the BoI which found the Waitata Reach to be an area of high natural character values, approaching outstanding in some areas, and therefore subject to NZCPS Policy 13²⁰.
- 33 Water quality is a key consideration in sub-surface natural character. Water quality is understood to be high and is not greatly adversely affected by runoff from land-based activities, although the King Salmon farming activities will now be having some impact. Any contaminants from, for example, activities in the river systems that enter the Pelorus system have usually reached background level by the time they reach the Waitata Reach (despite lower salinity than throughout much of the Sounds), although flood events do result in temporary water quality variations. Suspended solids are deposited in Beatrix Bay, “resulting in clear water” as the fresh water moves towards Maud Island and into the outer Sound. Effects of the older existing salmon farms at Waihinau and Forsyth Bay on water quality, while known to be obvious locally within the bays themselves from monitoring reports and observation (despite the two sites

¹⁷ I note Dr Steven’s acknowledgement that even if deemed not outstanding, such natural coastal landscapes require protection in terms of NZCPS Policy 15(b).

¹⁸ Natural character evaluation has been largely appropriated by landscape architects in New Zealand, but in coastal areas equally require an understanding of what lies beneath the water’s surface (as first noted in the Environment Court’s decision on a Kukumara mid-bay application in the Sounds).

¹⁹ Dr Steven’s evidence, paragraph 119.

²⁰ Dr Steven’s evidence, paragraph 127 and 128.

being used intermittently and otherwise fallowed to allow for benthic recovery), appear not at present to affect water quality more widely throughout the Reach²¹.

- 34 Similarly, the descriptions of the seabed biota and pelagic communities accompanying the consultative document in the Waitata Reach indicates relatively little modification from what could be described as natural state in this area²².
- 35 The area is thus one of at least high natural character, both above and below the water surface.
- 36 It is clear that the proposal is of great significance in an area that is still largely natural, that is an important gateway to the Sounds, and is a treasured landscape with high values.

The Planning Context

- 37 The operative Marlborough Regional Policy Statement (**RPS**) and Marlborough Sounds Resource Management Plan (**the Sounds Plan**) apply to the Sounds area. These were made operative in 1995 and 2003 (the latter fully operative 2011) respectively. Both have been subject to changes over the years, through RMA First Schedule processes.
- 38 The Proposed Marlborough Environment Plan (**the Proposed Plan**), incorporating the Proposed Regional Policy Statement, was publicly notified in May 2016. Submissions closed on September 2016. This does not yet include provisions relating to marine farming, which are still subject to review. The Council's website advises that *"in the meantime, the existing aquaculture planning provisions of the Marlborough Sounds Resource Management Plan and the Wairau/Awatere Resource Management Plan remain in place"*. At present, there is a single Coastal Marine Zone shown in the Proposed Plan.

²¹ Comment from King Salmon BoI AEE (Appendix 5).

²² I acknowledge the effects of fishing which have led to specific restrictions on blue cod fishing, and the current ban on blue cod fishing around Maud Island, as well as the Sounds closure to scallop fishing (see MPI website, Challenger area fishing rules). Fish stocks and benthic areas are not in a completely natural state at the scale of individual Sounds.

- 39 In accordance with RMA section 86B, some rule provisions have legal effect. The objectives and policies have some weight when a resource consent application is being considered. However, as submissions have not yet been heard and no decisions made, the weight placed on any part of the Proposed RPS and Proposed Plan must be small.
- 40 The RPS and Sounds Plan remain the primary RMA documents providing the policy context and permitted baseline (against which effects are measured). They are currently the “settled” provisions on which the community can rely, although currently subject to comprehensive and integrated review through RMA First Schedule processes.
- 41 The Sounds Plan originally identified two Coastal Marine Zones – Coastal Marine 1 (**CMZ1**) and Coastal Marine 2 (**CMZ2**). The plan change process completed in 2013 introduced a third, CMZ3, zone specifically for salmon farming. The eventual effect was that just two additional areas in the Waitata Reach of Pelorus Sound, were added to the Sounds Plan.
- 42 Section 9.2.2, Methods of Implementation, of the Sounds Plan states:
- “In Coastal Marine Zone 1 the Plan identifies those areas where marine farms are prohibited in accordance with Policies 9.2.1.1.1 and 9.2.1.1.6²³. These areas are identified as being where marine farming will have a significant adverse effect on navigational safety, recreational opportunities, natural character, ecological systems, or cultural, residential or amenity values”.*
- 43 The sites identified in the proposal fall into the coastal zones shown in the table on the following page:

²³ These policy references are to policies which require the avoidance, remedy or mitigation of the use and development of coastal marine resources on specified characteristics and qualities. Policy 9.2.1.1.6 is specific to Queen Charlotte Sound.

No.	Name	Zoning	Plan Notations
1	Blowhole Point North	CMZ1	Proximity to an ecological area of regional significance (1/12) – high density of burrowing tube anemone.
2	Blowhole Point South	CMZ1/CMZ2	Overlaps with a King Shag feeding area (1/11)*.
3	Mid-Channel Waitata	CMZ1	Appears to overlap in part with a King Shag feeding area (1/11)
4	Richmond Bay South	CMZ1	Proximity to a King Shag feeding area (1/11).
5	Horseshoe Bay	CMZ2	Overlaps with an ecological area buffer zone for King Shag breeding and roosting site.
6	Tio Point, Oyster Bay	CMZ1/CMZ2	–

*All King Shag sites are identified as nationally significant.

- 44 In the CMZ1 areas, applications could not be made to establish salmon farming, or any other type of marine farming (although plan change requests could be made). In the CMZ2 zones, the salmon farms in the proposal would be fully discretionary because of their somewhat offshore locations. The CMZ3 areas are specifically set aside for salmon farming in the same way as is proposed for the additional six sites of the proposal.
- 45 Some of the areas 1 to 6 in the table above are close to areas of outstanding landscapes on the Sounds Plan maps, particularly the mid-channel Waitata Reach site which lies between two “outstanding” promontories. Further natural character qualities in proximity to the proposal’s new salmon farming areas are indicated in the Sounds Plan maps, with several king shag breeding, roosting and feeding areas identified across the points, bays and the main Reach area²⁴, and an offshore rocky reef colony with a high degree of natural character²⁵ around the centre of the Reach at Keep Clear Rock.

²⁴ See Map 68 and Appendix B, Vol 2 RMP.

²⁵ High species diversity and abundance, Appendix B, Vol 2, RMP.

The Permitted Baseline and the Existing Environment

- 46 The “permitted baseline” may (and in my opinion, should) be taken as a starting point for any assessment of the implications of a proposal. On this basis, any assessment should commence taking into account the environment as it exists at present, as marine farms are either prohibited, fully discretionary or non-complying within the Waitata Reach and no permitted activity has the characteristics or effects of a salmon farm, including permanence²⁶, presence of structures, scale and occupancy.
- 47 Since the Hawthorn decision²⁷, there has been guidance through case law in interpreting practice relating to the existing environment. My understanding is that the existing environment against which the impact of an activity which is sought to be approved should include the effects of activities which have been granted consent and which have not yet been established but which are likely to be established.
- 48 The main stretch of the Waitata Reach has two approved salmon farms – the sites now known as Waitata and Kopaua. Adjacent to White Horse Rock (and slightly overlapped by the Waitata salmon farm) there was a 2.2 hectare consented mussel farm which has never been established²⁸. Since the BoI decision, this has effectively been cancelled.
- 49 Near Reef Point are further potential farm sites for very low-key activities (sponges and possibly spat catching). Two have been declined and one consented. All are subject to appeal. I am unable to speculate on the outcomes, and thus whether these farms would be part of the existing environment. If they do, they are sufficiently low-key to have little effect on natural character or landscape values of the Waitata Reach as a whole.

²⁶ As compared to the transitory nature of permitted activities in the coastal marine area.

²⁷ Queenstown Lakes DC vs Hawthorn Estates (2006) NZRMA 424 CA.

²⁸ It has a 20 year duration, but would normally have lapsed some time ago but for the implications of the various aquaculture moratoria and reforming legislation. Species approved were bivalves and algae.

- 50 The two salmon farms now facing the main Waitata Reach have some effects on visual, landscape and natural character, and also add nutrients to the water (subject to monitoring). Full development of the two farms over time, as approved by the BoI effectively comprises the permitted baseline. The actual and potential effects associated with these are outlined in the evidence of Dr Steven and Mr Schuckard. In summary, both somewhat reduce the quality of the pre-existing environment (visual, natural character), or have the potential to do so (benthic and water quality, marine species diversity).
- 51 The consents are subject to a range of limitations on feed discharge volumes, management plans and monitoring requirements which are intended to manage effects within acceptable bounds. The extent of potential effects to date, which through adaptive management can be considered to be a part of the existing environment, have not yet been confirmed because the first monitoring reports are not yet available.

THE METHOD USED TO ACHIEVE THE “END POINT”

- 52 The consultative document does not mince its words when it talks about the proposal enabling a significant expansion in salmon farming in the Marlborough Sounds. Although dressed up as a relocation proposal, with (paraphrased):
- improved environmental management through implementation of “benthic best management practice”
 - better social and cultural outcomes from more salmon farming jobs
 - better social and cultural outcomes from moving salmon farms away from areas of high complexity use²⁹
 - maintained or increased economic benefits from salmon farming,
- only expansion and intensification could result in the claimed potential benefits of 511 FTE jobs, and \$49m GDP addition.

²⁹ See Footnote 4 of the consultative document. This is a poorly explained and justified claimed benefit.

- 53 Unlike land-based intensification of activities, salmon farming relies on access to and occupation of public space to operate. Like some land-based activities, it will discharge into public space within and beyond the boundaries of its area of occupation and reduce environmental qualities over a much wider area³⁰.
- 54 The “favour” that is being shown by central government to one industry and, indeed, are operator under the guise of the RMA is, in my experience, unprecedented. From a planning point of view, I find it incomprehensible that the government would wish to do what it is seeking to ultimately, have the Governor-General, do through the application of regulations.

The Basis of the RMA

- 55 The RMA was introduced to Parliament in 1990 as integrating legislation to manage the nation’s valued environment, including its existing natural and physical resources. It brought together all or parts of approximately 54 pre-existing statutes. The new processes it entailed were integrated, streamlined and participatory. The RMA was intended to create a “*level playing field*” in environmental terms. Previous legislation was variously criticised as “*special purpose*” or based on “*picking winners*”. Being in the thick of the reforms over several years in the late 1980s and early 1990s, to me there is a certain irony in the government’s current involvement in supporting an activity and an operator that has so clearly been “*picked*”³¹.
- 56 The RMA is legislation that has, for two and a half decades, provided a framework within which people and communities have largely been able to determine the future of their area and its natural and physical resources. The RMA has placed a light but principled management framework (through Part 2) over the top of processes at national, regional and district/territorial level through which more specific policy, methods and rules is developed. The inquiry through processes and ultimately the law

³⁰ Similar to industrial/urban discharges to air and water, and to agricultural discharges to air, land and water.

³¹ The nearest thing in the RMA to “picking winners” was the separate method through designations for network utilities (extended later to other public and Crown and local government works and developments). This was on the basis of it being essential public and economic infrastructure which needed to be able to join up across private and public space.

enabled operative plan provisions to give communities a level of certainty to operate within, but also opportunities to depart, innovate and change the established frameworks. There have been numerous changes to the RMA through amending legislation, but the fundamental principles and approaches of the RMA have remained in place.

57 Aquaculture has always been somewhat problematic, largely because of the parallel fishing legislation but also because it occurs in the coastal marine area and has effects that can be significant. It is fair to say that inter-industry squabbling³², aquaculture industry participation in something akin to a land grab³³, and the significance of Māori interests in the coastal marine area, have resulted in national-level responses which, in my opinion, have not always been appropriate. The RMA has been subject to lurches in approach (through statutory modification) which may have frustrated sound decision-making over the years. In my observation, the RMA processes were robust enough for sound decisions on aquaculture to have been made without such changes.

58 The schema of the RMA provides for:

- national guidance (through National Policy Statements (**NPS**) of which there are now five, including the NZCPS)
- national environmental standards under RMA section 43 and 360 (of which there are also now five).

These policies and standards are all nationally-based.

59 The purposes of NPSs are prescribed in RMA section 45, they are then scoped through defined processes, approved and Gazetted, and require interpretation at regional and district/territorial level. National Environmental Standards are brought in by regulation and are limited in scope to actual standards³⁴ and classification methodologies.

³² Through legal processes – such as Challenger Scallop’s ability to cause long-term delays to Tasman District’s plan provisions, and numerous appeals on specific proposals. Now largely resolved by the trade competition limitations.

³³ Resulting in the Moratorium.

³⁴ Qualitative and/or quantitative technical standards.

- 60 The processes for developing and formalising a NPS are specified in RMA sections 46 to 54, or for a NZCPS, in RMA sections 56 to 58. NPSs require a BoI process or an alternative process which meets similar requirements. National Environmental Standards, being more technical and specific, have lesser consultation and submission standards but nevertheless must meet the requirements of RMA section 44.
- 61 When the RMA was first implemented, there was a less clear policy flow from NPS to RPSs, and from RPSs to regional and district plans than now applies. Now RPSs must give effect to NPSs (RMA section 62(3)), as must all regional and district plans (RMA sections 67(3) and 75(3))³⁵. Regional and district plans must also give effect to RPSs through the same RMA sections. The Supreme Court's King Salmon decision³⁶ describes this policy flow, and emphasises the importance of the requirement in plans to "give effect" to higher policy provisions³⁷. Higher policy provisions are worked out and implemented at regional and local level through the integrated and participatory plan development process, including processes that have access to the special expertise of the Environment Court³⁸.
- 62 Within this clear policy schema, there is one RMA-related NPS dealing with aquaculture – the NZCPS (2010). The introductory statement (p7) to the NZCPS requires local authorities to amend RMA policy statements and plans to give effect to its provisions "*as soon as practicable, using the process set out in Schedule 1 of the Act except where this NZCPS directs otherwise*". Policy 8 relates specifically to aquaculture³⁹. Policy 6, relating to activities in the coastal environment, is broader, but also addresses matters which are relevant to aquaculture. However, these sit alongside specific protectionist policies such as Policy 11 (indigenous biological diversity), Policies 13 and 14 (protection and restoration of natural character), Policy 15 (natural features and landscapes), Policy 21 (enhancement of water quality), and

³⁵ This change was made precisely because the policy flow was not being achieved under the earlier "consistent with" wording.

³⁶ SC82/2013 [2014]NZCS 38

³⁷ A more recent High Court decision has made similar comments in relation to the National Policy Statement on Electricity Transmission.

³⁸ And higher Courts on points of law.

³⁹ In this it differs from the previous NZCPS (1994) which was silent on aquaculture.

Policy 23 (discharges of contaminants). They also sit alongside process policies such as Policy 3 (precautionary approach), Policy 4 (integration) and Policy 7 (strategic planning).

- 63 In contrast to the policy driven approaches, the RMA contains opportunities for any person to seek to change a regional or district plan (First Schedule Part 2). Any Minister can seek a change to a RPS. These provisions were always part of the RMA and were intended to allow for flexibility and to test provisions when local authorities were slow or intransigent.
- 64 Although there were call-in procedures for matters of national significance from the commencement of the RMA, these were substantially boosted in 2009 when Part 6AA was added. These provide the ability for the Minister for the Environment to identify key nationally-significant projects or proposals and have them addressed by the EPA through an appropriate process. This route was used for the King Salmon plan change request in 2011.
- 65 Looking at the schema of the RMA, it is apparent that it is intended to be policy driven from national level downwards, and there are opportunities for a wide range of people to both take part in normal processes, and to initiate processes themselves when they feel a change is needed. Crown Ministers have additional rights as they can initiate national and regional policy. The Minister of Conservation has always had a key role and responsibilities in the coastal environment.
- 66 Regulatory powers are extensively provided for in the RMA. They provide for “nuts and bolts” provisions as an inspection of section 360 and the regulations to date themselves reveal⁴⁰. Generally the regulation powers apply to the Minister for the Environment, but the Minister of Conservation and of Transport may also have roles. The matters of general regulations are quite prescribed⁴¹. Under section 360, it would seem to be impossible for the Minister to zone specific areas for specific activities or

⁴⁰ Such as the marine pollution regulations, water take measurement requirements, forms and fees.

⁴¹ In my opinion, there are some opportunities for an overlap with national environmental standards, but not with provisions that would normally be developed through First Schedule processes.

to bypass the other available processes in the RMA except for prosaic matters. In relation to the coastal marine area, the powers include “deeming” provisions to include matters in regional coastal plans across a relatively narrow pollution-related set of provisions⁴².

- 67 Currently, the Ministry for the Environment’s website⁴³ on National Directions indicates that it is preparing *“nationally consistent rules for coastal plans for the management of aquaculture, including simpler and more certain consenting provisions for existing farms”*. This is advice from as recently as September last year. It is expected that the provisions will be completed by Mid-2017. The tools available through this process include NPSs, NESs and regulations.

Aquaculture Regulation Provisions

- 68 Sections 360A and 360B were added to the RMA in 2011. They provide a separate “code” for regulations related to aquaculture which are specific to the Minister of Aquaculture (currently in the guise of the Minister of Primary Industries).
- 69 Although the scope for the Governor-General, acting on the advice of the Minister of Aquaculture, includes the ability to *“amend provisions in a regional coastal plan that relate to the management of aquaculture activities in the coastal marine area”*, and the Minister of Aquaculture has such functions under RMA 28B(c)⁴⁴, it could not have been expected or envisaged that this would be used to usurp the normal RMA processes to effectively rezone coastal marine areas or to allow major expansion of salmon farming as the proposal provides.
- 70 It might have been expected that the regulatory powers could have been used to develop additional safeguards for monitoring, protection, allocation between competing parties or other methods akin to the wider regulatory powers in section

⁴² See section 360(1)(ha)

⁴³ “A Way Forward for National Direction”, 2016, INFO766

Source: http://www.mfe.govt.nz/sites/default/files/media/RMA/MFE_RMA%20Nat%20Direction_Lo-Res.pdf

⁴⁴ Also added to the RMA as an entirely new section in 2011.

360. The “*regional or national significance*” clause in section 360B(2)(c) does not lead to an expectation of new zoning provisions or intensive and localised allocation of areas of coastal space.

- 71 One problem is that the Minister of Aquaculture has a narrow brief in terms of section 28B of the RMA, and which does not enable him or her to form judgements in relation to, for example, the items in RMA section 360B(2)(c)(iii). A second problem is the inclusion of the reference in 360B(2)(c)(i) which is that “*the proposed regulations are necessary or desirable for the management of aquaculture activities in accordance with the Government’s policy for aquaculture in the coastal marine area*”. Nowhere else in the whole of the RMA is there unfettered ability to call on a current government policy which has not been through an RMA process⁴⁵. The consultation document on the proposal relies heavily on statements of government policy which have not been subject to RMA processes. Both these aspects raise great concern as to how the regulation provisions are proposed to be used.
- 72 There is RMA policy for aquaculture which has gone through the exacting process for a RMA NZCPS and has been included in the NZCPS which is quite inconsistent with the stated Government (non-RMA) policy used to justify the proposal. The inconsistency includes the NZCPS’s requirement that a Schedule 1 process is used to embed appropriate provisions in plans. The inconsistency also emerges in the single-purpose scope of sections 360A and B, which patently overlooks the range of other NZCPS policies which must be reconciled alongside NZCPS Policy 8. There is further inconsistency in the use of the regulatory tool, as it provides for a localised intensity of salmon farming use which seems to fly in the face of the measured approach recently and specifically developed for King Salmon through the Minister for the Environment’s call-in procedures.

⁴⁵ There is aquaculture policy within the NZCPS, particularly Policy 8, which requires that RPSs and regional coastal plans include provisions “in appropriate places” for aquaculture. This policy sits alongside, and must be reconciled through RMA processes, numerous other policy requirements. The Interpretation section of the NZCPS makes it clear that the policies are not in priority order.

- 73 Finally, the Minister of Conservation, who has the important function of approving regional coastal plans (and plan changes) under RMA section 28(b) which incorporates reference to Schedule 1 processes, appears to be entirely cut out of any role through the current process. There is no cross-over between the Functions of the Minister of Aquaculture in RMA section 28B(c) and the Functions of the Minister of Conservation. This may be acceptable if the regulations are being applied to subjects and aspects to which RMA regulations are typically applied. However, when the regulation-making power is used to usurp normal Schedule 1 processes, in my opinion this leads to a fundamental problem in the integrity of the administration of the RMA.

Appropriate Processes

- 74 In my opinion the current process and proposal is a mis-use of regulatory powers. There are three types of approaches that MPI and/or King Salmon Ltd could have initiated or become involved in which would have appropriate process and adequate safeguards. These are:
- Allow and even assist the Marlborough District Council to complete the development and notification of the aquaculture provisions of its RPS and proposed Plan, and take part in the process of submissions, hearings and appeals (if necessary). At the moment I expect that the Council has made considerable progress in developing that part of the plan, but that the current process has diverted resources and distracted effort away from getting the aquaculture provisions in a suitable state for inclusion in the Plan.
 - Either the Minister or King Salmon could initiate a plan change (as the Sounds Plan is operative and more than two years has passed since the last plan change request). From that point the plan change could be determined to be a matter of national importance and sent to the EPA for processing, or could follow the normal “private plan change” process.
 - The Minister or King Salmon could limit its expansion plans to a more modest proposal and seek resource consents for sites that are not in the CMZ1 zone.

- 75 I accept that plan review processes, such as are currently being undertaken by Marlborough District Council, are lengthy. However, they are inclusive and important processes, and in line with NZCPS policies, including for integration (Policy 4) as well as the RMA's direct requirements for integrated management of natural and physical resourcing and management of environmental effects. It is my opinion that it is this process that should have been followed by MPI or King Salmon, given the timing. Participation in this process could have identified appropriate new sites, and provided for "offered" relocations if requested. Rezoning of areas for new uses is quite possible through this process, as has recently been confirmed in relation to the Auckland Unitary Plan.
- 76 Such a process would provide for the integrated planning and management of effects in the context of the wider planning process that the RMA and NZCPS required. It would also involve the rigorous process and updated and "settled" outcome in relation to aspects such as natural character and landscape values of the Waitata Reach which are clearly not yet settled.
- 77 It would also involve basic RMA requirements such as a section 32 analysis. This basic evaluation against the purpose of the RMA appears to be currently missing, even in draft, from the process. The proposal as put forward certainly meets some elements of what would normally be included in a section 32 analysis, including information on the beneficial aspects of employment and economic growth, but lacks the rigor of risk assessment in *"acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions"*. This applies in relation to aspects such as water column and cumulative effects. Other plan objectives⁴⁶ cannot be reconciled against the proposal without such process.
- 78 It appears from the documentation that the Minister intends to undertake this exercise following the consultation process⁴⁷.

⁴⁶ Including those in the making under the Proposed Plan.

⁴⁷ See Cabinet paper, MPI website, last line, Appendix 6.

The Future of the Low-Flow Site Salmon Farms without the Proposal

- 79 Unlike the provisions that apply to district consents, which lapse if not used for 12 months, regional consents may continue. This has allowed for fallowing and non-operation of some sites. It is my understanding that the low flow salmon farm sites all come up for renewal over the next decade. Section 17⁴⁸, however, applies and enforcements or abatement procedures have always been available, as have reviews of conditions by the Council. The greater understanding of the adverse effects of salmon farming at the low-flow sites has meant that it would be inevitable that either consents would lapse, or sooner or later some person would apply enforcement or abatement actions. These constraints have been known by both King Salmon and affected people for some time⁴⁹. The environmental constraints have also limited production of salmon due to environmental issues and fish health.
- 80 It is quite clear from the discussion document on the proposal that the benthic guidelines that apply to the new King Salmon sites are not being achieved at the low flow sites⁵⁰. It is reasonably likely that all would become uneconomic under the environmental standards that are now expected. In the normal course of events, over time these sites would close to salmon farming⁵¹. As they are part of the permitted baseline, it may be possible to replace them with other types of aquaculture that do meet environmental limits.
- 81 This process would be the normal interplay of the market and environmental management. I know of no other situations where an industry has sought and achieved assistance to the extent of new public resource being allocated by RMA regulation to overcome this 'normal' process of economic obsolescence.

⁴⁸ The duty of care to avoid, remedy or mitigate adverse effects regardless of the permissive provisions of a resource consent

⁴⁹ Such issues were raised in relation to Waihinu Bay and the initial applications for a salmon farm at White Horse Rock. They include odour, benthic and surface effects, and attraction of prey species such as sharks.

⁵⁰ See p7, for example.

⁵¹ Unless new farming methods or technologies are developed.

Precedent

- 82 With environmental limits being reached in relation to a number of economic activities in New Zealand⁵² and other emerging environmental issues such as increased coastal hazards expected to intensify in coming years, the precedent set by the current process of regulation to allow salmon farm relocation and expansion in the public realm, is likely to be considered in relation to other industries, activities or circumstances.
- 83 It is likely to be applied again when King Salmon or another operator wishes to expand in another location with environmental qualities that make it suitable for the activity in the eyes of the Minister and advisors⁵³. Some of the potential areas, particularly those in more remote locations, do not have the community to participate in a process like the current one. With the Minister of Conservation having no role beyond that of the general public, the precedent set by the current process is of considerable concern.

THE RELEVANT STATUTORY TESTS

- 84 The provisions of sections 360B require that the Minister must:
- have *“first had regard to the provisions of the regional coastal plan that will be affected by the proposed regulations”* (section 360B(2)(a))
 - be satisfied that the regulations *“are necessary or desirable for the management of aquaculture activities”* in accordance with the Government’s policy (section 360B(2)(c)(i))
 - be satisfied that the matters to be addressed are of regional or national significance (section 360B(2)(c)(ii))
 - be satisfied that the amended Sounds plan will *“continue to give effect to*
 - a) any national policy statement*
 - b) any New Zealand Coastal Policy Statement*

⁵² See OECD Environmental Performance Reviews: New Zealand 2017, March 2017.

⁵³ See my earlier comments about the narrow mandate of the Minister of Aquaculture.

c) *any regional policy statement*" (section 360B(2)(c)(iii)).

85 My evidence now briefly comments on these matters.

Does the Proposal "Have Regard To" the Regional Coastal Plan Provisions?

86 This is a curious question to ask in relation to a rezoning proposal for salmon farming. If the regulation was for a "normal" regulatory power, one would be looking for general consistency. In this case, the proposal represents a major change in zoning, a substantial increase in activity and the associated potential to seek and obtain occupation and discharge consent components.

87 To "have regard to" has been the subject of considerable case law, but generally it can be taken to mean to "take into account" or to "respect". It is not as strong as, for example, "recognise and provide for" (section 6) or "have particular regard to" (section 7).

88 Introducing a major zoning change through regulation, particularly in areas in which the activities which the zone provides for are currently prohibited (and cannot be applied for) in my opinion does not "have regard to" the regional coastal plan. These areas are closed to such activities in the Sounds Plan. To the extent that the proposal may have taken into account other aspects of the Sounds Plan – in particular the ecological values of identified areas – again there appear to be inconsistencies sufficient for the "regard to" test to be seen to fail.

89 In my assessment there are numerous policy provisions in the Sounds Plan to which the provisions of the proposal are contrary. The proposal's response is to insert provisions, particularly rules, which effectively over-ride and ignore the application of policy in the specific locations. In my opinion, this process does not meet the "regard to" test.

Are the Regulations “Necessary or Desirable” for the Management of Aquaculture Activities?

- 90 This raises again the issue of the appropriateness and acceptability of using regulations to zone areas of the coastal marine area and allow for significant expansion of one type of aquaculture activity in these specified locations. This is a general question which is being applied to a specific situation for the benefit of one aquacultural operator.
- 91 Even if a broad approach is taken, the answer to this question is clearly “no”. There are alternative methods to regulation which mean that this method is not necessary.
- 92 As to the question of whether the method may be desirable, I can see that it could be to the Minster and King Salmon, as it removes many of the rights and balances to other parties which apply through the other processes. It also potentially speeds processes. Otherwise it does not achieve anything that normal RMA processes could achieve (if sustainable in terms of Part 2 and other necessary considerations).
- 93 If the wider context of RMA government policy for aquaculture (including the NZCPS policy) is taken into account, it is not desirable to pursue the proposal in isolation and ahead of normal plan review processes. This is patently clear in terms of, for example, updated information and the importance of aspects such as natural character, landscape values and areas of ecological importance and cultural values, being addressed through integrated plan review processes.

Regional or National Significance?

- 94 King Salmon’s previous rezoning proposal initially involved nine new sites and was deemed by the Minister for the Environment to be nationally significant. In making that decision, the Minister was required to form an opinion and issue an explanation.

- 95 Amongst all the documentation, I do not see any equivalent statement about the national or regional significance of “the matter to be addressed”. Even the Ministerial Foreword to the discussion document does not suggest that it is – rather the proposal is couched in this Foreword as one that *“is about ensuring good environmental management of salmon farms”*, and *“finding a better balance between the different values people hold in the Marlborough Sounds”*. One might ask “better than what?”. Despite this unanswered rhetorical question, these two justifications do not identify any nationally or regionally significant aspects to the proposal. In my opinion, these justifications are much better addressed through a normal planning process (plan review or plan change) although I acknowledge that regulation can be useful in determining methods and specific standards for environmental management⁵⁴.
- 96 There is a brief mention in Appendix 6 of the Cabinet Paper, where the Minister states that *“the environmental improvements to the seabed beneath salmon farms are of regional significance”*, and the *“economic benefits, which include potentially doubling the production of King Salmon from the same amount of space, may be of national significance”*. These are tentative statements, both of which are questionable, and which appear not to have been furthered.

Effects of the Proposal

- 97 An understanding of the actual and potential effects of the proposal is fundamental to an understanding of the matters to be addressed in the RMA section 360B(2)(c)(iii), and also RMA Part 2 considerations. As noted earlier, effects must be considered within the context of the permitted baseline.
- 98 From my review of the material available, including the evidence of Dr Steven and Mr Schuckard, I comment briefly in the following paragraphs on what I consider to be the key actual and potential effects.

⁵⁴ As applied by the Minister for the Environment to some extent under section 360.

Effects on Natural Character

- 99 As can be seen from my general description of the area and in agreement with the evidence of Dr Steven and the BoI's findings, I consider the natural character values of the Tawhitinui Reach of the Pelorus Sound which will be affected by most of the proposed new farms to be high to outstanding.
- 100 The above surface natural character values will be significantly reduced due to the presence of the new farms and the associated human activity⁵⁵. The effects will be cumulative because of the concentration of farms in the one part of the Reach, and in my opinion, will be significant.
- 101 The sub-surface natural character values will also be reduced. This includes effects on the benthos where entirely new footprints of modifications from current levels of natural character will be produced. This includes areas which meet the benthic guidelines but which are nevertheless substantially modified⁵⁶. It also includes effects on the water column which will have to "treat" 80% of the discharged nutrients, and other underwater effects such as lighting at some times of the year and underwater noise. As noted by Dr Steven, behaviour patterns of larger marine creatures and seabirds may change.
- 102 As pointed out by Mr Schuckard, this is the environment within which seabirds feed as well as where fish spend their lives. King Shag are part of the special natural character values of this area, and the potential effects are largely unknown but are expected to be negative.
- 103 In contrast, the Pelorus Sound areas where farms are to be removed do not have these high values due to human settlement (Waihinau), and extensive establishment

⁵⁵ A degree of modification is recognised in the various landscape assessments, and by the recreational/tourism review in relation to at least one of the sites (mid-bay Waitata).

⁵⁶ The benthic guidelines allow reduction in natural character from deposition and reworking in a way that may result in a reduction in biodiversity while increasing the biomass through organisms suited to highly enriched locations within the ES5 Enrichment Footprint. A much greater area is affected by deposition at the ES3 level, but to a lesser extent.

of mussel farms nearby (Forsyth and Crail Bay) which have already modified the sea bed, along with the existing effects of the existing salmon farms.

Effects on Landscape and Natural Feature Values

104 It is clear from the various commentaries that the mapped areas of outstanding landscape in the Sounds Plan are outdated and the plan review process which is partly underway which will establish the values through a robust process. In the meantime, all opinions must be considered and robustly evaluated to meet RMA requirements. Given the inconsistency that is apparent between the Hudson report and the Williams review as well as Dr Steven's criticisms, the extent of effects cannot be certain but all three commentators acknowledge a degree of adverse effects on landscapes and natural features that are at the higher end of the spectrum.

105 As noted earlier, I agree with Dr Steven's approach and his assessment of natural landscape values as outstanding. My own geographical assessment of the Tawhitinui Reach ria coastline is that its natural feature values are also outstanding.

106 The proposal has cumulative effects on landscape values (taking into account the two existing salmon farms approved by the BoI) which are described in the Williams review to be high, and considered by Dr Steven to be unacceptable. I agree with these assessments.

Benthic and Water Column Effects

107 These aspects have been noted above in relation to natural character. While there is now an agreed method to manage benthic effects, there are nevertheless effects which would be provided for which will affect natural character.

108 There is as yet no such method of managing water column effects, and the consequences (even at preliminary discharge levels) are not known. There is the potential for a range of adverse events associated with effects of low probability but

high potential impact⁵⁷, the risks of which are clearly not understood. These risks include high risk to King Shag. Mr Schuckard's evidence deals extensively with such risks.

109 My opinion on the sub-surface effects of the proposal is that they are currently poorly understood or unknown, could be significant, and will be cumulative, both in relation to the sites already approved through the BoI and amongst themselves.

110 The BoI adopted a cautious (but not fully precautionary, which would have resulted in the decline of all sites due to uncertainty) approach in the face of such uncertainty, and I agree that such effects require such an approach, starting from the BoI's established "permitted baseline" which applies to the two new farms.

Effects on Recreation/Tourism

111 The TRC report identifies concerns with the mid-channel Waitata site. The concern raised relates essentially to natural character values on which the Sounds tourism attraction is largely based.

112 The report does not address cumulative effects – however, the attraction of this part of the Pelorus Sound as a wild/wilderness destination will, in my opinion, be significantly reduced if the area becomes industrialised for salmon farming as the proposal provides.

Cumulative Effects

113 As can be seen from this brief summary, the additional salmon farms promoted for the Waitata Reach in the proposal will have a range of adverse effects. These effects are compounded because of the clustering of the proposed sites in a highly visible and natural part of Pelorus Sound. It is my opinion that the area will take on a significantly industrial character as a result of these effects. There will also be cumulative effects in

⁵⁷ Such an event was experienced in Wellington Harbour in the late 1990's; it was not foreseen, nor are the conditions predictable into the future.

the water column and benthic areas, the potential impacts of which are poorly understood but could be very significant.

Does the Proposal Continue to Give Effect to the NZ Coastal Policy Statement?

114 This is a key consideration, particularly given the exclusion of the need for the Minister of Conservation's approval. As noted earlier in this evidence, the Minister of Aquaculture could not be expected to make such a judgement given the limited mandate of the role.

115 As the NZCPS (2010) effectively post-dates the Sounds Plan⁵⁸, simply integrating the new proposal into the Sounds Plan framework through regulation will not necessarily ensure that the changes give effect to the requirements and directions of the NZCPS. Careful enquiry is needed to answer the question posed above.

116 I do not consider that the proposal gives effect to the NZCPS provisions, for the reasons set out in the table below. My tabulated commentary takes into account my opinions on effects, noted above.

117

NZCPS Provision	Reason for failure to give effect
Objective 1 Safeguarding the coastal environment's integrity, form and function, and sustaining its ecosystems.	<p>The integrity, form, functioning and resilience of the marine component of the coastal environment will not be safeguarded, nor its ecosystems sustained due to:</p> <ul style="list-style-type: none"> – lack of recognition of the need for protection of King Shag habitat, with consequential risks to New Zealand's biodiversity – coastal water quality is not maintained because of discharges associated with the human activity of salmon farming – the enhancement provided for by retiring low-flow sites is not addressing existing significant adverse effects (any benefits will be minor) – the scale of discharges is such that natural biological processes will not be maintained or enhanced.

⁵⁸ Although the Sounds Plan became fully operative in 2011, the contents were in train well before the NZCPS (2010) was approved.

NZCPS Provision	Reason for failure to give effect
Objective 2 Preservation of natural character and protection of natural features and landscapes	<ul style="list-style-type: none"> – natural character is not preserved, and the values of landscapes and natural features are not protected, as neither has been able to be comprehensively evaluated and subject to an RMA process for a number of years – the locations chosen are mostly currently in areas where all but transient use is permitted and all developments are prohibited in the Sounds Plan.
Objective 3 Treaty principles and kaitiaki roles	Treaty principles and cultural impact are subject to ongoing consultation with iwi. It is not possible to form a view other than this aspect of the NZCPS has not yet been given effect to in the proposal. (For this reason I make no comment on Policy 2 either).
Objective 4 Maintaining and enhancing public open space and recreational qualities	While the proposal is promoted as one that replaces one site with another, the new sites are all in prominent locations and so the proposal does not maintain and enhance the public open space qualities and recreation opportunities of the coastal marine area.
Policy 3 Precautionary approach (only Policy 3(1) applies)	A precautionary approach would provide that the two recently consented salmon farms in the Waitata Reach are able to be developed over time, subject to management and monitoring, as the BoI provided. The proposal does not give effect to this policy.
Policy 4 Integration	<p>The proposal does not provide for integrated management of natural and physical resources, as it has been decoupled from the plan review process, which would provide for integrated planning and consideration in a co-ordinated way.</p> <p>The proposal does not give effect to (v) as significant adverse cumulate effects can be anticipated.</p>
Policy 6 Activities in the coastal environment (Policy 6(2))	While at the present time salmon farming has a functional need to occupy the marine environment, the sites chosen, the intensity of use, and the requirements associated with the BoI approved sites mean that the Waitata Reach farm sites are not “appropriate” in terms of Policy 6(2)(c).
Policy 7 Strategic Planning	This policy recognises RPSs and plans as a framework through which areas and types of appropriate development are identified and provided for, and other areas and types of use are avoided, where given activities will be inappropriate (usually for reasons relating to other NZCPS requirements). This process has not been

NZCPS Provision	Reason for failure to give effect
	<p>followed, and the proposal has been promoted outside the available and timely regional policy statement and plan development and formal statutory processes. Instead, the proposal has proceeded on the basis of picking winners and promoting them through a process which is divorced from strategic planning.</p> <p>This policy also requires that resources and values at significant risk of adverse cumulative effects are identified and managed or avoided. In contrast, the proposal carries with it the potential for significant adverse cumulative effects – particularly relating to the Waitata Reach and its resources and values.</p>
<p>Policy 8 Aquaculture</p>	<p>This policy requires recognition of the contribution of aquaculture, and its provision in RPSs and plans in appropriate places in the coastal environment. The proposal seeks to make provision which is not appropriate, given the findings of the BoI and the provision of the two new sites that it considered to be an appropriate level of provision for salmon farming in the Waitata Reach.</p>
<p>Policy 11 Indigenous biological diversity</p>	<p>This policy requires avoidance of adverse effects on habitats and species, including on threatened or at risk species, habitats of naturally rare species, and areas containing nationally significant examples of indigenous community types. The Waitata Reach sites are part of the very limited habitat of King Shag, and all adverse effect on these species must be avoided.</p>
<p>Policy 13 Preservation of natural character</p>	<p>There is lack of agreement on the natural character values in the Waitata Reach, however it seems it may be outstanding, and is at least high. This policy requires at least avoidance of significant adverse effects, and avoidance remedy or mitigation of other adverse effects (Policy 13(1)(b)). In my opinion it is equally likely that Policy 13(1)(a) should apply and complete avoidance of all adverse effects is required. The policy also requires that RPSs and plans identify areas of high natural character and above, and that provisions to preserve natural character are included in plans. This context is not yet available, and the proposal cuts across this policy in any case due to the location and clustering and intensity of development of the proposed farms resulting in significant cumulative adverse effects. Adverse effects have not been appropriately avoided, remedied or mitigated.</p>

NZCPS Provision	Reason for failure to give effect
Policy 15 Natural features and natural landscapes	<p>This policy operates in a similar fashion to Policy 13, in relation to natural features and landscapes. There is a similar lack of agreement on landscape and natural feature values, so the requirement of Policy 15(a) may apply, but at least the requirements of Policy 15(b) apply and significant adverse effects must be avoided and other effects avoided, remedied or mitigated. If the areas comprise on outstanding natural feature and landscape as assessed by Dr Steven, then all effects must be avoided.</p> <p>As with Policy 13, Policy 15 plan requirements have not been put in place and the proposal cuts across this process. Significant adverse effects have not been avoided, and other adverse effects have not been avoided, remedied or mitigated.</p>
Policy 23 Discharges of contaminants	<p>Particular regard must be had to the nature and sensitivity of the receiving environment where discharges are concerned. The extent of the discharges, and the risks associated with them particularly relating to King Shag habitat, means that this policy is not given effect to in the proposal.</p>

118 I acknowledge that NZCPS (2010) Policy 6(2)(a) and (c) require recognition that some activities functionally need to be located in the coastal marine area, and that these can contribute to wellbeing. This requires an assessment of both the activity and whether the place is appropriate for it. As set out in my evidence on effects and the tabulated policy assessment above, the locations chosen are not appropriate and the intensity of development proposed is equally not appropriate. Policy 6(2)(e) requires the efficient use of occupied space in the coastal marine area. In this case the environmental implications of the proposed use are not known. Time should be provided for the BoI's approved sites to be developed to the extent provided for (subject to the environmental requirements through established conditions) so that their efficiency and environmental implications can be assessed.

119 I also note that Policy 14 seeks to promote restoration and rehabilitation of natural character in the coastal environment, and that the proposal intends to relinquish consents in low-flow areas. As stated earlier in this evidence, the areas which would

be restored under this provision are of lesser inherent value than the areas that would be adversely affected, due to their already modified locations. Policy 21 has similar implications in relation to water quality, and is similarly of limited benefit when applied through the proposal.

- 120 Overall, I consider that numerous NZCPS (2010) policy provisions are not given effect to through the proposal. Amongst these are policies relating to natural character, landscape values, ecological protection and discharge risks.

Does the Proposal Continue to Give Effect to the RPS?

- 121 The RPS provisions can be considered to be outdated, as well as now also potentially inconsistent with the NZCPS (2010). No reliance could be placed on an analysis of the proposal in terms of these outdated provisions. The current review process would have remedied this situation. The proposal however cuts across and removes the opportunity to achieve consistency in terms of process and outcome.

RMA PART 2

- 122 It is not clear to me whether the regulation powers under sections 360A and 360B are subject to Part 2, although it would be very strange if they were not. Normally, regulations deal with the “rats and mice” of RMA processes and, *ipso facto*, Part 2 matters should not be raised, let alone at risk. In this case, where regulatory powers are replacing plan change processes, a Part 2 assessment is important.
- 123 Part 2 sets out the RMA’s purposes and principles (section 5), matters of national importance which any decision-maker must recognise and provide for (section 6), other matters to which decision-makers must have particular regard (section 7), and a requirement to take into account Treaty principles (section 8). My analysis follows.

Section 5

- 124 The proposal sets up a classic conflict in terms of “use, development and protection” in a Sounds location where natural values are high and, in my opinion, where the protection component of management should overwhelmingly apply. Although GDP and employment growth are promised, details and implications of the employment are not expanded upon (For example, who will be employed; where will they live; how will they travel to work; etc). The closure of the current low-flow sites (which is promoted as a major benefit) would, in the fullness of time, most likely occur in any case and in my assessment is a minor benefit only.
- 125 In section 5 terms, it is not entirely clear that the life-supporting capacity of the water column is being safeguarded or that ecosystems (including King Shag as a species) are being safeguarded (section 5(2)(b)). Adverse effects on the environment are not being adequately avoided or mitigated in relation to valued components of the environment, particularly in the at Waitata Reach (section 5(2)(c)).

Section 6

- 126 In terms of section 6(a), the natural character of the coastal environment is not preserved and existing (at least high and possibly outstanding) natural character is not protected from inappropriate use and development. The intensity and cumulative nature of the proposal mean that effects are likely to be significantly adverse.
- 127 A similar situation exists in relation to section 6(b) matters, although the extent to which existing natural landscapes and natural features are outstanding is subject to disagreement amongst experts.

128 There is no doubt that the Waitata Reach, where a cluster of farms is part of the proposal, is part of a significant habitat (in fact the only habitat) of King Shag. The proposal does not protect this habitat as required (section 6(c))⁵⁹.

129 Of the remaining section 6 matters, only section 6(d), public access, is likely to be relevant. The placement of the mid-channel Waitata Reach site seems particularly unacceptable in terms of this provision for public access, as it breaks up and bisects the wide and wild natural channel that is the Reach.

Section 7

130 Of the section 7 matters to which particular regard must be had, the following may be relevant:

- a) Kaitiakitanga
- aa) the ethic of stewardship
- b) the efficient use and development of natural physical resources
- c) the maintenance and enhancement of amenity values
- d) the intrinsic values of ecosystems
- f) the maintenance and enhancement of the quality of the environment.

Item (h), the protection of the habitat of trout and salmon, is not considered relevant, as these are farmed animals and their habitat is not threatened. My comments on relevant section 7 matters are set out in the following paragraphs.

131 In my opinion, the ethic of stewardship is not well-served by the proposed relocation and significant expansion of salmon farming enabled in the proposal. Stewardship would not provide for development beyond that provided for by the BoI. Kaitiakitanga is dependent on the outcome of consultation with iwi.

132 The efficient use and development of natural resources is claimed as a fundamental benefit of the proposal. However, the proposal also relies on the ability of the natural environment to “treat” the discharges and on benthic modifications, visual effects and

⁵⁹ Waitata Reach is the most important habitat for the Duffers Reef colony – the biggest colony.

other aspects of the proposal being appropriate in the environment concerned. I consider that the extent of the proposal go well beyond considerations of efficiency of natural resource use and will result in unacceptable adverse effects. In this I am in agreement with the BoI when it considered a five-farm proposal in a similar area, rejecting three of the five in Waitata Reach.

133 The proposal will not result in the maintenance and enhancement of amenity values or the quality of the environment, due to the extent of effects, including cumulative effects. If it is found that the landscape and natural features values are not outstanding, then it is likely they are amenity landscapes at the high end of the scale, which should be maintained and enhanced. Water quality is not maintained or enhanced by the proposal.

134 The final item; the intrinsic values of ecosystems, has always been somewhat obscure in its application. However, in terms of the potential effects on King Shag, values must be considered to be intrinsic, and I consider that these values have not been properly safeguarded in the proposal.

Section 8

135 As consultation is not complete with iwi, and any cultural implications are not yet clarified, it is not yet possible to assess consistency with this section.

Part 2 Summary

136 I am not satisfied that the proposal is in accordance with RMA Part 2, assuming that it is relevant. There are many aspects of Part 2 which the proposal does not achieve. The proposal promotes economic development at the expense of many other important Part 2 considerations in the Waitata Reach of Pelorus Sound.

CONCLUSION FROM MY ANALYSIS

- 137 As with others providing evidence for Friends of Nelson Haven and Tasman Bay and the Kenepuru and Central Sounds Residents' Association I consider that the decision of the BoI on the King Salmon plan change request in relation to salmon farming in the Waitata Reach, and the subsequent Environment Court decisions on the proposed salmon farm at Danger Point, were correct and should be able to be upheld, with only the two new approved farms implemented progressively as provided for.
- 138 The four low-flow sites in the vicinity should be allowed to "run their course" through normal consenting processes. They are currently part of the existing environment and their effects should reduce over time or they will phase out due to the normal operation of the market.
- 139 On the basis of this and the matters covered earlier in this evidence, including NZCPS and RMA Part 2 considerations, my opinion is that none of the proposed new salmon farms in Waitata Reach should be provided for by regulation by the Governor-General.
- 140 The application of regulations for the current purpose is a misuse of regulatory powers and inconsistent with RMA processes.

COMMENTARY ON POTENTIAL AMENDMENTS TO THE SOUNDS PLAN

- 141 Although I do not agree that any of the sites in the Waitata Reach should proceed, I have nevertheless reviewed the amendments put forward in the discussion document for the proposal. I have identified a number of issues, ranging from typographic errors to more substantive comments, as set out in the table below. This is not an exhaustive list as there will be matters I have overlooked. I have not provided comments on the Appendices due to lack of time.

Discussion document page reference	Comment
<p>p70, first strike-out</p> <p>p70, first addition</p> <p>p70, change immediately above 9.2.1</p>	<p>This strike-out should not delete the word “expansion”.</p> <p>This addition explains the relocation of sites but does not explain the substantial expansion of activity provided for. While it is under the heading of the public access/private use issue, this is the main place where aquaculture is explained in the plan. The words “<u>and expansion is enabled</u>” should be added following the second comma.</p> <p>A small change has been made here which is misleading, as it implies that all new salmon farming sites have been achieved by plan change. This is not correct and the change here should be replaced by something that is correct – if any change here is worth making.</p>
<p>p70, new item (b) in 9.2.1.1.1.7</p> <p>p70, explanation relating to Policy 9.2.1.1.7</p> <p>p71, two additions lowest on the page</p>	<p>This lists out the sites for relocation in priority order. I note that the Tory Channel and Otanerau Bay sites are highest priority. As only one relocation site is provided for in that part of the Sounds, the scenario exists where one or two new sites are added in Waitata Reach, but no existing low-flow sites are removed. It is not clear that this possibility has been taken into account in any of the assessments relating to cumulative effects, and it should have been. The later provisions are not clear as the order of new sites, which I consider should be incorporated.</p> <p>Further, it is not clear why there is not a policy provision similar to 9.2.1.1.1.7 referring to the new sites and their restricted discretionary status.</p> <p>While the existing wording refers to “appropriate locations” which is a valid RMA policy explanation, the new addition to the wording is extremely loose. Again, the expansion provided for through relocation is not acknowledged. Further, the change to the policy here prioritises sites to relocate from, but is not matched by a primary order for new sites. Again, this seems surprisingly loose, and would be important to add.</p> <p>Wording added to the Rule method statement and the general explanations do not clarify that intensification is also part of the new provisions.</p>

<p>p72, new Policy 9.3.2.1.12</p>	<p>This appears to have general application to all salmon farms, both existing and new. While the policy appears to be directed in a useful way, I do query its practical application. In a dynamic environment, many of the items listed are notoriously difficult to establish causal responsibility for. Because of this, the policy may be the subject of endless future argument. In my opinion, all items should be prefaced with the wording “to not cause <u>or contribute to</u>...” rather than just “to not cause”. This would somewhat reduce the burden of proof in terms of a sole causal responsibility.</p>
<p>p74, Rule 3.5.3.3.2 matters to which discretion is limited</p>	<p>I do not understand why effects on water quality, item (e), is limited to a salmon farm and salmon farming at Tio Point. As this is a matter directly related to monitoring and build-up, it should also be a matter of discretion at all farms.</p> <p>I also do not understand why item (g), does not refer to marine farming as well as the marine farm when it come to the King Shag Management Plan. The inconsistency with wording of the other provisions is likely to raise issues.</p>
<p>P75, Rule 35.3.3.3</p>	<p>The rule preventing public notification is of concern, as it acts as a black on the ability to notify even when special circumstances may justify notification.</p>

Sylvia Allan
27th March 2017