Ministry for Primary Industries
Manatū Ahu Matua

Memorandum

Ref:

To: s 9(2)(a), Manager Aquaculture

Cc: Luke Southorn, Director Economic Development & Partners

From: s 9(2)(a), Principal Legal Adviser and s 9(2)(a), Senior Solicitor

Date: 1 November 2016[1]

Subject: **"CUMULATIVE THRESHOLD" – BOARD OF INQUIRY *NEW ZEALAND KING SALMON* DECISION AND ENVIRONMENT COURT *KPF INVESTMENTS* DECISION**
This advice is subject to legal privilege*

Background

1. On 13 September 2016, s 9(2)(a) forwarded six questions composed by the Marlborough Salmon Working Group (the Working Group) relating to the decisions of the Board of Inquiry on the New Zealand King Salmon (NZKS) applications and the Environment Court in *KPF Investments Ltd v Marlborough District Council*.[2]

2. The Working Group is comprised of individuals from wide backgrounds – community groups, stakeholders and iwi. As stated in the Working Group's Terms of Reference, the aims of the Working Group are:

    a. To consider options for existing salmon farms in Marlborough to adopt the guidelines; and
    b. To ensure the enduring sustainability of salmon farming in Marlborough, including better environmental outcomes including landscape, amenity, social and cultural values.

3. The questions were raised as a result of divergent views on the relevant cumulative effect threshold for the Waitata Reach in the Marlborough Sounds at the previous Working Group meeting. A response was prepared to help inform discussion within the Working Group as it considered potential NZKS relocation sites in Pelorus Sound. The response was circulated to the Working Group on 21 September 2016. As was stressed in the written response itself and in a conversation with you that afternoon, the response was not legal advice and could not be relied upon for that purpose, the reason being that MPI Legal cannot provide legal advice to the Working Group.

4. A copy of our response provided to the Working Group is **attached** as Appendix One to this advice. That response was reviewed by the Department of Conservation (s 9(2)(a)) and the Ministry for the Environment (s 9(2)(a)).

5. A further legal question had been added to the six questions. That question was: If there is a threshold, does that restrict our ability to enable relocation into Waitata Reach? Given that we could not provide legal advice to the

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[1] Note: a final version of this advice dated 11 October was provided to the Working Group for their meeting on 14 October 2016. The Working Group requested that the advice be provided to Julian Ironside, Barrister, and Quentin Davies of Gascoigne Wicks to obtain their confirmation that their views had been accurately expressed in the advice. This advice, now dated, 1 November 2016, incorporates the responses from both solicitors from paragraph 25 onwards. Other than the additions at paragraphs 25 to 28, the advice remains the same as that dated 11 October 2016.

[2] *KPF Investments Ltd v Marlborough District Council* [2014] NZENVC 152

Working Group, we did not answer this question in our response. Sara Ritchie did, however, discuss this question with you prior to the response being sent out.

6. This memorandum now records our legal advice with respect to the question: *If there is a threshold, does that restrict our ability to enable relocation into Waitata Reach?*

7. Since providing our response to the Working Group, we have also received copies of legal opinions provided by Julian Ironside, Barrister, and Quentin Davies of Gascoigne Wicks. This advice also discusses those opinions.

Summary of our response to the Working Group's questions

8. In our view, the findings of the Board of Inquiry and Environment Court decisions were:

    a. The Board of Inquiry found that the cumulative effects of the five proposed NZKS farms (four plan change and one resource consent site) would be decisive and have a high impact. Thus, in terms of cumulative effects, five farms was considered by the Board to be too high. A lesser number may be accommodated without significantly detracting from the character of the area. However, simply because the Board granted only two sites (Waitata and Richmond), this did not necessarily mean that the Board was establishing a threshold of two farms. It found that, for site specific reasons, the proposed Kaitira and Tapipi sites would have the highest impact. It was, therefore, following assessments of both site specific and cumulative effects that the Board of Inquiry approved only two of the plan change sites in Waitata Reach. It is difficult to tell definitively whether that was because two farms (together with the existing and consented farms in the Waitata Reach) was a "cumulative threshold" or whether, for site specific reasons, three farms were declined and so those decisions based on site specific reasons meant a "cumulative threshold" was not reached. It is not clear, in any event, from the Board's decision that two new farms is necessarily a limit.

    b. As to the extent of the Waitata Reach, the Board of Inquiry's consideration was based on Waitata Reach "as a whole", and our reading of the decision is that generally this includes Port Ligar and Waihinau Bay. There is nothing in the decision that suggests it also includes Forsyth Bay.

    c. The Environment Court in *KPF Investments* considered the NZKS farms approved by the Board and the Waihinau Bay farm as part of its assessments of the Waitata Reach.

    d. The Environment Court in *KPF Investments* did expressly apply a "threshold" to make a ruling for farms in the Waitata Reach – that threshold comprised the two new farms approved by the Board and the existing Waihinau farm.

9. Accordingly, while the Environment Court in *KPF Investments* found there to be a "threshold" of two farms (plus the existing Waihinau farm), no express threshold was stated by the Board of Inquiry. Cumulatively it found five new farms was not appropriate and that a lesser number might be accommodated, however, the Board's approval of two new farms did not of itself set a limit or "threshold".

If there is a threshold, does that restrict our ability to enable relocation into Waitata Reach?

10. As a result of the above, we do not consider the Board of Inquiry to have established a threshold, although the Environment Court set a threshold of two farms. The Board of Inquiry did say five new farms was not appropriate and that a lesser number might be accommodated. However, it is important to remember that the Board was making that decision based on the particular proposals that were before the Board. Those proposals were clustered around 4 headlands and the cumulative effects of those locations were highly relevant to the assessment. A different proposal which, for example, locates proposed farms over the span of the Reach, thus providing a very different density of farms, may have resulted in a different conclusion.

Precedent value of earlier decision

11. It is important to understand that a Board of Inquiry is not the same as a Court, even if it is chaired by a current or former Environment Judge. As such, a decision of a Board does not create binding legal principles in the same way that a Court can. Having said that, even though the Environment Court did establish a "threshold", that decision is also not binding. The Environment Court can take into account previous decisions of that Court but is not bound by them. Only decisions of higher courts are binding.

12. Accordingly, the Environment Court is able to consider each case on its own merits, in relation to the particular circumstances to that case. This means a differently constituted Environment Court could come to a different decision to that reached in *KPF Investments* because it is not bound by the decision of the Court in *KPF Investments*. While the Environment Court will make every effort to ensure that legal principles are applied consistently, the conclusions reached will depend on the facts of the case before the Court.

13. While neither the Court nor the Board's findings are binding, it is still important to refer to the Marlborough Sounds Resource Management Plan. If any limitation on numbers were to exist, it would be in the Plan itself (for example, if the Plan sets a limit on the number of farms within the Waitata Reach). We are not aware of this being the case.

14. Accordingly, subject to the above, in our view there is nothing which suggests that a "cumulative threshold" of two new farms (or three farms if the Waihinau Bay farm is included) is binding on the future of farms within the Waitata Reach. Any subsequent proposals for new farms in the Waitata Reach, or equally, any provision for new farms in the Reach in regulations, would require a robust assessment to ensure that they do not breach the relevant provisions of the Resource Management Act 1991 (RMA), and, as such a full assessment will need to be undertaken in each case. That assessment will need to take into account both site specific and cumulative issues.

15. Therefore, the findings by the Board of Inquiry and the Environment Court do not, of themselves, restrict the ability to enable relocation into Waitata Reach. If different proposals with different factual scenarios are suggested, a decision-maker does not need to take into account those decisions. However, any proposed relocation or proposed new farm would still need to be properly assessed under the relevant requirements of the RMA. The cumulative effects issues raised by the Board and Environment Court should still be carefully considered, particularly the effects on the King Shag, Maori (particularly Ngati Koata), natural character and landscape. Such consideration will require a combination of both the effects of the number of farms in total and the precise location of those farms.

Advice from J.C. Ironside dated 21 September 2016

16. We were provided with a copy of the advice from Julian Ironside which addressed the same questions that our response to the Working Group did. In summary, Mr Ironside found:

    a. The Board of Inquiry did establish a "cumulative threshold" beyond the two consented allocations.
    b. The Board considered the Waitata Reach in coming to its conclusions but not the adjacent bays.
    c. The Environment Court did use a threshold established by the Board in relation to tangata whenua values and the assessment of adverse effects on natural character were also influenced by the Board's findings. The Court found the Board's decisions established a threshold for development of further farms in the Waitata Reach which the Court found to be persuasive in relation to natural character and tangata whenua values.
    d. The threshold was the two farms at Waitata and Richmond.

17. In our view, our conclusions are generally aligned to those of Mr Ironside.

    a. While he did conclude that the Board of Inquiry established a "cumulative threshold" of two new farms, Mr Ironside notes this is a factual threshold and only in the sense that the existing environment must now take into account those two new farms. This consideration would, of course, need to also include the existing farm of Waihinau Bay. Mr Ironside also notes that a proposal for a further farm would need to address applicable aspects of the Board's review. Thus, although his answer to question 1 is 'yes' there is a threshold, there does not appear to be anything to suggest that further farms could not be considered. In fact, his response suggests otherwise. Having spoken to Mr Ironside, he did consider that the Board and the Court's decisions were highly persuasive. He considered a plan change application for a new farm would be difficult to be approved given the findings of the Board and Court. However, it was acknowledged that this would depend on what exactly was being proposed.
    b. In terms of question 2, we are in agreement that Waihinau Bay and Port Ligar fall within the "whole Reach" and were part of the consideration by the Board. Forsyth Bay, on the other hand, is an "adjacent bay" (as termed in the question we were asked) – it was not considered by the Board.
    c. We agree with his conclusion that the *KPF Investments* decision found that the Board of Inquiry used a threshold and applied it in their decision-making (question 3).
    d. Our comments at subparagraph a above apply equally here. We did not find there to be a threshold in the Board of Inquiry decision, but accept that there is a factual threshold in the sense the two new

farms would now need to be taken into account as part of the existing environment, together with the existing farm at Waihinau Bay. Julian Ironside's advice does not suggest that further new farms could not be considered. He says the two decisions would be highly persuasive if applied to a new proposal.

Advice from Quentin Davies, Gascoigne Wicks, dated 27 September 2016

18. We were also provided with a copy of Quentin Davies' advice dated 27 September 2016. In summary, Mr Davies concluded:
    a. The Board reached its findings on the evidence before it and did not assess the consequences of locating farms in other parts of Waitata Reach. The current proposal differs to what was before the Board. While the Board might have come to a view as to the cumulative effects threshold, especially in respect of amenity, there are likely to be a series of different factors at play with the current proposal.
    b. The "sub-bays" (which we assume are Port Ligar and Waihinau Bay) were not identified as separate entities by the Board.
    c. He agreed that the Environment Court was not strictly bound by the Board, although the Court in *KPF Investments* did agree with the outcome of the Board's decision. The Court was in error when it considered the Board dropped the KPF farm from its consideration, but in any event, any future decision-maker is not bound by the Board or Court's decision.
    d. The Board found on the facts that the threshold was four farms – Waitata, Richmond, Waihinau and KPF.
    e. Port Ligar and Waihinau Bay were included as part of the assessment. There is no reference to cumulative effects taking account of the Forsyth Bay farm in either decision.
    f. The Minister would not be bound by either the Board's or the Court's decisions but he could choose to address them if he wishes.

19. Mr Davies' advice accords generally with our advice.
    a. We agree the Board reached its conclusions based on the facts before it. We note that Mr Davies' advice goes into more of a factual evaluation of the current proposal as compared to the proposal that was before the Board of Inquiry. We accept that the current proposal will have different facts, including in terms of the relative layout of the farms within the Waitata Reach) which will need to be properly assessed.
    b. We also agree the Environment Court was not bound by the Board's decision. Equally any other future decision-maker will not be bound by either decision, however, as noted above, it would still be prudent to carefully consider the cumulative effects issues raised by the Board and Environment Court.
    c. Mr Davies did say the Board found a threshold of four farms (the two consented farms of Waitata and Richmond, as well as Waihinau Bay and the then consented Port Ligar farm). However, as Mr Davies noted, this finding is based on the facts. A future decision-maker will likely have different facts on which to base a decision.
    d. We also found that there was no reference to Forsyth Bay in either decision.

Strategy going forward

20. We spoke with Mr Davies yesterday and that discussion confirmed our view that the two legal opinions (and our views) are generally aligned - the differences being in the tone and emphasis of the advice, and possibly the starting point. However, the important point to note is that while a decision-maker can consider the reasons for a particular decision of another decision-maker, if the facts are materially different, or the relevant statutory test is different, there is no obligation to follow that decision.

21. In particular, if the Minister acted under ss 360A and 360B of the RMA, the process for a plan change or resource consent is different to the s 360B process, and so the tests are different. Section 360B(2)(c) sets out the conditions that the Minister must be satisfied of before recommending the making of regulations. One of those is being satisfied that "the proposed regulations are necessary or desirable for the management of aquaculture activities in accordance with the Government's policy for aquaculture in the coastal marine area" (s 360B(2)(c)(i)), which is not a factor for consideration by a council or court when considering a plan change or a resource consent application.

22. Also, the Minister must be satisfied that:

    a. The matters to be addressed by the proposed regulations are of regional or national significance;

b. The regional coastal plan that will be amended by the proposed regulations will continue to give effect to national policy statements, the New Zealand Coastal Policy Statement (NZCPS) and the relevant regional policy statements;
c. The regional coastal plan as amended by the proposed regulations will not duplicate or conflict with any national environmental standard.

23. Accordingly, both in terms of precedent and in terms of the s 360B statutory test, there is no obligation on the Minister to follow the decisions of the Board of Inquiry or the Environment Court, although we still consider it prudent to carefully consider the cumulative effects issues raised in those decisions. It will be important, however, for the Minister to be fully informed as to these s 360B matters (if that is the option that is taken), including any limits that the NZCPS imposes that could impact on the proposed regulations, to ensure there is a robust assessment of these requirements, and sound and robust reasoning to support any decision in relation to the making of the proposed regulations. Compliance with the s 360B process is essential.

24. We were asked to advise on a strategy as to how this matter can progress given the perceived divergence of views. As discussed above, we do not consider that our views and Julian Ironside's views are far apart. Further, Quentin Davies' advice accords generally with ours. It would, therefore, appear that the concern regarding divergent views no longer exists. Consequently, we do not consider there to be anything preventing the Working Group from continuing with its consideration of options for salmon farms in the Waitata Reach (which is one of the aims of the Working Group).

Additional comments following responses of Julian Ironside and Quentin Davies to final advice dated 11 October 2016

25. We provided a copy of the 11 October advice to Julian Ironside and Quentin Davies on 19 October 2016 as a consequence of a request made by the Working Group following its meeting on 14 October. The Working Group had requested that we obtain confirmation from both Julian Ironside and Quentin Davies as to whether our advice had expressed their views accurately. The following summarises the responses from both solicitors. We have not amended the advice other than adding those responses.

26. Quentin Davies responded in an email dated 21 October 2016 that he was happy with how our advice expressed his views.

27. In an email dated 21 October, Julian Ironside disagreed with paragraph 24 above that there are not divergent views:

> I do not think it is correct to say that there are not divergent views. While I acknowledge that each proposal must be considered on its merits, I consider that you and Mr Davies downplay the significance of the decisions that were made by both the board and the Environment Court in relation to locating salmon farms in the Waitata Reach. Those decisions were made under planning instruments that the Supreme Court has stated give effect to Part 2 of the Act. Neither decision lends support to the proposition that locating further salmon farms in the Waitata Reach amounts to appropriate development. My answers on questions 1 and 3 are consistent with those decisions.

28. Julian Ironside also commented on paragraphs 8(a), 10, 13, and 15 above. Accordingly, our conclusions in these paragraphs should be read in the light of Julian's email comments. To some extent this may be a matter of emphasis or a matter where we will need to agree to disagree. We still consider the Working Group is not prevented from continuing with its consideration of options for salmon farms in the Waitata Reach. In any event the decisions of the Board of Inquiry and Environment Court are going to have to be very carefully considered in any decision whether or not to proceed with putting salmon farms in Waitata Reach.

APPENDIX
Response to questions raised by the Marlborough Salmon Working Group – "cumulative threshold" – 21 September 2016

This paper is not intended to be legal advice and cannot be relied upon for that purpose. This paper is provided to inform discussion within the Marlborough Salmon Working Group. Independent legal advice should be sought.

1. Did the Board of Inquiry establish in its "Findings for Waitata Reach" a cumulative threshold for further salmon farming in Waitata Reach beyond their two consented allocations?

The Board of Inquiry (BOI) in the *New Zealand King Salmon applications* found that the cumulative effects of the five proposed NZKS farms (four plan change and one resource consent sites) would be *decisive* and would have a high impact. It was recognised that a lesser number of farms may well be able to be accommodated, without significantly detracting from the character of the area. It found that for site specific reasons the proposed Kaitira and Tapipi sites would have the highest impact as compared with Waitata and Richmond. Having assessed site specific and cumulative issues, the BOI approved two of the plan change sites in Waitata Reach (Waitata and Richmond).

Kaitira and Tapipi were declined because the particularly high impact those proposed farms would have because of their prominent, highly visible locations.

The issues identified in the BOI decision as relevant to the cumulative effects assessment cover a range of effects – for example, King Shags, water quality, the location off headlands, and the effect on Maori values.

When considering the White Horse Rock application, the BOI concluded that the adverse effects, when considered cumulatively with existing farms and the farms granted consent, would be sufficiently high to tip the balance against granting the application.

Therefore, in relation to the proposed NZKS farms, cumulatively five farms was found by the BOI not to be appropriate. It is difficult to tell definitively whether that was because two farms (together with the existing and consented farms in the Reach) was a "cumulative threshold" or whether, for site specific reasons, three farms were declined and those separate decisions meant a "cumulative threshold" was not reached. In any event, it is not clear that that two farms is necessarily a limit.

Paragraphs in the BOI decision that are relevant to this question are:

- When assessing the effect on natural character, the BOI looked at the cumulative effects of the five proposed farms (Waitata, Richmond, Kaitira, Tapipi and White Horse Rock), in conjunction with the other consented farms (Port Ligar (the KPF farm which at the time had been given consent by the Council but was later cancelled by the EC) and Waihinau Bay). As a result, the BOI found that the cumulative effects of the five proposed farms in conjunction with the other consented farms would have a high impact on the natural character of Waitata Reach Each new farm individually would have an effect on natural character and, given the prominent locations of the White Horse Rock/Waitata site, Kaitira and Tapipi, even if only one or two of these farms were consented, the effect on natural character would be high. [698]

- In particular, the BOI found that Kaitira and Tapipi were at prominent, highly visible locations which meant they would have a very high impact [699].

- In terms of the effects on the Waitata Reach as a whole, the BOI agreed with the assessment of the effects as moderate to very high, with the proposed farms at Kaitira and Tapipi having effects at the more serious end of the scale. [703]

- The BOI found that:
  - Five farms would have a decisive cumulative effect and from a visual and aesthetic point of view, the two more prominent farms of Kaitira and Tapipi are the defining element of the decisive cumulative effect.
  - At a more local level, the five proposed farms would have adverse visual effects. The most severe effects would be created by Kaitira and Richmond. [713]

- In terms of Waitata and White Horse Rock, the combined effect of these proposed farms on natural character would be high and the effect would be mitigated by reducing the number of farms to one. [778]

- The cumulative effects of all five farms would have a high impact on the natural character of the Waitata Reach and the proposed Kaitira and Tapipi sites a very high impact on the eastern side of the Reach. [783]

- There would be a high impact on the visually appealing entrance to the Sounds from Cook Strait, particularly on the northeastern side of the Reach where the Kaitira and Tapipi farms are proposed. [790]

- In relation to the potential water column effects, the BOI said "Our finding that only two of the zone locations sought in the Waitata Reach can be approved is partly underpinned by our recognition of the (unresolved) uncertainty and risk that exists with regards to the water column effects should all the zonings be approved and consents granted". [1212]

- The other two proposed farms (Waitata and Richmond) were not found to have the same impact on natural character and landscape. [1251]

- While the BOI agreed the cumulative effect of five new farms in the vicinity of Waitata Reach would adversely affect the views from the Tui Nature Reserve, it said a lesser number of farms may well be able to be accommodated, without significantly detracting from the character of the area [989] or without significantly affecting other commercial enterprises within the area. [994]

- In regard to the proposed Plan Change:
  - In the context of ecological integrity, and looking at the four CMZ3 sites proposed for Waitata Reach, the BOI found that, while some expansion of salmon farming seems to be able to be accommodated, the assimilative capacity for an expansion of the scale proposed (four sites), had not been demonstrated. [1245]

  - In terms of cultural concerns, the BOI listed a number of cumulative effects of the proposed farms in the Reach. [1248]

  - "After careful consideration of all the balancing factors, we conclude that the siting of four proposed farms in this Reach would not be appropriate. The assimilative capacity of the receiving waters and the potential cumulative effects on the foraging areas of the King Shag are uncertain. The cumulative effects of the Kaitira and Tapipi on the natural character, landscape and seascape qualities of the entrance to the Sounds would be very high. Further, Tapipi lies in the path of a traditional waka route – a taonga to Ngati Koata. It would also be in the vicinity of recorded sites of significance to Maori." [1252]

- "To grant all of the zones would not give effect to the statutory provisions in respect of natural character, landscape, Maori or ecological matters. The overall cumulative effects would be high." [1253]

- In assessing the White Horse Rock application, the BOI concluded "Looking at the Reach as a whole, we found that the introduction of five new farms would have a high impact on natural character and landscape values". [1355]

- The adverse effects on recreational fishing, customary fishing, navigation, natural character and landscape, "when considered cumulatively with the existing farms and the farms consented would be sufficiently high to tip the balance against granting the application". [1356]

2. Did the Board of Inquiry consider cumulative effects, including that on Natural Character, of the Waitata Reach in combination with the adjacent bays or were they identified as separate entities?

As shown by the paragraph references below, the BOI makes references to the Waitata Reach "as a whole", and in some cases makes clear reference to Port Ligar and/or Waihinau Bay, and in others, there is such no reference. It would seem that generally it is the Waitata Reach in combination with these adjacent bays that has been considered.

Paragraphs in the BOI decision that are relevant to this question are:

- In relation to landscape, the BOI considered the effects on the Waitata Reach as a whole. The BOI accepted the general consensus reached by landscape architects as to the location and general character of the Reach (based on there being little or no disagreement as to its setting). "The Waitata Reach incorporates the body of water that connects Tawhitinui Reach at Maud Island to the south, to the open waters of Cook Strait to the north. The Reach is approximately 12 km long and the width of the passage typically varies between 2km and 4km" (see paragraph [644]).

- The BOI considered the Waitata Reach as a whole to be a landscape of high to very high visual amenity, and included as one of the contributing factors the high legible peninsula that defines the eastern side of Port Ligar and the headland that separates the three main bays on the northwestern side of the Waitata Reach (see paragraph [664(d)]).

- In terms of natural character, the BOI found the cumulative effect of the five proposed farms, in conjunction with the other consented farms at Port Ligar and Waihinau Bay would have a high impact on the natural character of the Reach (see paragraph [698]).

- In relation to visual amenity, the BOI agreed with Dr Steven for Pelorus Wildlife Sanctuary Limited who said "The adverse effects on aesthetic quality will derive from the four farms considered individually and collectively, but will be compounded as cumulative adverse effects when considered together with:
  (1) The existing Waihinau Bay farms,
  (2) Existing mussel farms within Waitata Reach and adjacent bays." ([711]

- In terms of cultural concerns, the decision refers to the Reach as "the gateway to Te Hoiere (Pelorus Sound)" (see paragraph [1248], [1249] for example).

3. If the answer to Question 1 is "yes" then in the KPF decision, did the Environment Court use a threshold established by BOI to make a ruling for Salmon Farms in the Waitata Reach?
The answer to Question 1 was that the BOI made its decision on the basis that cumulatively five new farms was not appropriate but did not expressly specify what the threshold should be.

The Environment Court in *KPF Investments Ltd v Marlborough District Council* [2014] NZENVC 152 did use a "threshold" to make a ruling for salmon farms in the Waitata Reach. That "threshold" comprised the two NZKS farms approved by the BOI and the existing Waihinau farm.

Paragraphs in the *KPF* decision that are relevant to this question are:

- At paragraph [155], the Court noted that when assessing the effects of the five proposed NZKS farms, the BOI took into account the effect of the KPF (Port Ligar) site when deciding in relation to the NZKS proposal that "even if only one or two of these farms were consented, the effect on natural character would be high". (This is a reference to paragraph [698] of the BOI decision.)

- The Court agreed the BOI considered the KPF consented farm was part of the environment when considering some of the ecological effects of the NZKS applications and in terms of natural character considerations. The Court noted no references were cited before it in relation to the effects of landscape or tangata whenua values, and that there was no consideration of the cumulative effects of the Danger Point farm in the BOI's overall "Evaluation of [the] Plan Change". [60]

- The Court said "… It defies belief to describe that the discharge from the accumulated (consented) salmon farms together with the KPF farm is only a minor adverse effect from a Maori perspective (or from some other cultural perspectives also)." [166]

- At paragraph [187], the Court noted the BOI had considered four new farms in the Waitata Reach would "compromise" Maori values "to some extent", but that the other three adverse effects would be likely to occur. "We find that the addition of a third salmon farm in or beside the Waitata Reach (in addition to NZKS's Richmond and Waitata farms), or a fourth if the existing Waihinau Bay farm is included, would be a serious adverse effect on the values of Ngati Koata".

- The threshold identified in the Environment Court decision was two. The Environment Court said the BOI considered only two new farms should be allowed in the plan and concluded that "the threshold would be exceeded if consent were to be granted to the KPF application". [209]

4. If the answer to (1) and (3) is "yes", what threshold number of salmon farms for Waitata Reach was identified in the decision and ruling?
In relation to the proposed farms before it, the BOI did not specify what the threshold was except that it was fewer than the five farms for which approval was sought. The approach of the Court in *KPF* is discussed above.

5. If the answer to (2) is "no", which bays containing salmon farms in addition to Waitata Reach, were included in the assessment of cumulative effects in the NZKS BOI decision and KPF ruling?
The answer to question (2) was that, with regard to the BOI, generally it is the Waitata Reach in combination with the adjacent bays that has been considered. It would appear that Port Ligar and Waihinau Bay were considered, or at least expressly referenced in some aspects of the BOI's consideration and the BOI was silent in others.

The Environment Court considered the NZKS consented farms and Waihinau Bay (see paragraph [187] for example).

6. What reasons were used to underpin any such threshold/s?
This question is answered by reference to the five previous answers.