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**Ministry for Primary Industries**  
Manatū Ahu Matua



24 November 2016

Document Number: Sub16-0078

## Consultation proposal for relocation of salmon farms in the Marlborough Sounds

### Purpose:

This paper recommends you agree to progress to consultation with the public and iwi authorities on proposed regulations, which can be made under sections 360A to C of the Resource Management Act 1991 (RMA), to amend the Marlborough Sounds Resource Management Plan to enable the relocation of up to six existing salmon farms to higher flow sites. In deciding whether to proceed to consultation, you should seek the views of the Minister of Conservation, Minister for the Environment and also Cabinet. Attached for your consideration are the following associated documents: a Cabinet paper, Regulatory Impact Statement (RIS), consultation document, proposed amendments to the Marlborough Sounds Resource Management Plan, and the Marlborough Salmon Working Group Report. This briefing has been prepared by MPI with the Ministry for the Environment and Department of Conservation.

Minister	Action Required:	Minister's Deadline
<b>Minister for Primary Industries</b>	<b>Note</b> and <b>agree</b> the recommendations contained in the briefing	For discussion with Marine Ministers on 28 November 2016
<b>CC Associate Minister for Primary Industries</b>		

### Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Luke Southorn	Director, Economic Development and Partnerships	s 9(2)(a)	
Principal Author	s 9(2)(a)	Manager Aquaculture Unit	s 9(2)(a)	

## Key Messages

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1. Many of our primary industries will have to adapt overtime to meet modern best farm management practices, community expectations, and climate change.
2. This paper recommends you agree to progress to consultation with the public and iwi authorities on proposed regulations, which can be made under sections 360A to C of the Resource Management Act 1991 (RMA), to amend the Marlborough Sounds Resource Management Plan to enable the relocation of up to six existing lower flow salmon farms to higher flow sites.
3. Price Waterhouse Cooper (PwC) estimates meeting the Benthic Guidelines to reduce environmental effects at the existing sites would significantly impact their ongoing commercial viability and the numbers of people employed.
4. Moving to higher flow sites would improve both environmental and economic performance and enable farms to meet the Benthic Guidelines developed by the Marlborough District Council, government, industry, scientists and community. It would enable improved biosecurity management and climate change resilience.
5. Creating new salmon space in the Marlborough Sounds will be highly contested. This proposal aims to investigate whether existing salmon space could be better located to enable improved community, environmental and economic outcomes. The proposed regulations suggest changes to the Marlborough Sounds Resource Management Plan to enable relocation.
6. A Working Group comprising community, industry, iwi, council, the Ministry for Primary Industries (MPI) and the Department of Conservation (DOC) has considered relocation options. The proposed regulations as explained in this document are generally consistent with the Working Group's recommendations.
7. Even though the Working Group came to a set of recommendations there are still concerns among some of the community members in that group about whether relocation and salmon farming of any form in the Marlborough Sounds is a good idea. We can expect some parts of the community to object strongly.
8. In deciding whether to proceed to consultation, you should seek the views of the Minister of Conservation, Minister for the Environment and also Cabinet.
9. You also need to establish a consultation process with the public and iwi authorities that provides adequate opportunity and time for comment; and that requires a report and recommendation be prepared on those comments.
10. A preliminary assessment suggests that that the proposed regulations would meet other requirements set out in Sections 360A and 360B RMA. The consultation process provides the means to test this initial assessment and ensure that it is informed by the views of iwi and the community.

## Recommendations

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11. MPI recommends that you:

- a. **Agree**, subject to discussions with the Minister for Conservation, Minister for the Environment, and Cabinet, to consult with the public and iwi authorities on proposed regulations made under sections 360A-C of the Resource Management Act 1991 (RMA) to enable the relocation of up to six salmon farm in the Marlborough Sounds to higher flow sites.

**Agreed / Not Agreed**

- b. **Note** in deciding whether to proceed to consultation on the proposed regulations you should consider the attached Cabinet paper, Regulatory Impact Statement, consultation document, proposed amendments to the Marlborough Sounds Resource Management Plan, and the Marlborough Salmon Working Group Report.

**Noted**

- c. **Agree** to establish and use the consultation process set out in this document and that you consider it gives the public and iwi authorities adequate time and opportunity to comment on the proposed regulations.

**Agreed / Not Agreed**

- d. **Note** the proposed consultation process involves both consultation with the public (which includes Māori and hapu/iwi) and a second stream of consultation with iwi authorities.

**Noted**

- e. **Agree** to establish an independent panel comprising three appropriately qualified and experienced RMA practitioners to conduct public hearings and prepare a report and recommendation to you on the comments received through consultation on the proposed regulations.

**Agreed / Not Agreed**

- f. **Note** that if you agree to establish an independent panel, agencies will provide potential candidates and a terms of reference for approval.

**Noted**

- g. **Agree** to submit the attached Cabinet paper and Regulatory Impact Assessment to seek Cabinet's approval to consult.

**Agreed / Not Agreed**

- h. **Note** that preliminary advice is that the proposed regulations meet the requirements in sections 360A and 360B RMA.

**Noted**

- i. **Note** the attached Cabinet paper seeks, to avoid any doubt, confirmation of the Government's Policy for aquaculture.

**Noted**



Ben Dalton  
Deputy Director-General  
Sector Partnerships & Programmes  
for Director-General

Hon Nathan Guy  
Minister for Primary Industries

/ /2016

## Background

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12. In March 2015, Business Growth Agenda (BGA) Ministers agreed to the Ministry for Primary Industries (MPI) investigating use of the aquaculture regulation-making power (s360A-C RMA) to enable relocation of up to six lower flow salmon farms to higher flow more productive and sustainable sites in the Marlborough Sounds.
13. The proposal was initiated following discussions with The New Zealand King Salmon Company (King Salmon) and Marlborough District Council (MDC).
14. Detailed assessments commissioned to date indicate that moving these farms to higher flow sites would improve both environmental and economic performance and enable farms to meet the Benthic Guidelines developed by the MDC, government, industry, scientists and community. It would improve biosecurity management and resilience to warming sea temperatures without increasing the area of surface structures.
15. Relocation is consistent with the BGA aim to increase the productivity of natural resources while reducing environmental impacts. It would enable further growth of the salmon industry and create jobs while reducing environmental impacts by ensuring the Benthic Guideline standards are met.
16. In October 2015, MPI signed an agreement with King Salmon for it to pay for the Assessments of Environmental Effects (AEEs) needed to determine the effects of relocation. Under the agreement, MPI contracted and managed all research. The AEEs cost \$1 million.
17. In May 2016, BGA Ministers were updated on the project and agreed to establish a Working Group to provide recommendations on how to proceed. The Group considered nine potential relocation sites. No other suitable sites for salmon farm relocation have been identified in the Marlborough Sounds.
18. MDC has supported the process to date. Maps of the existing farms and proposed relocation sites are in Appendix One.

## Summary of the Marlborough Salmon Working Group (Working Group) findings

19. The Working Group comprising seven community, three industry, two iwi, the Department of Conservation (DOC), MDC, and MPI representatives has now delivered its advice report. A copy is attached.
20. The Group considered a range of options to enable the lower flow farms to meet the Benthic Guidelines<sup>1</sup>. The only viable options at this time with current technology are reducing stocking density at the existing farms or relocating the farms to higher flow sites. The Group recommends you consult on both options.

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<sup>1</sup> Alternative options include offshore and land-based salmon farming, waste capture and seabed remediation.

21. In respect to the nine potential relocation sites, the Working Group considered:
  - a. There are three sites to proceed to public consultation: Richmond Bay South, Horseshoe Bay, and Tio Point.
  - b. There are three sites where members have divergent views on whether the sites are appropriate to proceed to consultation: Blowhole Point North, Blowhole Point South, and the mid Waitata Reach.
  - c. There are three sites that should be eliminated due to environmental impacts (agencies agree): Tipi Bay, Te Weka Bay, and Motukina.
22. The Working Group noted that moving farms to higher flow sites may enable increased salmon production. Some members felt allowing increased production was not appropriate due to water quality effects. Others were comfortable providing any increases are sustainably and adaptively managed.
23. The Group also recommended, if existing farms are relocated, the vacated space should be prohibited to aquaculture. This is consistent with the principle of “a no net gain in surface structure space” that officials have been working to.
24. Even though the Working Group came to a set of recommendations there are still concerns among some of the community members about whether relocation and salmon farming of any form in the Marlborough Sounds is a good idea.
25. The value of the Working Group is that it brought together a range of perspectives and provided an opportunity for discussion and debate outside of a formal process to narrow down the real issues. Officials are now well informed of the issues likely to be raised at consultation. The report would be publicly available during consultation to help the community formulate submissions.
26. The Working Group’s recommendations on legal risk, adaptive management, consultation, and their ongoing role are discussed later in this document.
27. The Working Group was not asked to consider the wording of the proposed plan change but were provided an overview how the change plan would operate. Use of the regulation-making power was discussed but no recommendation made. The community representatives were not adverse to the regulations, but cautious to ensure a good consultation process and independent assessment of information. This is discussed in the consultation section later in the document.

### **The six potential relocation sites and differing views on suitability**

28. This briefing recommends consulting on proposed regulations that amend the Plan to provide for salmon farm relocation at six sites: the three sites the Working Group agreed should proceed to consultation and the three sites where the Group were divided on their views. Increased production will also form part of the proposal for consultation. The Working Group represents only a small part of the community and wider public views should be sought to determine the appropriateness of the proposal. No other sites in the Marlborough Sounds have been identified appropriate for salmon farming.

29. While the Working Group recommended consulting on two options (reducing stocking density at the existing farms; or relocating the farms to higher flow sites), as the consultation is on the proposed regulations which amend the plan the discussion is on just the option of relocation. This is because if relocation is not appropriate, the default position is the farms will remain at their current sites and it would then be up to MDC to consider reducing stocking density. Under this scenario, there would be no need for regulations to amend the plan.
30. The following sections of this briefing outline the proposed regulations and provide a summary of the key issues that will need to be factored into decisions about whether this proposal is appropriate in terms of the purpose and principles of the RMA and New Zealand Coastal Policy Statement (NZCPS).
31. At this stage the available information suggests all six sites are suitable for salmon farming, however all have some potential adverse effects. Consultation will ensure that this information can be tested and all views can be taken into account in assessing whether any or all of the sites are appropriate for salmon farming and that any adverse effects can be avoided, remedied or mitigated.

### **Summary of the proposed regulations**

32. The proposed regulations would amend the Marlborough Sounds Resource Management Plan to:
  - a. Allow applications for resource consent to farm salmon at six specific relocation sites currently within the prohibited zone. The effects of salmon farming in these areas has been assessed by a variety of experts. Weighing these assessments with public feedback will allow an informed decision whether rezoning the areas to allow aquaculture is appropriate.
  - b. Require that consent applications for salmon farming on the relocation sites would be a restricted discretionary activity provided that detailed standards and requirements are met, including the Benthic Guidelines. These standards and requirements are designed to manage the general effects of salmon farming on the environment including ecological, water quality, landscape, visual amenity, and noise. They have been developed from the 2013 EPA Board of Inquiry decision on salmon farming in the Marlborough Sounds and further decisions by the council. Including these in the plan, rather than leaving them to the consent stage will assist to streamline the process.
  - c. Enable the exercise of discretion at the consent stage over site specific matters which cannot be addressed on a general basis and so require public input and, if necessary, a consent application hearing. These would include effects on the coastal environment of significance to tangata whenua, potentially water quality and king shags, layout and positioning of farm structures to enable public access (including recreational use) and navigational safety, structural safety including anchoring systems, duration of consent, monitoring, review of conditions and administrative charges.
  - d. Provide a rules framework to ensure relocation will not increase the overall surface structures area of salmon farms, [i.e. limited to the 9 hectares currently consented]. This will be achieved by including a rule that an applicant must hold a consent for an existing site. Farms being relocated

- would have to be removed before locating a farm at one of the relocation sites. Rules would ensure that aquaculture at the surrendered sites would become prohibited.
- e. Preclude public notification but allow MDC discretion to give limited notification to any affected person if written approval of the person cannot be obtained.
  - f. The plan change would also implement staged adaptive management of any relocated sites. Development of water quality standards would begin in 2017 to inform adaptive management.
41. As part of the resource consent process there would be an assessment by MPI under the Fisheries Act as to whether salmon farming would have any Undue Adverse Effects on fishing.<sup>2</sup> If an aquaculture decision determines there is an undue adverse effect on recreational or customary fishing, consents would be declined.

### **Employment and GDP implications: Existing sites v relocation sites**

33. PwC estimates<sup>3</sup> current production at the four active<sup>4</sup> existing sites results in a GDP value of \$10 million and 105 full-time equivalents (FTE). Implementing the Benthic Guidelines would require destocking and fallowing the sites for two to five years to allow the seabed to recover before recommencing production at lower stocking levels. Over the fallowing period \$10 million GDP per annum and 105 FTEs will be lost.
34. There is scientific uncertainty about the exact stocking level that will meet the Benthic Guidelines following the fallowing period. Under minimum predicted feed levels all four farms (Ruakaka, Waihinu Bay, Forsyth Bay, and Otanerau) are not commercially viable resulting in an ongoing loss of \$10 million GDP and 105 FTEs. Under the maximum predicted feed levels, three of the four farms (Waihinu Bay, Forsyth Bay, and Otanerau) remain commercially viable producing a reduced GDP value of \$6.4 million and 67 FTEs.

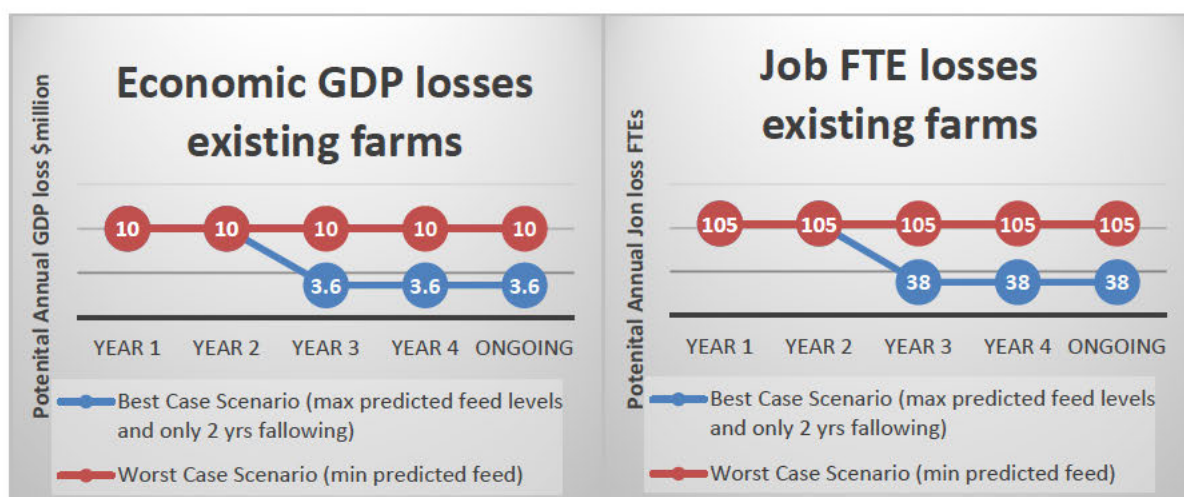
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<sup>2</sup> The purpose of the Undue Adverse Effects test is to determine whether a proposed marine farm would unduly affect recreational, customary or commercial fishing for specific fish stocks. A proposed marine farm cannot proceed if it would have 'undue' adverse effects on recreational or customary fishing, or commercial fishing for non-quota management system (non-QMS) stocks. When commercial fishing is unduly affected, compensation can be paid to affected quota owners. The outcome of the test cannot be predetermined, as it must consider all available information on fishing at the time of the assessment, including from public consultation.

<sup>3</sup> Economic impact assessment have been prepared by Price Waterhouse Cooper (PwC) and reviewed by Ernst and Young. The Cawthron Institute predicted feed levels and fallowing times to meet the Benthic Guidelines

<sup>4</sup> Note, the two Crail Bay sites have been inactive since 2011 and are not including in this estimate.

















35. Three new salmon farms were approved in 2013 following the Board of Inquiry process. While production from these farms will help to offset the potential reduction of production at lower flow sites, there will be no significant increase in the total salmon production from the Marlborough Sounds.
36. In contrast, PwC estimates increased production from relocating all six existing farms to the proposed relocation sites (best case scenario) could add up to \$49 million annually to GDP and 511 FTEs. Based on NZIER research, this equates to an additional \$125 million in annual export revenue. Economic gains would occur over 10 to 15 years as the sites are relocated and then developed in stages.
37. The two Crail Bay farms were not included in the economic models because they have been inactive since 2011. The PwC research shows, when used again, they will not be commercially viable under the Benthic Guidelines. Given they have not been used recently, they are the lowest priority for relocation.

#### *Overview of the potential relocation sites*

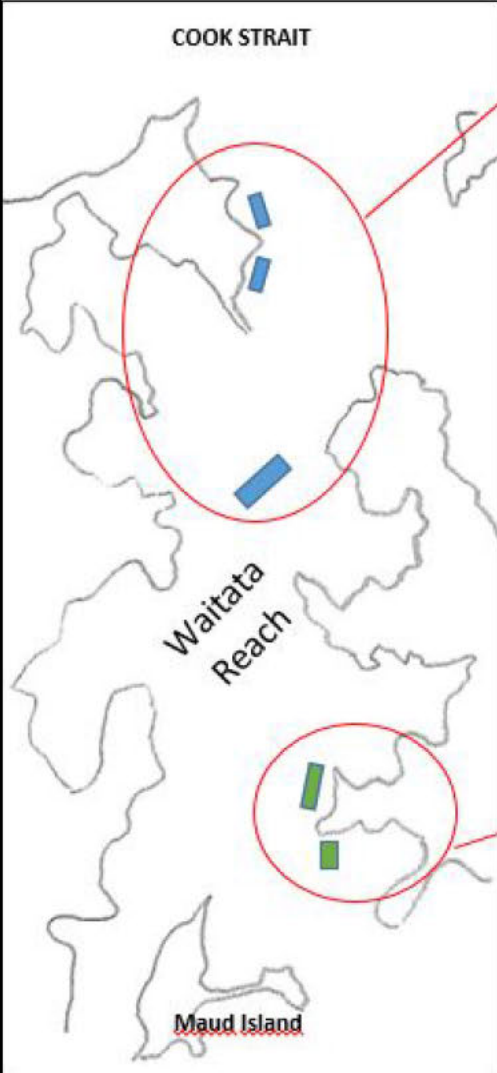
38. The six potential sites are away from important habitats, biophysically suitable for salmon farming, and would meet the Benthic Guidelines. Table 1 shows the key site concerns and potential production value. Note that the better sites for farming with the highest production potential are also likely the sites of most concern.

TABLE ONE: INFORMATION ON THE SIX POTENTIAL RELOCATION SITES							
	Site	Location	MSWG View	Key Concerns (full list of concerns is in the Working Group report)	Industry view <sup>5</sup>	Production	Value
Sites the MSWG divided whether should proceed to consultation	Mid Waitata Reach	Gateway entrance to Waitata Reach, Pelorus	 Highest Concerns	<ul style="list-style-type: none"> <li>Cumulative effects on the landscape and cultural values of Waitata Reach.</li> <li>Location in the middle of the channel and effects on views and perceptions</li> <li>Navigation larger vessels and cruise ships</li> </ul>	 Best site	3080t	\$13.9m 145 FTEs
	Blowhole Point North	Gateway entrance to Waitata Reach, Pelorus	 Highest Concerns	<ul style="list-style-type: none"> <li>Cumulative effects on the landscapes of Outer Sounds and 'gateway' entrance.</li> <li>Cumulative effects on the landscape and cultural values of Waitata Reach</li> <li>Wai hi tapu site and King Shags</li> </ul>	 Good site	1980t	\$9m 94 FTEs
	Blowhole Point South	Gateway entrance to Waitata Reach, Pelorus	 Highest Concerns	<ul style="list-style-type: none"> <li>Cumulative effects on the landscapes of Outer Sounds and 'gateway' entrance.</li> <li>Cumulative effects on the landscape and cultural values of Waitata Reach</li> <li>King shags</li> </ul>	 Good Site	2200t	\$10 m 104 FTEs
Sites the MSWG agrees should proceed to consultation	Richmond Bay South	Mid Waitata Reach, Pelorus	 Concerns	<ul style="list-style-type: none"> <li>Cumulative effects on the landscape and cultural values of Waitata Reach</li> <li>Recreation scallops</li> <li>King Shags</li> </ul>	 Good Site	2200t	\$10 m 104 FTEs
	Horseshoe Bay	Mid Waitata Reach, Pelorus	 Concerns	<ul style="list-style-type: none"> <li>Cumulative effects on the landscape and cultural values of Waitata Reach</li> <li>Recreation scallops</li> <li>King Shags</li> </ul>	 OK Site	660t	\$3 m 31 FTEs
	Tio Point	Tory Channel	 Less Concerns	<ul style="list-style-type: none"> <li>Cumulative effects on Tory Channel</li> <li>Water quality and algal blooms</li> </ul>	 OK Site	704t	\$3.2 m 33 FTEs
Total + \$49m to annual GDP and 511 FTEs							

<sup>5</sup> Industry view – based on the biophysical characteristics (currents, depth, flow, and temperature) and production potential



39. The main concerns raised by the Working Group are about cumulative effects. This was the reason the Working Group was divided on whether three of the six sites should proceed to consultation. Cumulative effects are an important consideration for all sites, but most relevant to the five sites in Waitata Reach.
40. Waitata Reach extends from Maud Island in the south to the 'gateway' entrance to the Pelorus Sound in the north. Waitata Reach is one of the few remaining relatively pristine and undeveloped areas in Pelorus Sound. It is in zone CMZ1 in the Marlborough Sounds Resource Management Plan, which prohibits consent applications for new aquaculture space.

CUMULATIVE EFFECT ISSUES IN THE WAITATA REACH		
REACH WIDE CUMULATIVE EFFECTS FOR ALL SITES		ADDITIONAL AREA SPECIFIC CUMULATIVE EFFECTS FOR SOME SITES
<p>The Board of Inquiry highlighted Waitata Reach is one of the few remaining relatively pristine undeveloped areas in Pelorus Sound</p> <p>Cumulative effects on landscape, natural character and cultural values need to be carefully considered.</p> <p>Recent Environment Court cases have also highlighted cumulative effects of marine farming on endangered King Shags.</p>		<p>These are the three sites the Working Group is divided on progressing to consultation due to:</p> <ul style="list-style-type: none"> <li>• Potential cumulative effects on outstanding natural features and 'gateway' entrance to Pelorus Sound</li> <li>• Potential cumulative effects on the proposed Outer Sounds outstanding landscape</li> <li>• Effects on the long views to Maude Island</li> </ul>
		<p>These are two of the three sites the Working Group agrees should progress to public consultation. The other site is Tio Point in Tory Channel</p>

41. The cumulative effects of salmon farms on the landscape, natural character, and cultural values of the Waitata Reach, and endangered King Shags were key issues during the 2012 Board of Inquiry (BOI), and more recently at the Environment Court. Of the five farms applied for in 2012 in the Waitata Reach, the BOI only approved two based on their site specific and cumulative effects.
42. Although the current proposal relates to different sites in the Waitata Reach, the BOI's assessment of cumulative effects will need to be carefully considered in determining the cumulative impacts of this proposal.

*New Zealand Coastal Policy Statement (NZCPS) considerations*

43. Cumulative effects on landscape, natural character and King Shags are also relevant considerations under the NZCPS including:
  - a. The requirement to avoid adverse effects on endangered King Shags (Policy 11 biodiversity), and on the outstanding natural features and landscapes of the Waitata Reach and Outer Sounds (Policies 13 and 15).
  - b. The requirement to avoid significant adverse effects on all other landscapes and on natural character of the Sounds.
44. Based on the current AEE landscape and biodiversity assessments, our preliminary view is that relocation will give effect to the NZCPS. However, this is likely to be key area of community debate and concern and will need be further informed by consultation.

*Water quality issues due to increased production*

45. The higher flow sites may enable a fivefold increase in salmon production and still meet the Benthic Guidelines. NIWA's water quality model suggests these increases are sustainable, however, the model is stretched because we are dealing with nitrogen levels far higher than the environment has experienced.
46. Agencies agree with the Working Group recommendation that water quality needs to be managed using adaptive management, staged development, and monitoring. As well as the Benthic Guidelines, Water Quality Guidelines will be developed in 2017 for the Marlborough Sounds to guide adaptive management.
47. Under the proposal, King Salmon would be required to use high-tech monitoring buoys to support robust adaptive staged development. These buoys would also significantly improve state of the environment monitoring in the Marlborough Sounds benefiting future management for all users.

## Summary of the proposal for consultation

48. In summary, the consultation document on the proposed regulations will explain the proposed amendments to the plan and seek comments on the changes. It will also :
- a. Explain the problem of low flow sites, the consideration of alternative options to meet the Benthic Guidelines, the Working Group process, how potential relocation sites were identified, and future growth is constrained
  - b. Seek comments on the relocation of up to six existing farms and the consequences of reducing stocking densities at the existing sites.
  - c. Explain that relocation would not result in any additional surface space and that the vacated space would be prohibited to any future aquaculture.
  - d. Explain that vacated sites should recover to a functional state in 5 years. Research on waste removal will be conducted to facilitate faster seabed remediation where sites have been vacated.
  - e. Seek comments on the costs and benefits of each of the potential relocation sites and the priority of existing sites for relocation. The two currently inactive Crail Bay farms are the lowest priority for relocation.
  - f. Explain how adaptive management would manage water quality and ensure farms meet the Benthic Guidelines. Also, that Water Quality Guidelines will be developed to guide robust adaptive management.
  - g. Explain King Salmon must provide advanced monitoring buoys to ensure cumulative effects are appropriately managed. These buoys will support improved state of the Environment monitoring to the benefit of all users.
  - h. Explain there is one relocation site in Tory Channel and two farms in Queen Charlotte being considered for relocation, so one of these would need to move into Pelorus Sound if both were relocated.
  - i. Explain that the intent is to deal with environmental issues primarily at the Plan stage. At the consent stage, council discretion and public notification would be limited.
  - j. Explain the ongoing work underway on waste capture, seabed remediation feed efficiency, and offshore aquaculture to enable an ongoing process of both environmental and productivity improvement.
  - k. Explain as part of the resource consent process, there would be an assessment by MPI under the Fisheries Act as to whether salmon farming would have any Undue Adverse Effects on fishing.
49. The proposal is generally consistent with the Working Group's recommendations.

*Should there be a prohibition on new salmon farms in the Marlborough Sounds?*

50. The Working Group also recommended that government explores options to close the enclosed Marlborough Sounds to any further new salmon farming.

51. Agencies have extensively investigated the Sounds and beyond the six potential relocation sites growth opportunities are very limited. The opportunity cost of closing the Sounds is not high. However, there will be new technologies in future that may create new opportunities. Some Iwi also do not support a prohibition that would curtail their rights to develop sustainable aquaculture.
52. Agencies do not recommend consulting on this option as part of the relocation proposal. This matter is more appropriately deferred to the overall aquaculture planning process being undertaken by the Marlborough District Council in developing its next generation coastal plan.

**Is the aquaculture regulation-making power the best tool for relocation?**

53. The RIS has identified three RMA options to facilitate potential relocation through a plan change, two of which appear to offer the most potential:
  - a. Government using the aquaculture regulation-making power to change the Marlborough Sounds Resource Management Plan, followed by King Salmon applying for the resource consents; or
  - b. King Salmon applying to the Environmental Protection Authority (EPA) for a concurrent plan change and consents.
54. Table 2 below provides an assessment of both options. The Cabinet Paper has been prepared on the basis you agree to consult on the proposed regulations. This should not be seen as restricting your decision. In deciding to use the regulations you need to agree that it is appropriate that the government assume the costs and risks of enabling relocation. MPI suggests this is appropriate for the following reasons:
  - a. Government's policy for aquaculture as set out in this paper
  - b. Salmon farming is important to the regional economy of Nelson and Marlborough.
  - c. Relocation presents an opportunity to increase GDP and employment and improve environmental performance without increasing surface space.
  - d. If relocation is not facilitated there are threats to the commercial viability of existing farms and the economic and employment opportunities provided.
  - e. The proposal is consistent with the BGA aim to increase the productivity of natural resources while reducing environmental impacts.
  - f. Moving farms to higher flow sites would provide opportunities for improvements in biosecurity management and climate change resilience to warming sea temperatures. MPI will proactively work to improve on current biosecurity practices for salmon farms.
  - g. Preliminary assessment indicates that the environmental effects of salmon farming at the new sites can be managed through plan rules and a limited consent process.
55. The proposal does give rise to a number of risks set out in Table 3.



**Table 2.** Estimated timeframes and costs for plan change and coastal permits

	<b>EPA</b> Concurrent Plan Change and consent applications	<b>Regulation</b> Sequential Plan Change and consent applications
	Decision made by a Board of Inquiry	Decision made by the Minister of Aquaculture on the Plan and by MDC on the consents
<b>PROCESS COSTS &amp; TIME</b>		
Plan change and consents		
Cost	\$4-5m	\$1m
time	9 to 12 months	15 months
<b>LEGAL COSTS &amp; TIME</b>		
Appeals High Court	High Court on points of law (plan change & consents)	High Court judicial review (plan change only)
cost	\$400k	\$100 –250k
time	6 to 12 months	6 to 12 months
Appeals Environment Court	NA	Environment Court (consents) <sup>1</sup>
Cost	NA	\$200 – 750k
Time	NA	6-12 months
<b>TOTAL COST &amp; TIME</b>		
<b>TOTAL TIME</b>	15 to 24 months	25 to 39 months
<b>TOTAL COST</b>	\$4.4 to \$5.4 m	\$1.3 to \$2 m
Cost to Crown	0 <sup>2</sup>	\$850k to \$1.05m
Cost to King salmon	\$4.4 to \$5.4 m (Plus \$1m spent on AEEs)	\$450 to \$1m (Plus \$1m spent on AEEs)
<b>CONCLUSIONS</b>		
	Costly but quick. All costs and legal risks fall on King Salmon	Less costly but slow. Costs and legal risks fall on King Salmon and the Crown
<p><b>NOTES:</b>            Decisions on the Undue Adverse Effects test are also subject to Judicial Review, but any proceedings are expected to be in the same time period as any appeals to the Environment Court or High Court.            Estimates do not include additional costs to plaintiffs if court actions lost            Estimates do not include additional costs and time of potential subsequent appeals to higher courts  <sup>1</sup>Under the regulation option - the opportunities for appeal at the consent stage are reduced because the Plan would limit the matters of discretion and only require notification to affected parties. King Salmon is aware of the potential legal risks and costs at the consent stage.  <sup>2</sup>Presumes the Crown doesn't input into the BOI. It is likely the Crown would participate (~\$150k staff time)</p>		

**Table 3.** Risks, comment and mitigation of the proposed regulations.

Risk	Risk comment and mitigation	Risk level
Opposition to specific relocation sites and community opposition to salmon farming growth and central government intervening in the regional planning process	<ul style="list-style-type: none"> <li>While the proposal may deliver generally improved environmental outcomes, there will be individuals and groups particularly affected by the proposal who are strongly opposed to introducing salmon farms to new areas. These views are expected to come through in public consultation.</li> <li>MPI convened a Working Group to identify principles and select sites for consultation.</li> <li>Relinquishing existing lower flow sites is expected to have local community support particular where they are currently in high use areas and close to residential properties.</li> <li>Extensive investigations on the effects at potential sites has been undertaken, and will be publicly available.</li> <li>Consultation provides an opportunity for the community to participate in the process and raise their concerns</li> </ul>	H
Negative perception of an intervention that supports a particular company (King Salmon)	<ul style="list-style-type: none"> <li>This proposal is about implementing better environmental management of salmon farms without compromising commercial viability and King Salmon is the only operator in the Marlborough Sounds.</li> </ul>	M
Relocation sites (3) in areas proposed as Outstanding Natural Features/Landscapes	<ul style="list-style-type: none"> <li>An independent landscape report suggests that the sites could still be progressed in a way that gives effect to the New Zealand Coastal Policy Statement 2010 (i.e. result in effects that are no more than minor). However, there are different professional views on this and likely strong community views.</li> <li>The consultation process will allow for views to be canvassed and further expert opinion obtained</li> </ul>	M
Iwi aquaculture settlement grievance	<ul style="list-style-type: none"> <li>s 9(2)(g)(i)</li> <li>s 9(2)(g)(i)</li> <li>MPI is also working closely with Te Tau Ihu on the relocation proposal. If farms are relocated there would be a settlement obligation top up of s 9(2)</li> </ul>	M
Māori cultural concerns about effects at relocation sites	<ul style="list-style-type: none"> <li>There will be further consultation with Iwi authorities to ensure any cultural concerns are identified and assessed in determining which sites, if any, should proceed.</li> </ul>	M
s 9(2)(g)(i)		L



	s 9(2)(g)(i)	
Marlborough District Council opposition to central government intervention	<ul style="list-style-type: none"> <li>The former Council was supportive but this will be re-assessed given the recent local body elections.</li> <li>MPI will ensure the recently elected Councillors are briefed on the consultation proposal.</li> <li>MPI has worked closely with MDC. Council staff support relocation provided the Ruakaka site is included in the proposal, because the area is of high landscape value. DOC have also identified Ruakaka as a priority to be relocated.</li> <li>s 9(2)(ba)(i)</li> <li>The bulk of the plan change costs will be borne by central government rather than council.</li> </ul>	L
Second generation plan	<ul style="list-style-type: none"> <li>Whether MDC will notify MEP before King Salmon can apply for resource consents [see RIS]</li> </ul>	L
Private benefit from public space	<ul style="list-style-type: none"> <li>MDC is working on introducing a coastal occupation charge. King Salmon supports this initiative.</li> </ul>	L

### Legal Risks

56. This will be the first time the ss360A-C regulation making-power under the RMA has been used. Therefore there will be questions about how the provisions are applied.
57. Regulations made under s360A cannot be appealed like a normal plan change could be, however the decision making process is subject to judicial review. Judicial review may occur in relation to the Minister of Aquaculture's decisions to:
- Establish the process for consultation with the public and iwi authorities, and
  - Recommend regulations.
58. s 9(2)(h)

59. To reduce the chances of successful judicial review you must establish a process that you consider gives the public and iwi authorities adequate time and opportunity to comment on the proposed regulations; and will ensure that any future decision to recommend regulations is based on robust information, takes into account consultation, and meets all the requirements of sections 360A and 360B of the RMA. These requirements are discussed in the following sections.

### **Prerequisites to using the aquaculture regulation-making power**

60. There are two major prerequisites to be satisfied before using the regulation-making power. These are:
- a. establishing a process for consultation, and
  - b. satisfying other sections 360A to 360B evaluation requirements.

### **A. You must establish a process for consultation**

61. Under section 360B(2)(b)(iv), you cannot recommend regulations unless you have consulted the public and iwi authorities. Under section 360B(3) you must:
- a. Notify the public and iwi authorities of the proposed regulations; and
  - b. Establish a process that:
    - i. You consider gives the public and iwi authorities adequate time and opportunity to comment on the proposed regulations; and
    - ii. Requires a report and recommendation to be made to you on those comments and the proposed regulations; and
  - c. Publicly notify the report and recommendation.

### **Proposed process for consultation with the public and iwi authorities**

62. Agencies propose you agree to the following consultation process to provide the public and iwi authorities adequate time and opportunity to comment on the proposed regulations in accordance with section 360B(3) above:
- a. An 8-week (40 working day) period for written submissions consistent with RMA timeframe requirements for the public and iwi to comment on Plans.
  - b. The consultation document, proposed regulations, and Summary Assessments of Environmental Effects (and underlying technical reports) will be available in libraries, at Council offices and on the internet. The will be sent to affected parties, key stakeholder groups, and iwi authorities.
  - c. Targeted workshops will be held with key Marlborough Sounds groups, broader Marlborough community representatives, and hui with iwi authorities. There will also be drop-in sessions for the public.
  - d. At the end of the 8 week submissions period, public hearings will be held by an independent panel comprising 3 suitably qualified independent RMA experts, who will have the ability to test the information provided during the consultation process so that they are able to make recommendations.
  - e. Expert workshops will be held on King Shags, water quality, landscape, navigation and, if required, additional matters raised during consultation.
  - f. The independent panel will prepare a report and recommendation to you on the public comments and the proposed regulations and, as required, the report and recommendation will be publicly notified.

63. This process is consistent with the consultation principles recommended by the Working Group and with the consultation principles established by the Environment Court. A timeline for consultation is provided in appendix 1. This process also ensures that there is opportunity for meaningful engagement with iwi authorities through a number of specific local hui.

*Does the process provide adequate time and opportunity?*

64. Section 360B(3)(b)(i) requires the public and iwi authorities have adequate time and opportunity to comment. In respect to adequate time, the process provides the public and iwi authorities 40 working days to make written submissions. This is consistent with RMA timeframe requirements for comment on proposed Plans and more than what is required for proposed plan changes.
65. In respect to adequate opportunity, the proposed process provides two opportunities for the public and iwi authorities to make submissions:
- i. Written submissions on the consultation document, draft plan change, summary Assessment of Environmental Effects and full technical reports
  - ii. Speak to written submissions at the public hearings
66. The process also provides opportunities to access information on the proposal:
- i. MPI's website
  - ii. At libraries in Marlborough and from the Council offices
  - iii. Attendance at targeted meetings/hui
  - iv. Attendance at public drop in sessions.
67. In addition to the consultation document and draft plan change, publicly available documents will include a summary Assessment of Environmental Effects, all technical environmental, social, cultural and economic reports, and the Working Group's report. Cabinet approval will also be sought to release the Cabinet paper and RIS to inform consultation.

*The use an independent panel to hold hearings and prepare a report*

68. Section 360B(3) does not set a specific consultation process you must follow. However, you must be satisfied the process you establish provides adequate time and opportunity to comment; and requires a report and recommendation to be made to you on those comments and the proposed regulations.
69. At one end of the consultation spectrum, you could rely just on written submissions and require MPI to prepare the report. At the other end, you could establish a full EPA-like adversarial Inquiry process. Using an independent panel to conduct hearings and prepare a report is a sensible middle ground (Table 4). Hearings are a normal RMA Plan Change requirement and independent commissioners are regularly used. An independent panel will improve public confidence in the process and outcomes.

**Table 4:** Assessment independent panel v written submissions

	<b>Panel to hear submissions and prepares a report</b>	<b>Written submissions and MPI prepares a report</b>
Ability	Panel comprises experienced RMA experts	MPI and agencies procure RMA expertise as needed
Time	8 week submission period plus five weeks of hearings.: This will delay reporting back to Cabinet by one month to July	Submission period extended to 10 weeks.
Cost	Estimated \$300k above normal departmental staff costs.	Staff costs
Public perception	An independent panel will provide greater public confidence in the process and is in line with the Working Group's recommendations on the need for independent testing of the information	The public will be concerned this process differs from the normal RMA increasing "noise" and likelihood judicial review.
Legal risk	Will reduce the chances of successful judicial review if you agree with their report.  Will reduce perceived predetermination of outcome.  Will increase the chances of judicial review if you disagree with their report and make a different decision	Increases risk of judicial challenge that the process did not provided time and adequate opportunity to comment.  However, there is no requirement in S360 (A-B) to hold hearings.

70. If you agree to use an independent panel, agencies will provide you a list of potential candidates and a terms of reference for approval. The panel report together with final advice from agencies on the proposal and statutory requirements will form the basis for your decision on whether to recommend the use of regulations to enable relocation.

*The role of the Working Group and King Salmon during consultation*

71. The Working Group also recommended it has a role in providing additional advice following consultation. Agencies disagree; the Working Group's role has concluded. Members are free to make submissions to the process.
72. King Salmon will not have a formal role in consultation and can make its own submissions on the proposal.

**B. You must be satisfied that s 360 A & B evaluation requirements are met**

73. Sections 360A and 360B of the RMA set out a number of requirements that must be satisfied before the regulation making power can be used. The key requirements are discussed below.

*Government Policy for Aquaculture*

74. Section 360B(2)(c)(i) requires you be satisfied that 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.
75. The Government's policy for aquaculture is currently set out across three documents: the New Zealand Coastal Policy Statement (2010)<sup>6</sup>, the Aquaculture Strategy (2012)<sup>7</sup>, and the Business Growth Agenda (2015)<sup>8</sup>.
76. Based on these documents, to avoid any doubt, officials recommend Cabinet confirm that the overall Government's policy for aquaculture is:
- i. To recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:
    - a. Including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:
      - The need for high water quality for aquaculture activities; and
      - The need for land-based facilities associated with marine farming;
    - b. Taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and
    - c. Ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for the purpose;
  - ii. To support well-planned and sustainable aquaculture growth;
  - iii. To improve productivity while reducing environmental impact; and
  - iv. To support aquaculture development regionally.
77. The proposal regulations are in accordance with the above policy.

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<sup>6</sup> New Zealand Coastal Policy Statement 2010. Department of Conservation.

<sup>7</sup> Government's Aquaculture Strategy and Five-Year Action Plan to Support Aquaculture. 2012.

<http://www.fish.govt.nz/NR/rdonlyres/20A0ED89-A20B-4975-9E63-6B302187840D/0/AQUAStrat5yrplan2012.pdf>

<sup>8</sup> Building Natural Resources Chapter 4: Business Growth Agenda, Towards 2025. Ministry of Business, Growth and Employment, 2015 <http://www.mbie.govt.nz/info-services/business/business-growth-agenda/pdf-and-image-library/towards-2025/BGA%20Natural%20Resources%20Chapter.pdf>.

### *Other evaluation requirements*

78. Section 360A(2)(b) and 360B(2) sets out a number of other requirements that must be met before you make a decision on whether to recommend regulations.
79. In addition to consulting with the public and iwi authorities, you must formally consult with the Minister of Conservation, other relevant Ministers, and with the Marlborough District Council. This will formally occur post public and iwi authority consultation. At this stage, the Council is supportive of the process and you will be discussing the proposal with Ministers and seeking Cabinet agreement to consult.
80. A preliminary assessment has been made in relation to other requirements. Officials advise that, subject to comments received during consultation:
  - a. The proposed amendments to the Plan are not inconsistent with the purpose of the RMA, which is to promote the sustainable management of natural and physical resources and the principles in Part 2 of the Act, where applicable, will be considered. There is no prima facie/apparent inconsistency with other provisions of the RMA (including Part 7A, which is specifically concerned with occupation in the coastal marine area and aquaculture issues (s 360A(2)(b)).
  - b. The matters addressed are of regional and, possibly national, significance (s360B(2)(c)(ii)). The proposal is regionally significant due to the potential environmental effects and public interest, and likely nationally significant due to the economic and employment impacts. The Minister of Conservation considered the King Salmon EPA application, of a similar scale, to be nationally significant and referred it to a Board of Inquiry.
  - c. The Marlborough Sounds Resource Management Plan will continue to give effect to the New Zealand Coastal Policy Statement and the Marlborough Regional Policy Statement (s 360B(c)(iii)(B) and (C)).
  - d. The regional coastal plan as amended will not duplicate or conflict with any national environmental standards (s 360B(c)(iv)).
81. Officials are of the view that, based on available information, you should proceed to consultation. In making your final decision on whether to proceed with regulations, you will need to have particular regard to an evaluation report prepared under section 32 of the RMA. This report will be prepared following consultation and will form part of the final advice to you.



**Table of next steps if you agree to proceed to public consultation**

Ministerial discussion and Cabinet approval to consult	5 December 2016
Consultation with the public and iwi authorities	16 January – 24 February 2017
Public Hearings conducted by the independent panel	20-31 March 2017
Panel report and recommendations	May 2017
Agency final advice and section 32 report	July 2017
Minister of Aquaculture's decision	July 2017
Cabinet EGI committee and full Cabinet decisions	July 2017
PCO drafting	July – Sept 2017
Cabinet leg committee and Governor General approval	Post-election
King Salmon applies for consents and Fisheries Act test	Late 2017. Expected to take 5 month, but could be longer if decisions appealed.

**Settlement implications**

82. s 9(2)(g)(i) [redacted] Marlborough iwi aquaculture organisations signed a Regional Agreement in 2015 s 9(2)(g)(i), s 9(2)(ba)(i) [redacted]

**Other Budget implications**

83. The budget to run the consultation process, independent hearings panel, and regulatory assessment process is estimated at \$750,000 from MPI's baseline (comprising \$450,000 staff, contractor and consultation costs, and \$300,000 for the independent hearing panel). Plus a contingency of \$250,000 for the costs of potential judicial review of the regulation-making power decisions.

**Risks, Costs and Benefits**

84. A full cost, benefit, risk assessment of using the regulation-making power is provided in the Regulatory Impact Statement.

## **Cabinet approval for you to make changes to the consultation document**

85. The consultation document is attached for the Cabinet's approval. This document contains all the elements of the proposal, however minor technical changes may be necessary. A recent application has been made to extend an existing mussel farm partially into one of the proposed new salmon sites (Blowhole Point South). Technical work is underway to assess the effects of moving the boundaries of this site marginally seaward to remove the overlap. Cabinet approval is sought for you to approve any updates to the consultation document, based on further technical work and peer review, prior to release of the document in early January.

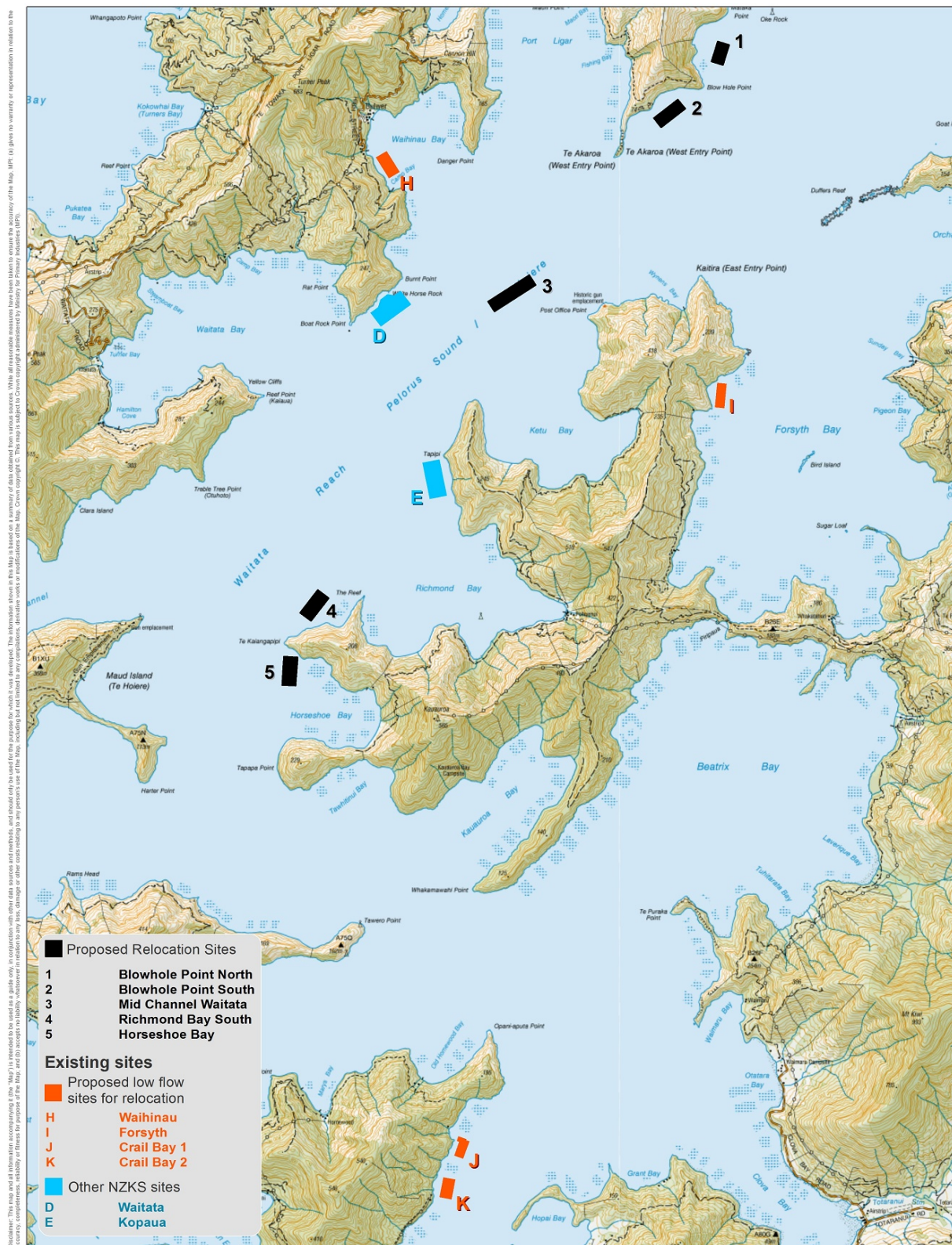
**Potential** s 9(2)(j) in Waikato

86. s 9(2)(j)
- [Redacted content]



## Appendix One: Maps of existing salmon farms and proposed relocation sites

### Pelorus Sound



Ministry for Primary Industries  
Manatū Ahu Matua



0 1 2  
km

1:55,000 @ A3

Coordinate System: NZTM

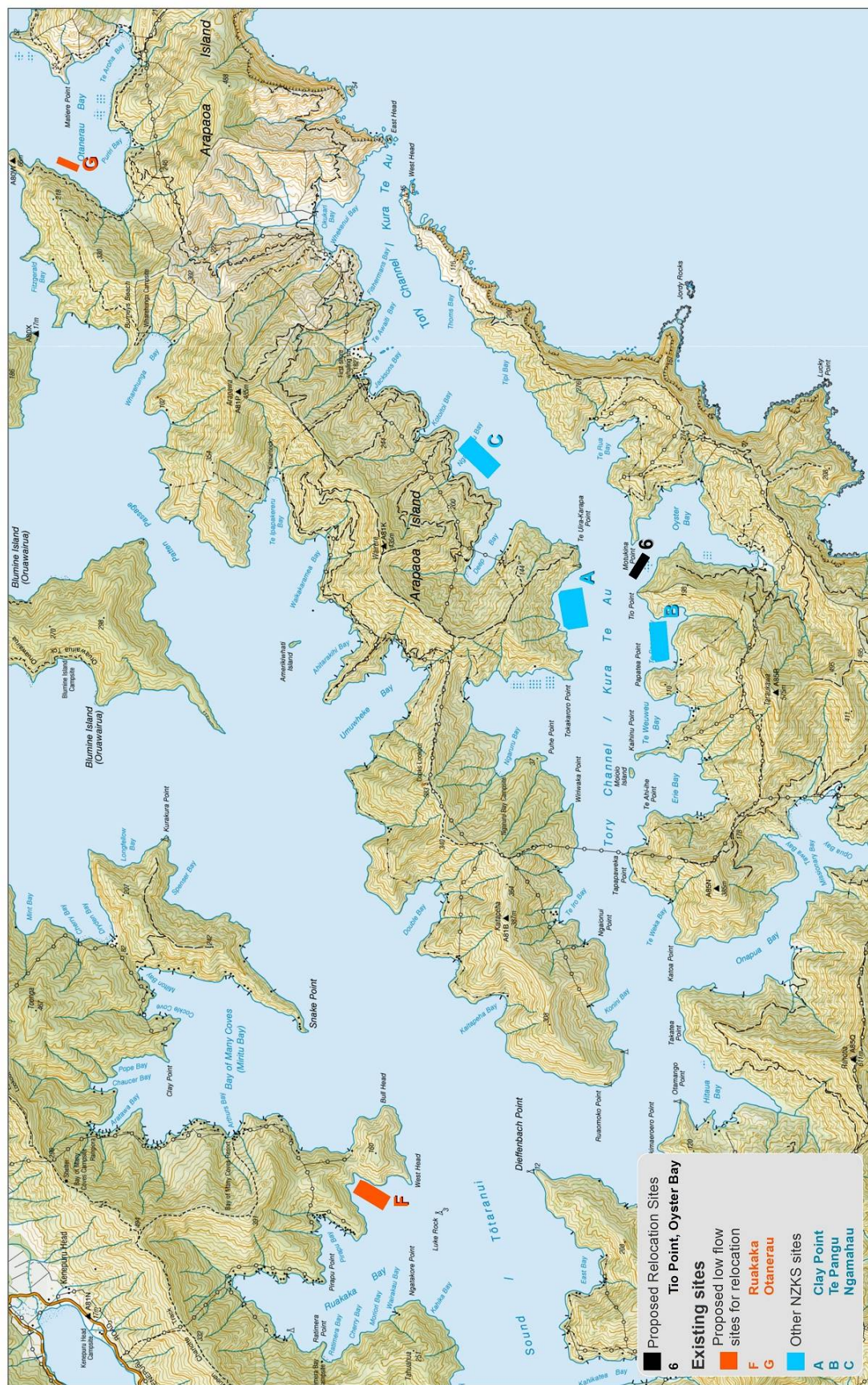
**Map 1: Existing and Potential Relocation Sites  
Pelorus Sound, Marlborough**

Data Attribution:  
This map uses data sourced from LINZ  
under CC-BY and Hillshade data, 2003,  
Geographx.

Date: 11/11/2016  
Produced by: Spatial Analysis Solutions  
Ref: r160467



# Queen Charlotte Sound and Tory Channel



Map 2: Existing and Potential Relocation Sites  
Queen Charlotte Sound, Marlborough

Date: 11/11/2016  
Produced by: Spatial Analysis Solutions  
Ref: r160467

Ministry for Primary Industries  
Manatū Ahu Matua

Data Attribution:  
This map uses data sourced from LINZ  
under CC-BY and Hillshade data, 2003,  
Geograph.

## Appendix Two: Proposed process for public consultation and timetabling

What	Description	Duration	Timetabling
Public submissions on Consultation Document and Draft Plan Change	Public submissions invited on the proposal, supporting documentation made available to inform submissions.	8 weeks (40 working days)	Weeks 1-8
Targeted meetings and hui/iwi consultation	Letters sent in December to iwi authorities and potentially interested groups	4 weeks	Weeks 1-4
Public drop in sessions	1 meeting each at Picton, Blenheim and Havelock, for 2 hours in evenings or on weekends	3 weeks	Weeks 2-4
Panel hearings (if you elect this option)	Opportunity for public to speak to written submissions, heard by advisory panel.	5 weeks	Weeks 9-13
Resources	Dedicated MPI webpage and email address, social and local media advertisements to target submitters. Information displays in secure public places.		
Expert workshops	Expert workshops on key issues, topics likely to include water quality, landscape, king shags, navigation. Further topics could be recommended by MPI or the Independent Panel (if option elected) but final decisions for workshops would rest with MPI (Ben Dalton).	5 weeks	During the consultation period