



Review of Sustainability Measures for the Southern Scallop Fishery (SCA 7)

**Proposals to temporarily close parts of the fishery until
14 February 2017**

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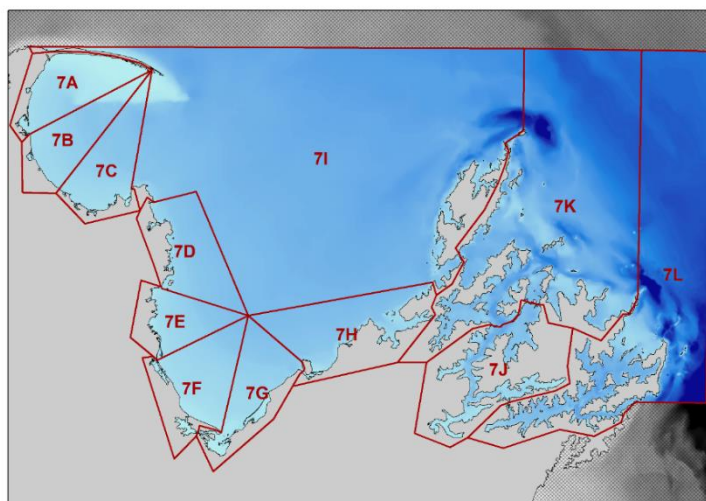


Figure 1: SCA7 reporting areas showing location of area 7H in Tasman Bay, and the Marlborough Sounds (areas 7J, 7K and 7L)

1 Executive Summary

The Ministry for Primary Industries (MPI) has consulted on your behalf on proposed measures aimed at ensuring fishing pressure will not exacerbate any decline of the remaining populations of scallops in the Southern Scallop Fishery (SCA7, refer Figure 1).

SCA7 is managed on an enhanced and rotational basis. The SCA7 fishery comprises three distinct areas; Golden Bay, Tasman Bay and the Marlborough Sounds. Almost all commercial catch currently comes from the Marlborough Sounds. Golden Bay and Tasman Bay, the enhanced and rotationally fished sections of the fishery, have been voluntarily closed by commercial fishers to protect the residual scallop beds. Tasman Bay had not been fished commercially since 2006-07¹. Golden Bay has not been commercially fished for the last two years. The Marlborough Sounds has been sustaining most of the SCA7 fishery over the last seven years.

Under the current management framework of SCA7, the following arrangements also apply:

- An enhancement harvest programme approved in 1998 by the then Minister under section 310 of the Act. The programme includes certain reporting requirements, but does not specify target enhancement levels or minimum enhancement investment.
- A Memorandum of Understanding between MPI and the Challenger Scallop Enhancement Company regarding the provision of information to enable you and MPI to make decisions on sustainability and other management measures. This information includes annual biomass surveys prior to any fishing occurring and recommendations based on yield assessments on proposed sub-area catch limits. They are also required to supply a rotational fishing plan showing the areas proposed to be fished in any year.

In the last ten years, the performance of the fishery has continued to decline, despite these arrangements. A survey carried out in November 2015, shows the biomass of scallops in the SCA7 fishery is at its lowest recorded level, with relatively few beds at a viable density to fish. This is despite measures to improve abundance in the fishery implemented in 2014, including significantly reduced commercial catches for the Marlborough Sounds. Two areas of the fishery (Golden and Tasman Bays) are likely to be below the limit at which it is MPI

¹ However, approximately 800 kg was harvested in sector H of Tasman Bay in 2015.

policy to consider closure of a fishery². The status of the Marlborough Sounds portion of the fishery is in relation to this limit is unknown; however, abundance continues to decline and overfishing is about as likely as not to be occurring. Reasons for the decline in scallop abundance continue to be investigated. Most experts agree that the suitability of the environment is lower now than in the past, and that this might be due to both anthropogenic influences and natural drivers affecting productivity. However, the exact cause of the decline in SCA7 is not known.

MPI wants to provide more likelihood that fishing does not exacerbate any further decline of this important fishery. MPI's strategy is to protect the remaining scallop beds in the Marlborough Sounds and Tasman Bay areas of the fishery by resting them over the coming 2016-17 scallop season, while longer-term management options are developed.

Consequently, on 8 June 2016, MPI released a discussion document that canvassed stakeholder views on:

- Proposed temporary closures in parts of the fishery, under section 11 of the Fisheries Act 1996, to both commercial and recreational fishing until the end of the scallop season on 14 February 2017.
- Potential longer-term management measures that could be considered to ensure fishing activities are sustainable and do not exacerbate any decline in scallop abundance.

The proposals were developed through discussions with a multisector group that includes representatives from the Challenger Scallop Enhancement Company and recreational fishers, and with input from tangata whenua through the Te Waka a Maui and Te Tau Ihu Iwi Forums.

The consultation process also included a series of public drop-in sessions at Blenheim, Nelson, Motueka and Takaka, where stakeholders and the public were able to discuss the proposals and share perspectives directly with MPI officials, members of the multi-sector group, and tangata whenua. Approximately 150 people participated in these sessions.

The following closure options were included in the discussion document and presented at the public sessions:

1. Temporarily close all of area 7H in Tasman Bay and some parts of the Marlborough Sounds to scallop fishing for the 2016-17 scallop season.
2. Temporarily close all of the Marlborough Sounds and area 7H in Tasman Bay to scallop fishing for the 2016-17 scallop season.
3. Status quo (no new closures are implemented for the 2016-17 SCA7 season).

157 written submissions were received on the proposals. The majority of these (approximately 91³) supported wider closure of the fishery (Option 2) with many submitters, and tangata whenua, also supporting extending this option to include Golden and the remainder of Tasman Bay.

Ten submissions supported closing specific scallop beds within the fishery (Option 1), while 10 submissions supported no new closures (Option 3 - status quo). The remaining 46 submissions did not indicate a preferred option for this coming season, but instead provided additional information and views on management changes for the fishery beyond this coming season, or options that were not consulted on. Tangata whenua, through the Te Waka a Maui Iwi Forum, have also stated that they intend to implement a rahui on customary scallop take for the fishery for the coming season.

² This is what is referred to as the 'hard limit' - a non-binding policy described in the MPI Harvest Strategy Standard.

³ Some submissions require interpretation to confirm a preferred option.

Taking into account the information and views expressed during consultation, MPI's preferred option is to temporarily close all of the Marlborough Sounds and area 7H in Tasman Bay to commercial and recreational scallop fishing (Option 2) until 14 February 2017. This is the most likely of the options to protect the remaining scallop beds while longer-term measures are developed to support a recovery of the fishery. There is widespread support from recreational stakeholders and tangata whenua for such a closure, with most submitters willing to forgo immediate utilisation of the fishery over the coming season in the interests of the longer-term sustainability and improved future access.

The Challenger Scallop Enhancement Company (the Company) considers the proposals are based on outdated information and does not support closures at this time. It has indicated it may commission a further survey of the beds later this year, and has requested that decisions be deferred until the results of this survey are available (likely to be early September). Alternatively, it suggests if a closure is implemented, it only apply to recreational and customary fishers, with any decision on commercial fishing deferred until survey results are available.

MPI notes that deferring a decision until later in the year means that closures could not be implemented until well into the last half of the scallop season. Their effectiveness is likely to be reduced as a result.

If the Company does commission a survey then, unlike that commissioned by MPI in November (which was the most comprehensive ever undertaken), this survey would likely focus only on the remaining beds expected to be at an economically viable density for fishing in the Marlborough Sounds. The November survey confirmed that there are some such remaining beds (refer Figure 2); however, these are relatively few, they are confined to the Marlborough Sounds, and they are the parts of the fishery that require protection to ensure the reproductive potential of the fishery is maintained (high scallop density is critical to scallop breeding success). The Company's proposal fails to consider that these are the areas that need to be protected from fishing.

There was support in submissions and during the public sessions for continuation of a multisector working group to develop longer term proposals to manage the fishery and ensure fishing does not exacerbate any decline. The group will consider public feedback on the longer term measures submitted during consultation. The group's proposals would be subject to wider engagement and consultation to gauge stakeholder and public views before any decisions are made.

2 Introduction

MPI has consulted on proposals to temporarily close parts of the SCA7 fishery to commercial and recreational fishing for the coming 2016-17 scallop season commencing 15 July 2016.

This decision document provides you with MPI's final advice on these proposals. It comprises discussions of relevant background information, specific legal considerations, a summary of submissions, and analysis of the proposed management options, including MPI's recommendations.

2.1 PROBLEM DEFINITION

The biomass of scallops in the SCA7 fishery has continued to decline, despite significant reductions in catch, to the point where the fishery is now at its lowest recorded level. Fishing is unlikely to be the only driver of decline in the fishery, and a number of areas in the Marlborough Sounds retain high densities of scallops. However, the number of such areas has reduced considerably (refer Figure 2 below).

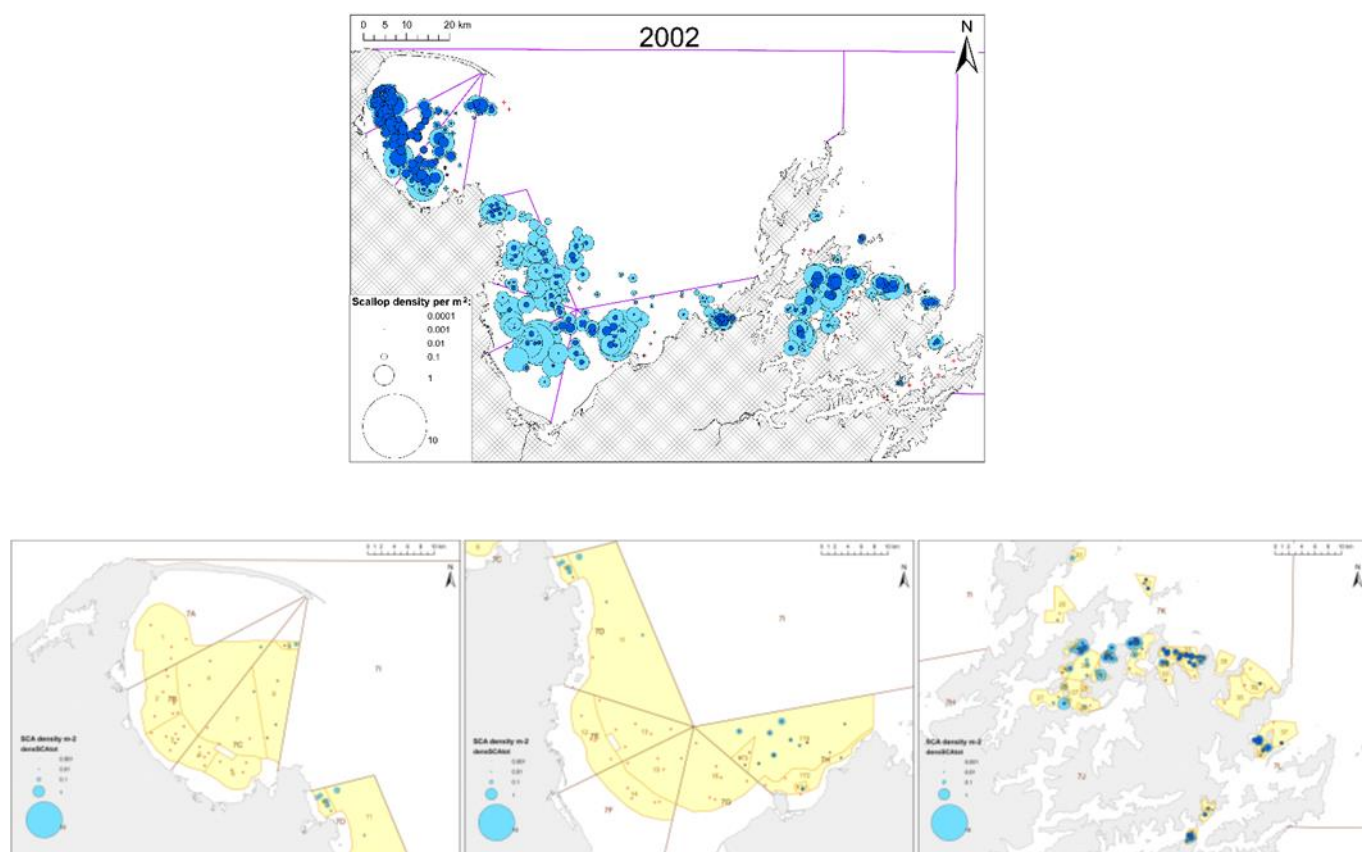


Figure 2. Distribution of scallop density in SCA 7 from surveys in 2002 (top) and 2015 (3 lower maps).

The Golden Bay and Tasman Bay parts of the fishery (Figure 2, left and centre lower maps) are likely to be below the 'hard limit' – the limit at which it is MPI policy to consider closure of the fishery. The status of the Marlborough Sounds beds (Figure 2, right lower map) in relation to this limit is unknown (no limit has been agreed), but scallop biomass and number of beds in this part has also declined significantly considerably over the last 15 years (refer Figure 3).

MPI considers action is required to protect these beds to ensure the remaining reproductive potential of the fishery is maintained (since high scallop density is critical to scallop breeding success), while longer term options are developed.

2.2 OBJECTIVE

The purpose of the Fisheries Act 1996 is to provide for utilisation while ensuring sustainability. SCA7 is a “Group 2” fishery under MPI’s Draft National Fisheries Plan for Inshore Shellfish⁴. Such fisheries are considered to be important to all sectors, and are fast growing with variable abundance. The management approach for this group enables responsiveness to changing abundance levels. The options proposed in this paper are consistent with this management approach as they respond to the low abundance of scallops in SCA7.

2.3 BACKGROUND

Since the 1980s, the Golden and Tasman Bay areas of SCA7 have been managed on an enhanced and rotationally fished basis. In 1998, a rotational and enhancement harvest programme was approved by the then Minister of Fisheries under section 310 of the Act.

In conjunction with the enhancement programme, a system of rotational fishing in Golden and Tasman Bay was implemented in SCA 7 in 1989-90. Under the intended three-yearly rotational enhancement management framework, sectors (sub-areas) were to be enhanced with spat, closed to commercial fishing for two years, and then opened to fishing in the third year. After which, the cycle would repeat again.

This practice was generally carried out in the early 1990s as initially intended, but this rotation became less consistent from about 1996 onwards. Unfortunately, the success of the programme and extent of enhancement has greatly reduced over the last ten years, partially driven by the decline in productivity and recruitment failure in the fishery.

Since 1998, management of the fishery under a rotational and enhanced framework has been recognised through listing of the fishery on the Third Schedule to the Act (allowing an alternative, non-BMSY related, Total Allowable Catch to be set under section 14 of the Act), and by approval of a statutory Enhancement Plan under section 310 of the Act.

2.3.1 Memorandum of Understanding

The Challenger Scallop Enhancement Company has a Memorandum of Understanding (MoU) with MPI, regarding the provision of information, to enable you and MPI to make decisions on sustainability and other management measures.

The MoU allows the Company to exercise a degree of self-management of the fishery. Under the MoU, the following information must be provided to you and the Ministry each year:

- a) A proposed design for a biomass survey in the southern scallop fishery and a report detailing the results of this biomass survey.
- b) An annual summary of the previous season’s biomass survey results.
- c) A rotational fishing plan showing the areas proposed to be fished in any year.
- d) Recommendations on season start and finish dates.
- e) A plan outlining the provision that is proposed to be made for non-commercial access to the fishery.
- f) Recommendations on the TAC and TACC:
 - i. In relation to the Tasman and Golden Bay sectors, these recommendations should be supported by biomass and yield assessment of scallops available in these areas.
 - ii. Proposed sustainable sub-catch limits for the Marlborough Sounds, together with a plan outlining the proposed methods of monitoring and enforcing such a

⁴ This is a non-binding MPI policy.

limit. This recommendation is to be supported by biomass information and yield assessments regarding the densities of scallops available.

The Company undertakes the biomass surveys each year according to specified standards and timeframes. That survey provides information upon which annual management decisions are made, including estimates of available harvest.

2.3.2 Fishery information

Commercial catch dropped from 684 tonnes (meatweight) in 2002 to 22 tonnes last year and the fishery in Golden and Tasman Bays has collapsed, with almost all commercial fishing for the last five years concentrated on the wild scallop fishery in the Marlborough Sounds. This part of the fishery is not an enhanced fishery and, under the MoU, it is treated on a different basis to the enhanced parts of the fishery, with biomass and yield estimated on an annual basis. The commercial fishery also operates under regulatory constraints including a 90 mm minimum legal size, maximum dredge size and number, number of days fished, fishing only in day light hours and a commercial season from 15 July to 14 February. However, the commercial season generally does not commence until September due to scallop condition.

SCA7 is an important shared fishery. Best available information suggests that recreational harvest is approximately 11 tonnes (meatweight), but there is uncertainty around this estimate. In the 2015-16 scallop season, commercial fishers harvested 22 tonnes (meatweight), primarily from the Marlborough Sounds. Scallops are a popular target species for recreational fishers, taken by dredge or diving. SCA7 can only be taken recreationally above a minimum legal size of 90 mm. There is a daily bag limit of 50 scallops per person per day and the recreational season runs from 15 July to 14 February.

Scallops (tupa/tipa) are an important kaimoana species for tangata whenua. They are identified by Te Waka a Māui me Ōna Toka iwi forum⁵ as a taonga species in the Te Waipounamu Iwi Fisheries Plan. This plan includes objectives relating to supporting and providing for the customary and commercial interests of South Island iwi.

2.3.3 Stock status

The results of a new survey of SCA7 were presented to MPI in November 2015. The survey was commissioned by MPI to provide a stock-wide picture of the state of the fishery. Other surveys, carried out earlier in the year in May and in October, provided information only on parts of the fishery. The survey of core commercial areas that took place in May 2015 projected recruited scallop abundance to be ~203 tonnes meatweight (50% of which was in the Marlborough Sounds). The November 2015 survey, which covered much broader areas across the whole of SCA7, estimated recruited scallop abundance to be 211 tonnes meatweight (50% of which was in the Marlborough Sounds).

The estimates of recruited scallop abundance across SCA7 (at or above the minimum legal size - MLS) are the lowest that have been observed since surveys began in 1998 (refer to Figure 3). The estimates of scallop abundance in the Marlborough Sounds (at or above MLS) are the lowest that have been observed since surveys began in 1998.

There are signs of what appear to be improved numbers of pre-recruits in the fishery coming through in some areas, possibly as a result of measures implemented in 2014, but the number of pre-recruits that actually recruit into the fishery is uncertain.

⁵ The Te Waka a Māui me ōna toka iwi forum represents the nine iwi of the South Island, each holding mana moana and significant interests (both commercial and non-commercial) in South Island fisheries.

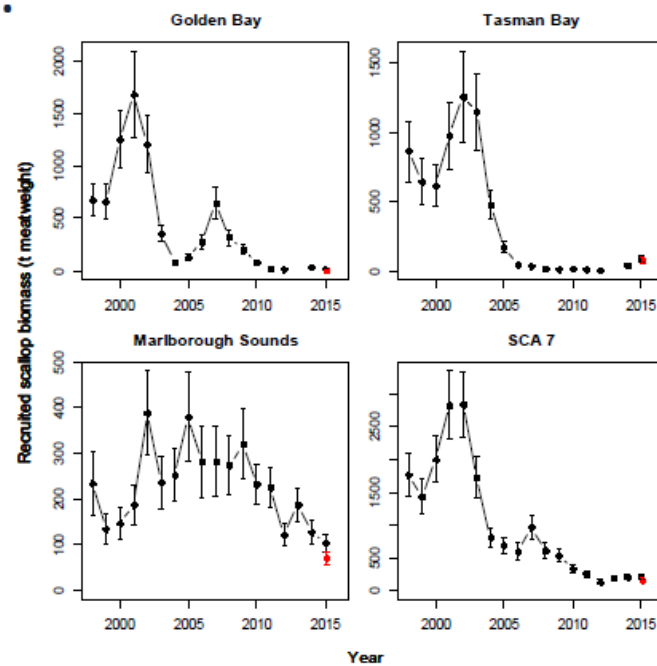


Figure 3. The red dots show the estimates of scallop abundance at or above minimum legal size (90mm) in the November 2015 survey. The graph for Marlborough Sounds relates only to survey strata that are comparable across the entire time series.

The November survey shows that in SCA7 there are unlikely to be any areas of significant scallop biomass outside of the areas already known and previously surveyed. The primary area of the fishery where scallops are available is in the Marlborough Sounds.

3 Consultation

MPI has been in regular discussions with the Challenger Scallop Enhancement Company on management options for the fishery. These discussions include development of a package of measures in collaboration with a multisector group that includes representatives from the Company as well as recreational fishers, and with input from tangata whenua through the Te Waka a Maui and Te Tau Ihu iwi forums.

On 8 June 2016, MPI released a discussion document proposing that parts of the fishery be temporarily closed under s 11 of the Fisheries Act 1996 to both commercial and recreational fishing until 14 February 2017.

The consultation process was supported by a series of public drop-in sessions at Blenheim, Nelson, Motueka and Takaka, where stakeholders and the public were able to discuss the proposals and share perspectives directly with MPI officials and members of the multisector group. Approximately 150 people participated in these sessions.

MPI consulted on three options:

Option 1	Temporarily close all of area 7H in Tasman Bay, and some or all of the following parts of the Marlborough Sounds to scallop fishing for the 2016-17 season (until 15 February 2017): <i>Wynens Bank, Guards Bank, Ships Cove, Pelorus Sound and Dieffenbach Point.</i>
Option 2	Temporarily close all of the Marlborough Sounds and area 7H in Tasman Bay to scallop fishing for the 2016-17 scallop season.
Option 3 (Status quo)	No new scallop fishing closures are implemented for the 2016-17 scallop season.

During consultation, MPI also sought tangata whenua and stakeholder views and information (*i.e.*, the potential benefits and impacts) on wider management measures to support a rebuild of the scallop fishery. The feedback received on these has been collated by MPI and will be used to develop and further consult on a secondary package of measures later this year that, if approved, would be implemented in 2017.

3.1 SUMMARY OF SUBMISSIONS

157 written submissions were received on the proposals. Copies of all submissions are attached (refer to Appendix 1).

Approximately 91⁶ submissions supported a wider closure of the fishery (Option 2), primarily on the grounds that the fishery is at a low point and this is a necessary step to allow rebuilding to occur. Many of these submitters supported extending this option to include Golden and the remainder of Tasman Bay. Some also noted they did not support the more specific closures proposed under Option 1 because a significant amount of fishing effort would be displaced to remaining open beds, and it would be difficult to educate and enforce bed-by-bed closures.

Tangata whenua, through the Te Waka a Maui Iwi Forum (with support from Te Ohu Kai Moana), also supported a closure wider than Option 2 and have stated that they will implement a rahui on customary scallop take for the entire fishery for the coming season.

Ten submissions supported no new closures (Option 3 - status quo). These submitters considered the fishery is already showing signs of recovery; that scallops are more abundant than suggested; that fishing is not the primary driver of decline in the fishery; and/or that a further survey of the scallop beds should be carried out with decisions regarding closures deferred until then.

Ten submissions supported closing specific scallop beds within the fishery (Option 1). These submitters generally wished to retain fishing access to some parts of the fishery, or felt that parts of the fishery held sufficient scallops to sustain fishing over the coming season

The remaining 46 submissions did not indicate a preferred option for this coming season, but instead provided additional information and views on management changes for the fishery beyond this coming season, or proposed options that were not consulted on. These included prohibiting commercial fishing (particularly in the Marlborough Sounds), reviewing catch limits (both commercial and recreational) and harvest methods (in particular prohibiting dredging), and changing season start dates.

⁶ Some submissions required interpretation to determine the preferred option.

Overall, written submissions, as well as feedback from the approximately 150 people who participated in the public sessions suggest there is widespread support for a closure of the Marlborough Sounds and sector H Tasman Bay portion of the fishery (i.e. Option 2, or an extension of this option to also include Golden and the remainder of Tasman Bay). Most recreational stakeholders and tangata whenua appear willing to forgo immediate utilisation of the fishery over the coming season in the interests of the longer term sustainability and improved future access.

3.2 CHALLENGER SCALLOP ENHANCEMENT COMPANY

The Challenger Scallop Enhancement Company has a particular role in the fishery and operates annual management processes under an Enhancement Plan and MoU with MPI. The Company's submission (refer to Appendix 1) considers the proposals are based on outdated information and does not support closures at this time.

The company has indicated it may commission a further survey of the beds later this year, and has requested that decisions be deferred until the results of this survey are available (likely to be early September). Alternatively, the company suggests that if a closure is implemented, it only apply to recreational and customary fishers with any decision on commercial fishing deferred until more up-to-date survey information is available.

4 Legal Considerations

This section provides an overview of your legal obligations under the Fisheries Act 1996 (the Act) that relate to the decisions.

4.1 SECTION 8 – PURPOSE OF THE FISHERIES ACT 1996

The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

“Ensuring sustainability” is defined in section 8 as: “maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment”.

“Utilisation” of fisheries resources is defined as “conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.”

The Supreme Court has stated that the purpose statement incorporates “the two competing social policies reflected in the Act” and that “both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system....[I]n the attribution of due weight to each policy that given to utilisation must not be such as to jeopardise sustainability”⁷.

Utilisation may be provided for at different levels, and the extent of such use should be considered on a case-by-case basis. Where there is a significant threat to the sustainability of a fish stock, the measures adopted to achieve sustainability are likely to be more stringent than where there is a lesser threat.

4.2 SECTION 9 – ENVIRONMENTAL PRINCIPLES

The Act prescribes three environmental principles that you must take into account when exercising powers in relation to utilising fisheries resources and ensuring sustainability.

Principle 1: Associated or dependent species should be maintained above a level that ensures their long-term viability.

The Act defines “associated or dependent species” as any non-harvested species taken or otherwise affected by the taking of a harvested species. “Harvested species” means any fish, aquatic life, or seaweed that may for the time being be taken with lawful authority. Taken together, these definitions mean that only protected species constitute associated or dependent species. MPI considers that scallop fishing has little impact on associated or dependent species, and that the measures proposed in this discussion paper are likely to reduce any such impacts.

Principle 2: Biological diversity of the aquatic environment should be maintained.

“Biological diversity” means the variability among living organisms, including diversity within species, between species, and of ecosystems. There has been no formal assessment of the extent to which dredging for scallops reduces biological diversity as defined in the Act, although dredge and trawl fisheries in general are known to affect benthic communities, including often reducing some measures of species diversity. The measures proposed in this

⁷ New Zealand Recreational Fishing Council Inc v Sanford Limited and Ors (Supreme Court, [2009] NZSC 54 at [39]).

discussion paper are likely to reduce impacts on biological diversity, especially in any area that might be closed.

Principle 3: Habitat of particular significance for fisheries management should be protected.

“Habitat of particular significance for fisheries management” is not defined in the Act but MPI considers that the maintenance of healthy scallop stocks requires the mitigation of any major threats to habitat important for scallop spawning and recruitment. The activity of dredging could affect such habitats and could also exacerbate other impacts like sedimentation from a range of terrestrial activities. It is not known precisely what habitats are important for the recruitment of scallops within the SCA7 fishery, or the impacts of scallop dredging on such habitats, but measures proposed in this discussion paper are likely to reduce impacts on habitats important for scallops, especially in any area that might be closed.

4.3 SECTION 10 – INFORMATION PRINCIPLES

The nature of data and assumptions used to generate fisheries assessments and the results produced contain inherent variation and uncertainty. Section 10 of the Act requires that you take the following information principles into account:

- a) Decisions should be based on the best available information;
- b) Decision makers should take into account any uncertainty in the available information;
- c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate; and
- d) The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.

“Best available information” is defined in the Act to mean the best information that, in the particular circumstances, is available without unreasonable cost, effort or time.

Less than full information suggests caution in decision-making, not deferral of a decision completely if information standards are not met. “The fact that a dispute exists as to the basic material upon which the decision must rest, does not mean that necessarily the most conservative approach must be adopted. The obligation is to consider the material and decide upon the weight which can be given it with such care as the situation requires.”⁸

Both scientific and anecdotal information need to be considered and weighed accordingly when making management decisions. The weighting assigned to particular information is subject to the certainty, reliability, and adequacy of that information. As a general principle, information on stock status outlined in the MPI Fishery Assessment Plenary Report is considered the best available information and should be given significant weighting. The information presented in the Plenary Report is subject to a robust process of scientific peer review and is assessed against the Research and Science Information Standard for New Zealand Fisheries. Corroborated anecdotal information also has a useful role to play in the stock assessment process and in the management process.

These information principles have been taken into account in preparing this decision document.

⁸ *Greenpeace NZ Inc v Minister of Fisheries* (HC, Wellington CP 492/93, 27/11/95, Gallen J) p 32.

4.4 SECTION 11- SUSTAINABILITY MEASURES

Section 11(1) of the Act allows the Minister to set or vary any sustainability measure for one or more stocks or areas, after taking into account any effects of fishing on any stock and the aquatic environment, any existing controls that apply to the stock or area concerned (for example any controls under the Enhancement Plan for the fishery, referred to in this paper), and the natural variability of the stock concerned. Scallop populations are known to vary over time and in response to environmental changes, and can also be affected by fishing pressures. The proposals to close some scallop beds to harvesting seek to address the risk that fishing will further exacerbate conditions that have led to declining populations.

Section 11(2) states that before setting or varying any sustainability measure, the Minister shall have regard to any provisions of: any regional policy statements, regional plans, or proposed regional plans under the Resource Management Act 1991; any management strategy or plan under the Conservation Act 1987; sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000; any regulations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and any planning documents lodged with the Minister of Fisheries (Minister for Primary Industries) by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011. MPI is not aware of any specific matters under the above provisions that are relevant to this proposal.

Section 11(2A) states that before setting or varying any sustainability measure the Minister must take into account any relevant fisheries plan approved under Part 3 of the Act, fisheries services or conservation services. There are no relevant approved fisheries plans or conservation services. The management of the SCA7 fishery is guided by the non-binding policy objectives that are found in the draft National Fisheries Plan for Inshore Shellfish. Key relevant fisheries services are the regular biomass surveys of SCA7, such as that carried out by CSEC, and the more extensive biomass survey carried out in November 2015 funded by MPI in November 2015.

Section 11(3) outlines a non-exhaustive list of sustainability measures that the Minister may set for a stock. Sustainability measures may relate to the areas from which any fish, aquatic life, or seaweed of any stock may be taken. The Minister may implement any sustainability measures by notice in the Gazette (as proposed in this paper) or by the making of regulations under section 298 of the Act. MPI is proposing temporary area closures as one measure for the 2016-17 season to address the observed declines in the SCA7 population.

Section 11(4) allows sustainability measures to be set or varied by Gazette Notice or by recommending the making of regulations. MPI proposes that the sustainability measures be set by notice in the Gazette.

4.5 SECTION 12- CONSULTATION

Before implementing any section 11 sustainability measure, section 12 of the Act specifies the Minister shall consult with persons or organisations that the Minister considers have an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Maori, environmental, commercial, and recreational interests.

The Minister must also provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned. The Minister must also have particular regard to kaitiakitanga.

MPI has consulted with and provided for the input and participation of tangata whenua for SCA7. Tangata whenua, through the Te Waka a Maui and Te Tau Ihu Fisheries Forums have stated they support a wider closure of the fishery (beyond what is set out in Option 2), and that they will put in place a rahui on customary fishing for scallops for the coming season.

4.6 SECTION 310 - ENHANCEMENT PLAN

The Challenger Scallop Enhancement Company operates annual management processes for the fishery under an Enhancement Plan approved under section 310 of the Act in 1998, and a MoU with MPI. These documents set out timeframes, information requirements the process for approval of an annual harvest plan. Section 310(5) says that nothing in any enhancement plan prevents the Minister from taking any sustainability measures under Part 3 of the Act for the fishery and this power is reflected in the MoU.

MPI notes that the MoU was signed in 1998, at a time when SCA7 was primarily an enhanced fishery operating in Golden and Tasman Bay. While the company still attempts enhancement, in recent years the scale of enhancement has been small and survival of reseeded scallops very poor. MPI has sought to review the MoU to ensure it remains appropriate given the reduced state of the fishery, however, the company has stated it is unwilling to do so.

5 Management Options

MPI notes in addition to the MoU and Enhancement Plan frameworks, there are a range of other tools available under the Act that may be used to manage the impacts of fishing pressure on scallop abundance. For example, under section 11 of the Act you may set or vary any sustainability measures for a stock, which may relate to:

- the catch limit (including a commercial catch limit) for any stock or, in the case of a quota management stock that is subject to section 13 or section 14, any total allowable catch for that stock:
- the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken:
- the areas from which any fish, aquatic life, or seaweed of any stock may be taken:
- the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area:
- the fishing season for any stock, area, fishing method, or fishing vessels.

MPI has sought views on some of these tools as part of the longer-term package of measures to manage the fishery in future. However, any proposal to adopt such measures would require further consultation over the coming year with tangata whenua and recreational stakeholders and the Challenger Scallop Enhancement Company. In the interim, MPI considers the proposed temporary closures provide an appropriate interim mechanism to protect the remaining beds.

The temporary closure options for the season are outlined in the following table. The options do not differ from those consulted on. However, MPI notes that during consultation there was significant support for a wider closure also extending to Golden Bay and the remainder of Tasman Bay.

Option 1	Temporarily close all of area 7H in Tasman Bay, and some or all of the following parts of the Marlborough Sounds to scallop fishing for the 2016-17 season (until 15 February 2017): <i>Wynens Bank, Guards Bank, Ships Cove, Pelorus Sound and Dieffenbach Point.</i>
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Option 2	Temporarily close all of the Marlborough Sounds and area 7H in Tasman Bay to scallop fishing for the 2016-17 scallop season.
Option 3 (Status quo)	No new scallop fishing closures are implemented for the 2016-17 scallop season.

5.1 OPTION 1 – CLOSE PARTS OF THE MARLBOROUGH SOUNDS AND TASMAN BAY TO COMMERCIAL AND RECREATIONAL SCALLOP FISHING

Under Option 1 some parts of the Marlborough Sounds and all of area 7H in Tasman Bay would be temporarily closed to both commercial and recreational scallop fishing for the 2016-17 scallop season. The closures would end on 14 February 2017 and would be implemented under section 11 of the Fisheries Act 1996.

Closing specific beds would help safeguard both mature and juvenile scallops in these beds from direct fishing mortality in the case of mature scallops, or incidental fishing mortality in the case of juvenile scallops. It would give these beds an opportunity to rest and contribute to the spawning potential of the fishery.

Spatial closures are an effective management tool that have been used previously in SCA7 and in other scallop fisheries to help rebuild the abundance of scallops.⁹ The beds that are most attractive for fishing (supporting high catch rates and a high proportion of legal-sized scallops) are also likely to be the beds that contribute most to the overall reproductive potential of the fishery. MPI notes that relatively few such beds now remain in SCA7 (refer Figure 2).

Under these circumstances, other sustainability measures (such as catch limit reductions, seasonal reductions, or closures to only some sectors) are less effective measures since scallops will remain subject to some level of fishing disturbance. Closure of specific beds (or wider closures as proposed under Options 2) would reduce the likelihood that fishing pressure exacerbates a further decline of these beds. While fishing may not be the only driver of abundance, closing these areas would provide an opportunity for all scallops in the sounds to spawn, settle and grow without fishing mortality and disturbance.

Both commercial and recreational fishing over the coming season would be impacted by the closures. The extent of the impact depends on how many, and which, beds are closed under this option. If the beds containing the highest biomass (for example, Guards Bay or Ships Cove) are closed, then commercial fishing will be significantly reduced as catch would be based on the set harvest rate (22%) applied only to the estimated scallop biomass (that are greater than a minimum density) in the remaining open areas. The level of reduction in catch may make it uneconomic to fish. The Challenger Scallop Enhancement Company estimates in its submission that last year's commercial catch of 22 tonnes of scallops had a total economic value based on retail price of \$1.4m. Based on MPI's published port price the value of the catch received by the fishers was \$0.33m.

Similarly, if wider areas of the fishery are closed (for example, the whole of Pelorus Sound), then the opportunities for recreational fishers to fish for scallops will become increasingly limited.

⁹ The use of closures and rotational fishing strategies have been shown to be beneficial in overseas scallop fisheries (United States and Canada for example) and were once part of the Tasman and Golden Bay fisheries. The programmes have shown the benefits derived can vary depending on the length of the closures (eg. 1, 3 or 6 years).

10 submitters supported this option. However, many submitters, as well as those attending the public sessions, considered the amount of recreational fishing effort that could shift to the remaining open beds under this option is greater than anticipated in the discussion document. Outer beds in the Marlborough Sounds such as Guards Bay, which are less accessible to recreational fishers, may be able to be closed without significantly displacing effort. However, based on the views provided during consultation, closing more accessible beds, such as Ships Cove or Dieffenbach Point, would create a significant risk of overfishing adjacent open scallop beds. There was also concern that closing only some discrete areas, as described under Option 1 above, may also be difficult to enforce and risks delaying any rebuild as effort could shift to the remaining open beds creating a risk of overfishing those beds.

There was some feedback that closing larger, geographically distinct areas (for example, all of Queen Charlotte Sound or all of Pelorus Sound) could mitigate some of this risk, given the distance between boat ramp access points to these areas. Such areas were considered to also be easier to communicate and enforce. Nevertheless, the majority of submitters considered a closure of the entire sounds (as in Option 2, or wider) was preferable and would be more effective at protecting the scallop stock over the next season.

Relative to Options 2 and 3, Option 1 entails an intermediate level of risk (depending on the areas closed) that fishing pressure may exacerbate a further decline in the fishery.

The Challenger Scallop Enhancement Company, does not support temporary closures under either Option 1 or Option 2. The Company does not agree with MPI's assessment of the status of the fishery and does not consider closures are required in relation to commercial fishing. A full analysis of the company's views is included under Option 3.

5.2 OPTION 2 - CLOSE ALL OF THE MARLBOROUGH SOUNDS AND PART OF TASMAN BAY TO COMMERCIAL AND RECREATIONAL FISHING

Under Option 2 the whole of the Marlborough Sounds and area 7H in Tasman Bay would be closed to both commercial and recreational scallop fishing for the 2016-17 scallop season. The closures would end on 14 February 2017 and would be implemented under section 11 of the Act. It is proposed that "Marlborough Sounds" be defined as the same area specified under the recent decisions relating to Marlborough Sounds Blue Cod.

The Marlborough Sounds represents the last area of the SCA7 fishery to hold a number of high density scallop beds, but the number of these beds has declined in recent years. For area 7H in Tasman Bay, the November 2015 survey showed good signs of recruitment; however, overall numbers and scallop density are still considered low. Option 2 provides the greatest likelihood, relative to Options 1 and 3, that fishing pressure will not exacerbate any decline of the remaining populations of scallops in the Marlborough Sounds and eastern Tasman Bay. While fishing may not be the only driver of abundance, closing the entire Marlborough Sounds and eastern Tasman Bay to fishing would provide an opportunity for all scallops in the sounds to spawn, settle and grow without fishing mortality and disturbance.

Both commercial and recreational fishing would be significantly impacted under this option. It is unlikely there would be any significant commercial catch under this option, and there would be limited recreational fishing opportunity in remaining open areas. The Challenger Scallop Enhancement Company estimates in its submission that last year's commercial catch of 22 tonnes of scallops had a total economic value of \$1.4m. Based on MPI's published port price the value of this catch was \$0.33m.

91 submissions supported this option. There is widespread support from recreational stakeholders and tangata whenua (through the Te Waka a Maui and Te Tau Ihu iwi forums) for a wider closure of the fishery (either Option 2 or a modification to include Golden and the remainder of Tasman Bay). Submitters and the majority of those attending the public sessions considered they have observed a significant decline in the fishery and agreed with the time series of survey results showing the fishery is at its lowest recorded level. They expressed a willingness to forgo immediate utilisation of the fishery over the coming season in the interests of the longer-term sustainability and improved future access.

As described under Option 1, the Challenger Scallop Enhancement Company, does not support temporary closures under either Option 1 or Option 2. A full analysis of the company's views is included under Option 3.

Overall, this option has the most impact on utilisation, but has the least sustainability risk of the three options. MPI considers it is an appropriate response given:

- MPI's plenary report concludes that the fishery is at the lowest level since surveys began in 1998 (refer to Figures 2 and 3) with two of the three areas of the fishery likely to be below the hard limit¹⁰ (the biological reference point at which MPI's Harvest Strategy Standard suggests closure should be considered,¹¹
- the information and views provided during consultation,
- that closing all or significant parts of a scallop fishery has proven to be a successful approach in rebuilding scallop numbers both in SCA7, and in overseas scallop fisheries, and
- that closing only some discrete areas, as would occur under Option 1, may be difficult to enforce and risks; delaying any rebuild, as effort could shift to the remaining open beds creating a risk of overfishing those beds.

5.3 OPTION 3 – STATUS QUO

Option 3 is the *status quo*. No closures under section 11 of the Act would be implemented under this option.

Compared to other options, more beds would be available for commercial fishing this season under this option, with potentially greater catch, and there would be greater opportunities for recreational fishers to catch scallops across a wider extent of the fishery. The set commercial harvest rate (22%) that has been implemented by the Challenger Scallop Enhancement Company for the past two years, would also still apply.

Ten submissions supported this option. These submitters considered the fishery is already showing signs of recovery; that scallops are more abundant than suggested; and/or that fishing is not the primary driver of decline in the fishery.

Overall, this option has the least impact on fishing but provides the least protection to remaining scallop beds from fishing over the coming season. MPI's view is that the status quo option is not a responsive approach to the significant declines in scallop abundance.

The Challenger Scallop Enhancement Company supports this option in relation to the commercial fishery. The company has provided a detailed submission which is attached to

¹⁰ Golden and Tasman Bays are likely to be below the hard limit and it is not known whether the biomass in the Marlborough Sounds is below the hard limit, as this limit is uncertain.

¹¹ The Harvest Strategy Standard can be found at: <https://www.mpi.govt.nz/document-vault/728>

this decision document. Key matters raised in the submission and by the company in its discussions with MPI during development of the closure options, along with MPI's response are set out below.

November 2015 survey

The Company does not consider the November survey provides an accurate picture of the fishery and does not agree with MPI's conclusions regarding the state of the fishery, which are based on the survey. The Company notes the usual timing of annual surveys is May, and points to indications of significant numbers of juvenile scallops coming through as evidence the fishery is rebuilding.

MPI agrees that the survey in November differed from the usual timing for previous surveys. However, as described in section 2.3.3, this was only one of three surveys carried out in 2015. All these surveys indicate the fishery is at its lowest point (refer Figure 3).

MPI also agrees that increased numbers of juvenile scallops in some of the beds were noted in the November survey. This was discussed by scientists at MPI's plenary meeting, which concluded it is uncertain whether this is because the survey was in November (rather than May) or if it is an indication of some recovery. If so, the plenary concluded there is no certainty that these juvenile scallops will grow through into the fishery. In particular, juvenile scallops are susceptible to incidental mortality during dredging. The increase in juveniles also does not indicate any substantial recovery in the fishery, as overall abundance is still considered low.

Further survey

The Company has indicated it intends to commission a biomass survey of the beds later in the year (possibly late July or August). It considers no decisions should be made until the results of this survey are available (likely to be September).

MPI notes that the MoU between the Company and MPI specifies that, if the Company intends to fish the Marlborough Sounds, then it is to report the results of a biomass survey to MPI by 30 June each year so that this information can be used in setting sustainability measures, and as a basis for the Company's annual harvest plan. That harvest plan is normally provided to you by 15 July each year.

You may choose to consider additional survey information and adjustment of the normal reporting dates. However, MPI notes the following steps the company would still be required to meet:

- Submission of a proposed design for biomass survey to MPI at least one month prior to the undertaking of the survey,
- A report detailing the results of this survey to MPI, and
- Consultation with sector groups you consider representative of having an interest in the stock or effects of fishing on the aquatic environment – noting they are required to provide MPI with a copy of the proposed consultative timetable at least two weeks prior to consultation being undertaken.

Following that process, MPI is required to provide you with recommendations (including the final recommendations from the company) on the proposed harvest plan. MPI is concerned that this deferred timeframe may have subsequent implications on the ability to implement any closures, should you consider any proposed plan to be insufficient to protecting the remaining scallop beds.

Given the Company's failure to meet the above timeframes, as well the protracted negotiations that occurred in relation to the Company's 2015 harvest plan, there is a risk that the Company will not be able to meet the requirements associated with submission of harvest plan this year.

The effectiveness of any closures not implemented until well into the last half of the scallop season is likely to be significantly reduced, as recreational fishing will have been occurring in the interim. The level of recreational harvest that would occur over this period is uncertain. Estimates of total recreational catch for SCA7 suggests it may be around 11 tonnes meatweight per annum.

If the Company does commission a survey then, unlike that commissioned by MPI in November (which was the most comprehensive ever undertaken), this survey would likely focus only on the remaining beds expected to be at an economically viable density for fishing in the Marlborough Sounds. The November survey confirmed that there are some remaining scallop beds at high density (refer Figure 2); however, these are relatively few, they are confined to the Marlborough Sounds, and they are the parts of the fishery that require protection to ensure the reproductive potential of the fishery is maintained (i.e. high scallop density is critical to scallop breeding success). The Company's proposed survey, which would be a prelude to fishing these areas, fails to consider that these are the areas that need to be protected from fishing.

If an increase in scallop numbers in these beds were shown by survey data, then MPI considers this would be a positive sign. However, a closure for the season would still be appropriate as it would support the primary objective of protecting the remaining scallop beds, while longer-term options to manage the fishery are developed.

Closure to apply to recreational and customary only

The Company supports the need to close the fishery to recreational and customary fishers, but does not support closure to commercial. The Company considers that commercial fishers are able to control their catch and additional controls are not required.

MPI notes that customary fishing is not restricted by a closure under section 11 in the same way as other sectors. However, tangata whenua have stated they will implement a rahui on issuing customary permits over the entire fishery for the coming season.

MPI considers that a closure to all sectors is required rather than to only some. This would allow scallops in the closed areas to spawn, settle and grow without any fishing mortality or disturbance. The Company could implement a self-imposed voluntary closure to commercial fishing for the coming season, in which case it may be open to you to consider a closure under section 11 only to the recreational sector. MPI has suggested this approach to the Company on several occasions over the past six months, however, the Company has stated it does not wish to develop its harvest proposals until later this year. Therefore, it is uncertain what measures the Company would implement this season.

Consultation process

In its submission the Company states that MPI has not followed a lawful consultation process in terms of the options proposed in the discussion document. It points to the short consultation period and believes that MPI first advised the Company of the proposals on 8 June (when the discussion paper was released).

This is incorrect. Since the survey in November 2015, MPI has met on five separate occasions with company Directors, Chairman and/or Manager where closure of the fishery for the coming season was discussed. Over the same period, MPI has facilitated six multisector meetings where company representatives participated in sessions to develop closure options for the coming season. MPI is confident that in developing and consulting on the sustainability proposals contained in this paper it has met the requirement to operate in good faith with the Company.

A further submission from the Company's recreational representative proposes the fishery be closed only until September, so that the results of a further survey can be considered and the commercial season can begin. If the survey results show that continued closure of the beds is warranted then a further closure should be implemented (the submitter proposes a further closure from December to 14 February under all scenarios). This is a variation of the Company's proposal discussed above.

6 Other Matters

6.1 FULL CLOSURE OF THE FISHERY

In its discussion document, MPI proposed that a full closure of SCA7 (i.e. including Golden Bay and the western part of Tasman Bay) may not be required because scallops are found at only low densities in these areas with few fishers targeting scallops.

The option of a wider closure including these areas had been discussed by the multisector forum, including recreational and company representatives, and with tangata whenua at the Te Tau Ihu Iwi forum. Recreational representatives and tangata whenua supported a wider closure, there was also some support for such an approach from the Challenger Scallop Enhancement Company representatives (but only if required to manage recreational fishing).

MPI sought information and views on this issue during consultation, seeking feedback on this issue at public drop in sessions at Golden and Tasman Bays (Takaka, Motueka and Nelson). However, MPI did not formally present a full closure as an option under consideration in the consultation paper.

As described for Option 1, many submitters and participants at the public sessions considered the amount of recreational fishing effort that will shift to remaining open areas is greater than MPI anticipated in its discussion document. They expressed concern that any increase in the level of dredging effort in Golden and the open areas of Tasman Bay could negatively impact any residual beds in these areas, and supported extending Option 2 to also include Golden and the remainder of Tasman Bay. Similarly, some submitters noted that not closing the entire Tasman Bay could create practical difficulties in enforcing the closure in the area since the line of closure cuts across the bay.

MPI's initial view was based on the assumption that little additional fishing effort would occur in Golden and the remainder of Tasman Bay, as it is generally perceived to hold very few scallops. If, as suggested by submitters, this is not the case, there is some risk of increased opportunistic dredging by recreational fishers under Option 2. MPI does not have information to assess this risk, and notes the key determinant will be fishers' perceptions of scalloping success in these areas.

MPI notes that given the stock status of scallops in Golden Bay and Tasman Bay are likely to be below the 'hard limit', and do not appear to hold viable densities of scallops for harvesting they are voluntarily closed by commercial fishers. The western zone of Tasman Bay has not

been fished commercially since 2006-07. Similarly there has been very little commercial harvest (<1.5 tonnes) in Golden Bay since 2011.

MPI proposes to monitor closely whether any scallop fishing occurs in Golden Bay and western Tasman Bay during the season, and if required will respond accordingly with additional measures.

6.2 LONGER-TERM MANAGEMENT MEASURES

Additional information and views on management changes for the fishery beyond this coming season were provided during the consultation. These included prohibiting commercial fishing (particularly in the Marlborough Sounds), reviewing catch limits (both commercial and recreational) and harvest methods (in particular prohibiting dredging and/or including establishing dive-only areas), and changing season start dates.

There was support in submissions and during the public sessions for continuation of a multisector working group to develop longer-term proposals to help rebuild the fishery. MPI proposes to continue to facilitate such a group, which will consider public feedback on the longer term measures submitted during consultation. The group's proposals would be subject to wider engagement and consultation to gauge stakeholder and public views before any decisions are made. MPI expects to provide a discussion document outlining further proposals for the fishery in October this year, so that any regulatory or other changes to management of the fishery in place for the 2017 season.

7 Conclusion

The SCA7 fishery is at its lowest recorded level, with relatively few beds at a viable density to fish. Parts of the fishery are likely to be below the hard limit; the point at which closure of the fishery is appropriate.

MPI's suggested strategy is to stop any further decline in the scallop abundance caused by fishing pressure, noting that there are likely environmental factors affecting abundance in the SCA7 fishery. Resting parts of the fishery over the coming 2016- 17 scallop season, provides an opportunity to develop longer-term management options that ensure any future fishing is sustainable, and appropriate within the current environmental conditions and status of the fishery.

Spatial closures are an effective management tool that have been used previously in SCA7 and in other scallop fisheries to protect residual beds and support recruitment. Two closure options and the status quo are put forward for consideration.

Option 1, temporarily closing some scallop beds in Marlborough Sounds and part of Tasman Bay to commercial and recreational harvest, would safeguard both mature and juvenile scallops in those areas from direct and incidental fishing. However, consultation has raised concerns regarding the shift of effort and risk of overfishing of the remaining open areas under this option, as well as the practicality of enforcing closures of specific areas. This option has an intermediate level of sustainability risk.

Option 2, temporarily closing all of the Marlborough Sounds and part of Tasman Bay to commercial and recreational harvest, has the most impact on fishing, but carries the least sustainability risk of the options. MPI's view is that this option is appropriate, given the fishery is at its lowest recorded state with only a limited number of beds at fishable density. There is significant support for extending this option to include Golden and Tasman Bays,

which may be appropriate if, as suggested during consultation, there will be a shift in dredging effort to these areas if these areas remain open. However, MPI notes that a wider closure was not consulted on, and that very little fishing effort occurs in Golden Bay and the western portion of Tasman Bay given the very low levels of scallop abundance.

Option 3, the status quo, has the least impact on fishing but has the highest sustainability risk of the three options. MPI's view is that the status quo option may not be a responsive approach to the status of the fishery.

Taking into account the information and views expressed during consultation, MPI's recommended option is to temporarily close all of the Marlborough Sounds and area 7H in Tasman Bay to commercial and recreational scallop fishing (Option 2) until 14 February 2017. This is the most likely of the options to protect the remaining reproductive capacity of the fishery. Such a closure would also be supported by tangata whenua through a rahui on customary fishing for scallops for the coming season

In relation to the proposal by the Challenger Scallop Enhancement Company that decisions be deferred until the results of a further survey are available (likely to be early September). MPI notes that the MoU specifies any such survey results are to be provided by 30 June, and that deferring a decision until later in the year means that any decisions on closures could not be implemented until well into the last half of the scallop season. Their effectiveness will be reduced as a result.

In addition, a survey by the Company is likely to be limited to the relatively few remaining beds in the Marlborough Sounds. If the survey results indicate that scallop numbers in these beds is increasing, then MPI considers a closure for the season would still be appropriate as it would support the primary objective of protecting the remaining scallop beds and ensuring the reproductive potential of the fishery (particularly in those areas where density is still high) is maintained.

MPI notes that you have broad discretion in exercising your powers of decision making, and may make your own independent assessment of the information presented to you in making your decision. You are not bound to choose the option recommended by MPI or any of the options proposed.

8 Appendix 1. Copies of submissions