

29 June 2017

Professor Peter Skelton
The Chairperson
Marlborough Salmon Farm Relocation Advisory Panel
c/-Mr Ron Crosby
Email: ronsta@xtra.co.nz

Dear Mr Crosby,

Marlborough Salmon Farm Relocation Advisory Panel – Further Issues directed to Government Policy for Aquaculture

1. I thank you for your message dated 22 June 2017 concerning this issue raised by Royal Forest and Bird Protection Society of New Zealand Inc in submission number 0587 at paras 9-12.
2. I will first deal with the statement in the Aquaculture Strategy 2012 that says:

"Government should only intervene where we add value and where industry and others cannot act alone."
3. The submission from Royal Forest and Bird Protection Society of New Zealand Inc at paragraph 12(a) appears to be asserting that because regional planning is already underway in Marlborough it cannot be said that government intervention is necessary.
4. The inference behind the submission appears to be that unless a particular step or objective cannot be attained without government intervention of some kind, then regulatory intervention would be ultra vires the regulation making power. One could easily see how the possible answer to that is to acknowledge that everything to be regulated here could be attained one way or another without government intervention which would mean that there is nothing on which the government should intervene.
5. In my view the answer to this lies in a perusal in the Aquaculture Strategy 2012 itself which contains the statement at issue and set out in para 2 above. It is not a large document and I have appended the full version to this advice.
6. Its full title is "The Government's Aquaculture Strategy and Five Year Action Plan to Support Aquaculture". The statement at issue appears on page 2 under "Government's Role". But it is apparent from reading the entire document that what that statement is directed to is **achieving growth of the aquaculture industry**:
 - 6.1. The Minister's foreword is subtitled "Sustainable aquaculture growth is good for New Zealand";

- 6.2. The next two sub-headings on page 1 are "Setting the scene for growth" and "Supporting the growth pathway";
- 6.3. On page 2 the government's commitment is recorded as being the support of growth to achieve a goal of \$1 billion in annual sales by 2025, and that is boxed and highlighted;
- 6.4. The next item is headed "Industry's Role" the first sentence of which refers to sector growth having to be industry lead and that government can help to enable growth but industry must identify opportunities, lead development, and invest.
- 6.5. The next section, which contains the statement at issue is headed "Government's Role" as mentioned earlier. The text refers to the need for government to act in the public interest, to ensure an appropriate balance of values and to uphold the Crown's obligations under the Treaty of Waitangi. The statement at issue here then follows. The sentence after that refers to the strategic areas where government can help enable growth.
7. Therefore in my view it is abundantly clear that the statement at issue in the Aquaculture Strategy 2012 is made in the plain context of an imperative of sector growth, and nothing else. Once government takes the view that achieving the growth objective is not something that can be attained by industry and non-government agencies alone, then no vires issue arises in respect of exercising these regulation making powers.
8. I turn now to the "Business Growth Agenda 2015". I have made some enquiries about this document and the position appears to be as follows:
 - 8.1. The document is actually entitled "The Business Growth Agenda – Towards 2025".
 - 8.2. On 7 December 2016 the Cabinet Economic Growth and Infrastructure Committee noted by Minute that the government's policy for aquaculture was as outlined in that paper;
 - 8.3. On 12 December 2016 cabinet confirmed that Minute.
9. Turning then to the contents of that policy, chapter 4 contains some references to aquaculture. The most specific reference to the Salmon Farm Relocation is on page 15 where it says:

"MPI is investigating government intervention to unlock salmon growth opportunities in Marlborough."
10. There are also other references worth noting:
 - 10.1 Page 1 para 3: *"through more efficient land and resource use..."*
 - 10.2 Page 9 item 6 para 3: *"we will also investigate new growth opportunities..."*

11. Given the adoption of the paper by Cabinet's Economic Growth and Infrastructure Committee, and then subsequent confirmation by cabinet itself, there seems little doubt that it represents government policy. That presumably answers your questions concerning adoption by cabinet and disposes of any issue relating to the extent of delegation to that committee.
12. As to the broader issue of what documents in totality should be considered as setting government policy for aquaculture in the coastal marine area, it is interesting that in the Ministerial foreword to the consultation document on this proposal the Minister said this:

"This proposal is about ensuring good environment management of salmon farms and finding a better balance between the different values held in the Marlborough Sounds. Relocating farms provides an opportunity to get better outcomes by reducing environmental effects and moving farms to less populated areas. Because the sites would be more productive, jobs and value would be added to the regional economy. This would support the government's policy for aquaculture as set out in the New Zealand coastal policy statement, the aquaculture strategy, and the natural resource business growth agenda, to increase the productivity of natural resources while reducing environmental effects."

13. Although it could be said that the New Zealand Coastal Policy Statement is more than simply an expression of government policy given its entrenchment as an RMA planning instrument, that ministerial identification of government policy in respect of the other two documents seems to me to be fair and accurate.
14. I turn back now to the question of whether the two policy documents are consistent and can be reconciled.
15. Now that it is clear that the Aquaculture Strategy 2012 is directed to **growth**, any concern that the Business Growth Agenda Policy creates an inconsistency dissipates.
16. I hope this is of assistance but I would be happy to reconsider or augment any of this if you think it would be helpful.

Kind regards



Richard Fowler QC

The Government's Aquaculture Strategy and Five-year Action Plan to Support Aquaculture

MINISTER'S FOREWORD

Sustainable aquaculture growth is good for New Zealand

Our primary industries are the engine room of our economy. We need to enable primary industry growth underpinned by strong environmental performance. The Ministry for Primary Industries' (MPI) vision for our primary sectors is "Growing and Protecting New Zealand".

Within an international market characterised by strong demand for safe and sustainable seafood products, the aquaculture sector has significant growth opportunities. This growth has to be industry-led and the industry's opportunities and aspirations are reflected in their own goal of growing annual sales to NZ\$1 billion in value by 2025.

The aquaculture industry has established a strategy to deliver that growth. The Government is committed to environmentally sustainable, primary sector-led strengthening of the economy and is committed to enabling the aquaculture industry to reach its goal.

The foundations for growth are already in place. Our aquaculture production is free of many of the issues facing international producers and our environmental and food safety credentials are second to none. New Zealand has good trading conditions and trade agreements with key and emerging markets. Within these markets, we can leverage off our clean green reputation; world-leading environmental, food safety, animal health and welfare standards; and biosecurity management to secure premiums and market share.

While the foundations for growth are strong, the sector faces particular challenges and has unique characteristics that distinguish it from other primary producers and necessitate a specific Government strategy and action plan. The bulk of aquaculture production comes from the use of public water space, which can only occur in a planning and allocation framework that balances and respects other uses of that space. For this reason, the steps necessary to establish aquaculture operations differ from many other primary producers.

Aquaculture is relatively young in New Zealand and has seen significant regulatory change in recent years.

The success of the most recent reforms will need central Government support, particularly for local authorities which are looking for Government to assist with their critical role in managing sector growth. The true value of the recent regulatory reforms will only be realised through a co-ordinated plan of action across Government.

This strategy and action plan establishes a whole-of-government pathway to enable the aquaculture sector to grow, be it through the development of new farming space, better use of existing space or getting better value from existing production. Government will:

- » implement the new aquaculture law and work with councils and the public to plan for sensible and sustainable future aquaculture growth in accordance with the Resource Management Act and the New Zealand Coastal Policy Statement 2010;

- » ensure the laws and frameworks governing the establishment and operation of marine and land-based aquaculture are effective and responsive, and enable industry investment;

- » deliver on the Crown's aquaculture settlement obligations to Māori and identify opportunities for improving Māori wellbeing through aquaculture development;

- » build our knowledge of environmental effects and ensure a healthy aquatic environment;

- » maintain and build our world-leading animal health and welfare, food safety, and biosecurity standards;

- » encourage investment and adoption of innovation; and
- » facilitate continued discussion between industry, government, Māori and the public as to how aquaculture should grow and be managed in New Zealand.

As the Minister responsible for aquaculture, I am excited about the pathway forward and to working with those with an interest in aquaculture to sustainably grow the sector towards its \$1 billion goal and beyond.

Hon David Carter
Minister for Primary Industries

SETTING THE SCENE FOR GROWTH

Aquaculture has potential to grow as an export industry for New Zealand. As the global supply of seafood from wild fisheries is limited, aquaculture has the opportunity to meet this growing world demand through increased production. Aquaculture is the world's fastest developing source of animal protein, growing by more than 60 percent over the past decade. The United Nations Food and Agriculture Organization reports that by 2025 over half of all seafood consumed globally will be farm produced. People around the world want to eat more seafood and New Zealand can supply a safe and sustainable product.

Whilst New Zealand cannot compete with low-end producers, we do have some distinct advantages to increase market share into higher-value/premium markets:

- » Our aquaculture industry has a reputation for high environmental performance and a legislative framework that ensures this is maintained.
- » We have world-leading food safety, animal health and animal welfare standards. International markets want to do business with us because their people demand safe food.
- » Our relative geographic isolation and biosecurity measures mean we are free from diseases and pests commonly affecting aquaculture production elsewhere in the world.
- » We have good water quality needed to grow a healthy and safe product.
- » We have good trading conditions and proximity to key emerging Asian markets.

Supporting the Growth Pathway

This strategy and action plan sets out the government's intended actions and activities to support growth of the aquaculture industry over the next five years. This document includes:

- » the context for government's involvement in supporting aquaculture and commitment to enabling the industry achieve its \$1 billion goal by 2025;
- » how this strategy relates to other documents; including the aquaculture industry's own strategy;
- » a set of values and behaviours that guide how the government acts;
- » the functions and roles where government can and should act;
- » the different roles played by various government agencies;
- » key government actions and activities to support sustainable growth; and
- » markers for measuring progress and performance.



GOVERNMENT'S COMMITMENT

Government supports well-planned and sustainable aquaculture growth in New Zealand and is committed to enabling industry to achieve its goal of \$1 billion in annual sales by 2025.

Towards \$1 billion
Enabling the growth of a sustainable aquaculture industry

An essential part of this commitment is to ensure aquaculture growth takes place within acceptable environmental limits and respects other uses and values of our waterways and marine environment.

INDUSTRY'S ROLE

Sector growth must be industry-led and this strategy links and sits beneath the aquaculture industry's own growth strategy. Government can help enable growth, but industry must identify opportunities, lead development, and invest. The Government's strategy sets a foundation for aquaculture growth and expects Government's role will reduce as industry capacity grows.

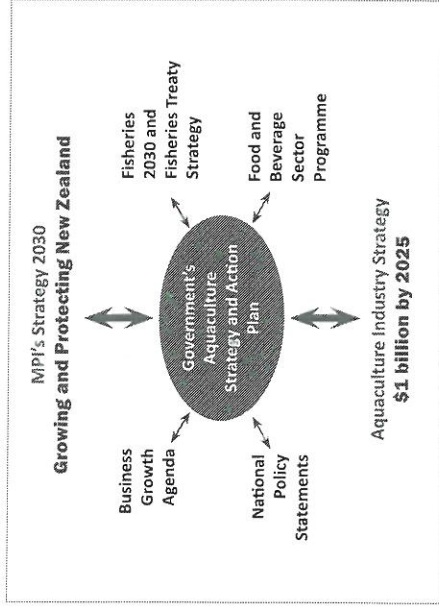
GOVERNMENT'S ROLE

Government must act in the public interest and ensure an appropriate balance of economic, social, cultural and ecological values. Government must uphold the Crown's obligations under the Treaty of Waitangi. Government should only intervene where we add value and where industry and others cannot act alone. For aquaculture, the Government sees seven strategic areas where we can help enable growth, described in the objectives below:

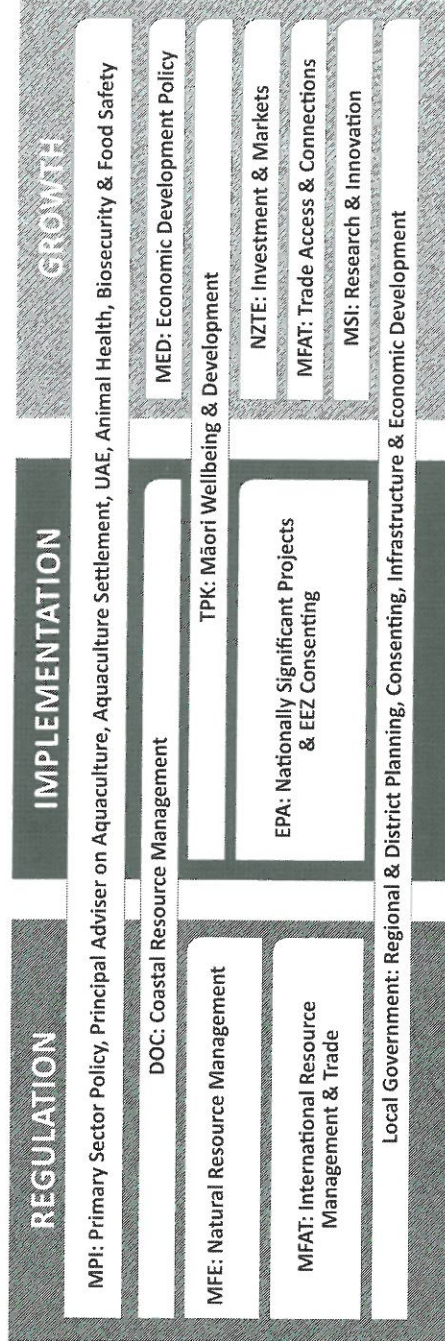
A Healthy Aquatic Environment	Build understanding of the environmental effects of aquaculture to support consistent decision making and community comfort. Maintain water quality and ecosystem health. Build on our animal health and welfare, food safety, and biosecurity standards.
Quality Planning & Permitting	Support efficient resource management planning and allocation processes that balance other use, ensure sustainability, and enable investment.
Effective & Responsive Regulation	Ensure effective and responsive regulation that provides responsible stewardship of natural resources while allowing the aquaculture sector to conduct business economically.
Support Māori Objectives	Settle the Crown's aquaculture settlement obligations and provide support for Māori development.
Increase Market Revenues	Remove unnecessary barriers to trade and, consistent with our international obligations, support initiatives to increase market value.
Increase Value through R&D	Encourage and co-invest in industry-led innovation, ensuring support for research and innovation aligns with industry priorities, identified opportunities and international obligations.
Sound Governance	Facilitate co-ordination across central and local government and collaboration with stakeholders to identify risks and opportunities for aquaculture.

FIT WITH OTHER STRATEGIES AND INITIATIVES

This Aquaculture Strategy and Action Plan has been developed to complement and support the Government's overarching environmental and economic initiatives. This strategy aligns with both the aquaculture industry's strategy and the Ministry for Primary Industries' 2030 Strategy, setting out how the government can support the growth pathway established by the sector.



A CO-ORDINATED RESPONSE ACROSS GOVERNMENT



Delivering on the objectives requires a whole-of-government approach. While MPI's Aquaculture Unit is the principal adviser to the Government on aquaculture, other government agencies and local government have core roles and responsibilities that connect with the aquaculture sector.

These agencies work in three key areas: 'regulate' aquaculture activities, to 'implement' regulatory and non-regulatory processes, and to enable sector 'growth'. Whilst certain agencies lead on certain matters, other agencies contribute to each other's core responsibilities. This strategy and action plan ensures greater coherence, co-ordination and prioritisation of activities across agencies.

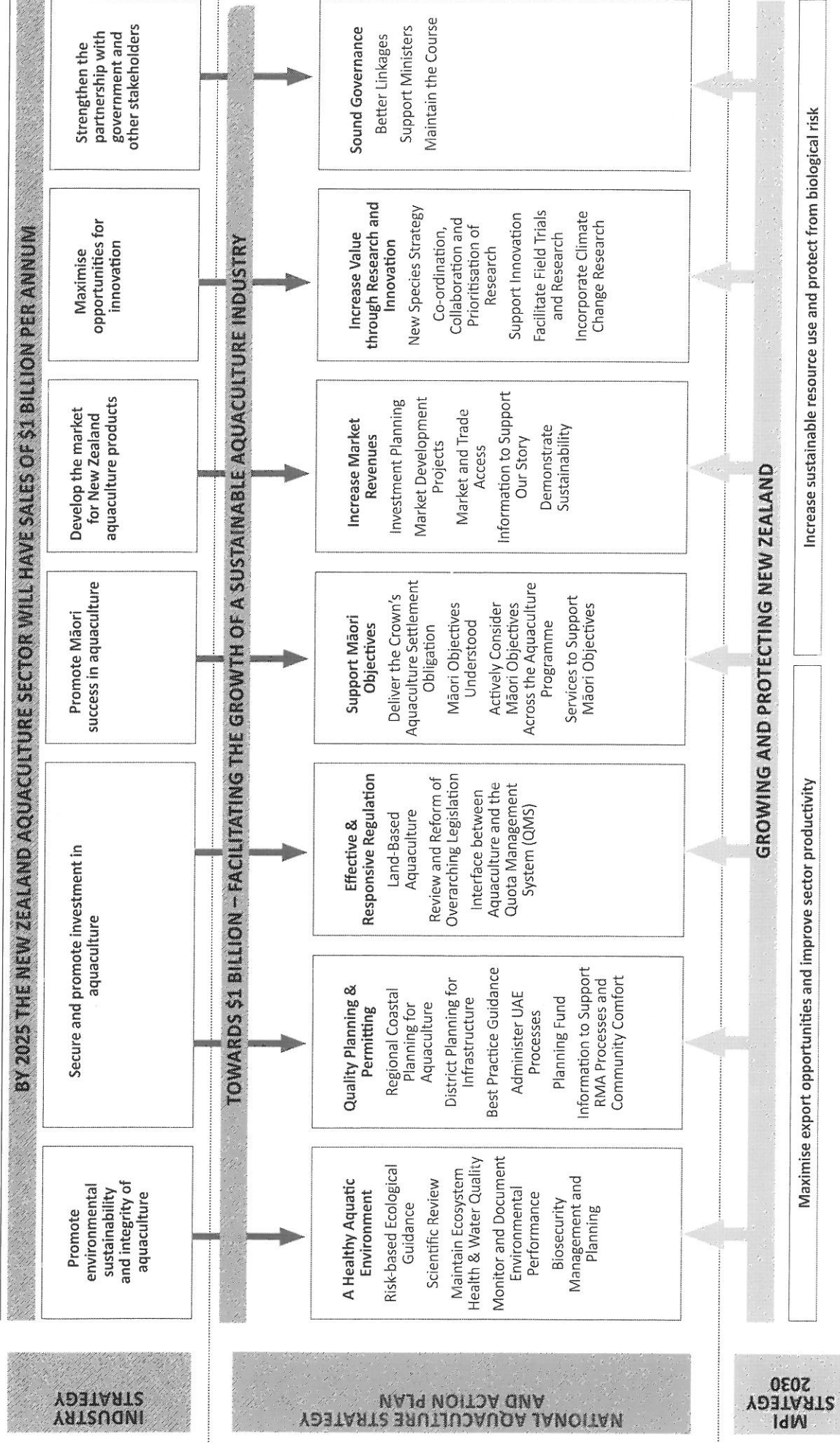
CORE VALUES

- » **INDUSTRY-LED GROWTH:** Policy, regulatory and business environment settings are in place to enable the private sector to lead and grasp opportunities for economic growth.
- » **SUSTAINABLE:** Aquaculture growth in New Zealand must be environmentally sustainable.
- » **WELL PLANNED:** Aquaculture development takes place within regulatory frameworks that recognise the benefits of aquaculture growth and respect other uses and values of our waterways.
- » **PARTNER WITH MĀORI:** Deliver on the Crown's aquaculture settlement obligations and recognise Māori development objectives.
- » **INTERNATIONALLY LEADING:** Maintain our position as a global leader in the management of environmentally sustainable aquaculture.

HOW WE WILL WORK

- » **DO WHAT WE DO WELL:** Align government resources on those activities where government is best suited and most able to add value.
- » **ENABLING AND PARTNERING:** Work alongside stakeholders in areas of mutual interest to maximise the benefits from sustainable economic growth.
- » **RESULTS FOCUSED:** Ensure actions are outcome oriented and delivered in a meaningful timeframe.
- » **MAKING INFORMED DECISIONS:** Decisions will be based on the best available and credible biological, economic, social and cultural information from a range of sources. Decisions will be risk and intelligence led.

The Government's Aquaculture Strategy and Five-year Action Plan Map



OBJECTIVE	ACTIONS and ACTIVITIES ¹	DEPARTMENT Lead	TIMELINE					PERFORMANCE MEASURES (we will know we have succeeded when)
			2011/12	2012/13	2013/14	2014/15	2015/16	
A Healthy Aquatic Environment	Provide risk-based guidance to support ecological impact assessments.	MPI, DOC						» RMA decisions informed by a national risk assessment of ecological effects
	Establish a national aquaculture working group to review science for important applications and planning initiatives.	MPI, MSI						» Councils in relevant regions have developed an integrated approach to aquaculture that maintains healthy aquatic ecosystems by 2016
	Through the implementation of national policy statements ² , facilitate integrated management to support healthy aquatic ecosystems and maintain water quality in aquaculture growing areas.	DOC, MPI, MFE						» Water quality in core aquaculture growing areas maintained or improved
	Establish a process to monitor and review environmental performance.	MPI, DOC, MFE						» Industry biosecurity plans in place by 2014
	Establish biosecurity plans for key growing regions.	MPI						» New Zealand's environmental performance as an aquaculture producer assessed as world leading
Quality Planning & Permitting	Work with regional councils to ensure planning to identify opportunities for aquaculture growth, including through identifying new growing areas in appropriate places and provisions to enable better use of existing space.	MPI, DOC, MFE						
	Partner with industry to develop regional growth scenarios to inform planning and prioritisation.	MPI						
	Work with district councils to ensure district planning enables aquaculture growth.	MPI, MFE						» 80% of regional coastal plans include aquaculture provisions in accordance with the policies in the NZCPS by 2016
	Develop best practice guidance for consent processing, consent conditions, information requirements and changes of use to promote national consistency.	MPI, DOC, MFE						» 4000 ha of new aquaculture space developed by 2016
	Efficiently administer undue adverse effects on fishing test processes (UAE) and other permitting processes.	MPI, EPA						» District plans provide for essential infrastructure in key growth regions
Effective and Responsive Regulation	Establish and administer the 'Planning Fund' to assist councils' plans for aquaculture growth.	MPI						» 95% of consents and UAE tests within statutory timeframes
	Collate and improve information on the ecological, cultural and social costs and benefits of aquaculture to support decisions and community comfort.	MPI, DOC, MFE						
	Develop options to improve the management of land-based aquaculture.	MPI, DOC						» Ministers are advised on options to review land-based aquaculture in 2012
	Complete outstanding components of marine aquaculture reforms transferred to RMA Phase II reforms.	MFE, DOC, MPI						» Reviews of relevant legislation and policies are informed by, and recognise the implications for, aquaculture
	Ensure aquaculture is considered in future reviews of relevant legislation and policy governing the sector (e.g. EIZ, biosecurity, animal welfare).	ALL departments						» Ministers are advised on future management frameworks for ranching and enhancement activities by 2014
Support Māori Objectives ³	Review the interface between aquaculture and the QMS framework to enable appropriate enhancement and ranching activities.	MPI						
	Deliver the Crown's aquaculture settlement obligation.	MPI, DOC						» Aquaculture settlement achieved within statutory timeframes
	Assist Māori in developing aquaculture objectives as part of iwi fisheries plans, forum fisheries plans, or other processes.	MPI						» Iwi fish plans include Māori aquaculture objectives as appropriate
	Recognise specific Māori interests across the aquaculture work programme.	MPI						» Māori interests are actively considered in aquaculture actions and recorded in advice
	Provide ongoing support for Māori development in aquaculture.	MPI, TPW, NZTE						
Increase Market Revenues	Develop an aquaculture investment plan to support growth.	NZTE, MFAT						
	Fund market co-ordination role within Aquaculture New Zealand.	NZTE						
	Ensure where appropriate that government funding for market support includes aquaculture within scope.	NZTE, MFAT						» Increased export volume and value
	Review and document trade barriers in key markets for seafood products.	MPI, MFAT						» Trade conditions for aquaculture products improved
	Within trade negotiations, work to improve trade conditions for seafood products.	MFAT, MPI						
Increase Value through Research and Innovation	Within markets, provide intelligence and market access support.	NZTE, MFAT						
	Maintain and review animal health, biosecurity and food safety management to gain and/or maintain trade access.	MPI						
	Support efforts to demonstrate and market the sustainability of New Zealand aquaculture production, including through third-party certification of aquaculture.	NZTE, MPI, MFAT						
	Develop and implement a strategy for new aquaculture species.	NZTE, MPI, MSI						» An agreed plan is in place to implement a new species strategy by 2013
	Establish a five-for-purpose approach to improve prioritisation, co-ordination and alignment of aquaculture research with industry priorities.	MSI, MPI						» An agreed medium-term research plan is developed for aquaculture by 2013
Sound Governance	Ensure government innovation funding includes aquaculture within scope.	MSI, NZTE						» Climate change implications considered across the aquaculture work programme
	Identify opportunities to enable research and field trials in a timely manner.	MPI						
	Investigate the impacts of climate change and measures to adapt and respond.	MPI, MSI						
	Establish appropriate governance groups to support implementation of this strategy, such as the 'Aquaculture Forum'.	MPI						» Stakeholders actively engaged in identifying opportunities and risk for aquaculture and the future management of the industry
	Complete annual reviews of the strategy and action plan.	MPI						» Performance objectives for the other six objectives achieved

1 Each action and activity will have a work plan developed elaborating on how the action will be delivered and the roles of particular agencies.
2 Including the New Zealand Coastal Policy Statement 2010 and the National Policy Statement for Freshwater Management 2011.
3 Actions aligned with other objectives in this strategy will also contribute to this specific objective given the core role of Māori in the aquaculture sector.

Core action
Implementation/
business as usual
No activity