

**Friends of Nelson Haven & Tasman Bay Inc. P.O.Box 365, Nelson 7040**

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**Our AGM will be on Wednesday 20 August 2014 at 7 pm at Hearing House,  
Trafalgar Square, Nelson**

The AGM will be followed by a talk by Rob Schuckard at 7:30 pm on  
**"Tasman/Golden Bay - Bird's Eye View Surveys"**

Rob has been part of a team surveying the Bays by plane and boat in summer and winter noting the location of birds, mammals and surface fish.

This is one of the first baseline studies recording hot spots of biodiversity.

**Public welcome.**

## *Annual Report - July 2013 - June 2014*

### **RMA under threat**

This year has been as busy as ever, and to top it off we are concerned that the Resource Management Act will "move from a rule of law approach to a political approach, which can lead to pork-barrelling of infrastructure projects and corruption...(and turn the core into) mush, with no clarity and no hierarchy as to what is important". (Listener, June 7, 2014, p24-25). The NZ King Salmon case in Marlborough has brought this to a head. The Listener article is at the back of this report.

### **Perrine Moncrieff Memorial Lecture and Double Birthday Party**

Perrine Moncrieff was a founding member of Friends of Nelson Haven 41 years ago and Forest & Bird 91 years ago. There was much to celebrate on June 6<sup>th</sup> at a full house at Victory Community Centre. The welcome was by the new CEO of F & B, a Wakatu local, Hone MacGregor. Craig Potton, who is a member of both groups, chaired the gathering and related memories of his experiences with Mrs. Moncrieff as did Gwen Struik. This year's Moncrieff Bush & Bird Shield was presented to Lily Gower for her report on foramifera. The main event was a superb lecture by David Melville relating what we now know of shorebirds' amazing 10,000 km flight on the Asian- Australasian flyway compared with Perrine Moncrieff's knowledge in her publications. This was followed by beautiful songs from Shannel Courtney's Mosaic World Choir, cake cutting and social. Honoured guests from overseas (Wellington) included Richard Fowler to whom Mrs. Moncrieff bequeathed her Astrolabe property and Robin Hodge, Mrs. Moncrieff's biographer whose book will be published by Nelson's Nikau Press in the future. All the feedback indicates a happy event enjoyed by all who came.

**Danny Boulton of French Pass**, who died on 23 June, will be very much missed. Danny was a long-time member of Friends, chair of Sustain Our Sounds, superb underwater photographer and expert witness at aquaculture hearings. His images of Admiralty Bay dolphins and their spectacular fish balls screened at one of Friends best attended meetings. The Nelson Mail illustrated feature article

(April 19, 2014, p15-16) tells the story of Danny and Lynn's love affair with each other and the Sounds, and the urgent need for an outer Sounds marine reserve of the "stunning" banks and walls rich with sponges, crabs, fish and hydroids, unlike "anywhere else in the world".

#### **A. Research Reports Update**

Friends obtained research funds and has several reports which are available on our website.

1. The Kidson Report on natural areas of Tasman/Golden Bay using the Pigeon Bay Criteria.
2. Surveys of bird, fish and mammal life of Tasman/Golden Bay is ongoing. The boat follows grid lines with surveys done in November/December and August/September to show seasonal differences. Results of this study have already been used to establish Important Bird Areas in the Top of the South Island's marine area. The work will continue in order to record both seasonal and yearly variations.
3. The King Shag research continues and will form the basis of a management plan for this Marlborough endemic. Progress has been made with food analysis and overall distribution and reports are in progress.

#### **B. Nelson City Council (NCC) area activities in which Friends is involved.**

1. The NCC Biodiversity Forum has representatives from about 30 organisations and agencies such as fishing, farming, environment, NIWA, Cawthron, MPI, DOC, TDC, and MDC and has developed an action plan and biodiversity strategy over five years. It deals with many environment subjects, but the realisation that Tasman/Golden Bay has seriously deteriorated with water column and benthic clogged with sediment to the detriment of filter feeders has focused its attention. A scallop spokesman stated, "The bays once had structure, but now...it is thick, black anoxic sludge – worse near river mouths" (NnMail 29/9/12). The Forum has voted to establish a 12 person working group to create a working plan modelled on processes used in Hauraki Gulf, Kaikoura and Fjordland. One lives in hope, but clearly land practices (e.g. development, horticulture, forestry, farming) and marine practices (e.g. trawling, dredging) need to be looked at in light of their effect on the Bay.
2. Paremata Flats management by NCC has conflicting inputs for site use. Friends has a watching brief and have made submissions. A new management plan is coming out soon.
3. De-sludging work has begun at North Nelson sewage ponds with Friends concerned with the process, which now includes de-watering on site in bags. The sludge is also being analysed by Cawthron and possibly going to Bell Island for composting. The leachate from de-watering goes back into the pond. Philip Simpson has updated a survey of Michael North around the ponds, which will help indicate impact of leachate on vegetation.
4. Port Nelson Ltd has bought the Calwell slipway in June. Due to the costs involved it is now planned to remove only about 1,000 of the 40,000 cubic metres of contaminated material. Perhaps this is another example of privatising profits and socialising clean-ups with public money.
5. Boulder Bank notification as an historic site by Historic Places Trust occurred in September 2013.
6. The Monaco-Bell Island pipeline was replaced a year ago, but the impact of the work and possible nutrients released to the Waimea Estuary is unclear. The sewage treatment is the responsibility of both TDC and NCC and may be part of the challenge of cleaning up the Bay's sediment problem and coastal enrichment.

7. . Atawhai rising main/Corder Park pump station repair work needs a resource consent, with a breach in the pipeline occurring in May when untreated sewage leaked into the Haven.
8. A member of Friends who saw people harvesting material from the rock pools on Rocks Road, notified NCC who have placed a health warning sign on the seaward side of the seawall along with signs stating that the pools are precious and "Please Observe and Do Not Disturb". Good on Council.
9. Friends' submission to NCC Draft Annual Plan resulted in the following response from NCC: Maitai River catchment management to be developed, NCC Biodiversity Forum will get funding, sludge disposal de-watering will be on site, and all methyl bromide at the Port will be captured as opposed to venting which is what occurs at other ports.
10. Friends had a representative at the Nelson Reserves draft bylaw hearing.
11. Friends is represented on a liaison group for NCC covering the global storm water consent. We are also a member of the Top of the South Biosecurity Forum which is watching the issue of combatting marine invasive pests.

#### **C. Tasman District Council area activities in which the Friends is involved**

1. A major effort in Tasman has been our continuing to have the Council incorporate Outstanding Natural Landscapes and Features (ONLF) Section 6(b) RMA a matter of National Importance, into their Plan. The Golden Bay small working group on which the Friends are represented, has been working for more than 3 years to identify ONFL. A plan change may be possible sometime early next year. A project for the remainder of Tasman District is yet to be approved by council and begun.
2. The coastal Baigent Reserve of 11.7 Ha has been purchased by TDC. This was quite a saga so it is disappointing that TDC is allowing leases for private boatsheds with inadequate conditions to ensure aesthetic and public use. Friends has made submissions and continues to actively participate in any resource consent applications for boatsheds due to their potential landscape and other adverse effects.
3. Friends made submissions on the Draft Annual Plan, Draft Navigation and Mooring bylaws and provided feedback on Draft Open Space (and Dog) Strategy 2015-2025.
4. The TDC Biodiversity Forum continues to have excellent lectures and field days, but takes no stands on any issue. Individuals and local groups are doing important coastal restoration work. A recent bus trip by the Forum included the impressive work at Champion Creek where highway construction destroyed Waimea Inlet wetland and restoration includes planting and fish passage best practice.
5. The southeastern corner of the Moutere Inlet was affected by the Tasman school muddy-buddy fundraising event and the TDC- commissioned Wriggle Report, confirmed the school children's own study that environmental damage was done. The event has now been moved to a less sensitive area on Kina Peninsula (LEH Baigent Reserve). The Wriggle report also found that soft mud has increased from 9 Ha to 274 Ha between 2006 and 2013. The Gross Nutrient Enrichment and poorly oxygenated sediments increased from 1 Ha in 1947 to 37 Ha in 2006 to 60 Ha in 2013. Friends wrote the school in 2011 of our concern.

**D. Marlborough District Council (MDC) area activities in which Friends is involved:**

1. The aquaculture situation in the Sounds in the last two years has seen another wave of expansion in this unique area. The Marine Farming Association states they are aiming for "consolidation", but in fact expansion is what is happening with insufficient knowledge on cumulative impact of this industry. Most new applications have been granted, often on the generic proposition that one additional farm will not break the environmental backbone of the Sounds. No adequate study has been made in understanding the cumulative impact of this expansion on the Sounds as a whole. Hydrodynamic modelling and water column sampling for nutrients has finally started, but has not been released to the public, nor has it been used in deciding in favour or against the expansions. Friends was successful, around 2000, in questioning some fundamental issues on suitability of mid-bay farming in Coastal Marine Zone 2 (CMZ 2), the discretionary/non-complying zone. Now, the expansion from the ribbon development (50-200 m from shore) into non-complying area (>200 m from shore) feels as if the industrialisation will never end. The wasteful and squandering attitude towards open public space continues with inadequate concern for cumulative effects.

The process of including recreation, landscape, navigation aesthetic, open space and environment issues is likely the reason the executive director of N.Z. Marine Farming Association, Graeme Coates is quoted in the Nelson Mail (26.10.13) as stating "marine farming only flourished in countries with a dictatorship or one-party government".

2. So far the aquaculture industry has made no financial contribution to monitoring the effects of their activities. Recently initiated baseline studies are predominantly paid for by rates. On a positive note, MDC is moving towards better protection of ecologically significant areas from trawling and bottom dredging. Hopefully Tasman Bay will be considered for a similar approach.

3. Friends joined with many others, including Sustain Our Sounds (SOS) and the Environmental Defence Society (EDS), in submitting against the nine new farms N.Z. King Salmon (NZKS) applied for. There is strong evidence this industrialisation is not sustainable and the promised jobs and income were issues hotly debated during the hearing process. The BOI decision was upheld in the appeal to the High Court, but EDS was successful in the Supreme Court in reversing the Port Gore site (see Listener article at back of this report) strengthening the provisions in the Resource Management Act (RMA) to have particular regard for Outstanding Natural Landscapes and avoid negative effects. Where the appeal of SOS was not allowed, their appeal had wider implications on the information that is required to assess an application. Baseline information is a fundamental data set that should be at the disposal of a decision maker before the application is assessed.

4. A recent development by NZ King Salmon is the synchronisation of all the farm conditions according to S.127 of the RMA to those conditions decided by the BOI. Friends submitted on a number of these changes because they effectively allowed for higher pollution levels than consents allow at present. Friends made extensive submissions to NZKS Clay Point Farm and Crail Bay Farm applications. At the Crail Bay hearing, Friends were listened to favourably by the panel where this farm is most problematic due to low flow and a more precautionary approach was warranted. The decision requires more monitoring by the applicant and informing MDC when the upper pollution levels of the consent are approaching. NZKS appealed this decision and an out-of-court mutual understanding was achieved with a consent memorandum signed between MDC, NZKS and Friends. The memorandum upheld the earlier decision where the consent holder will do regular qualitative monitoring and inspect that both out gassing and bacterial matting will not develop and the worm communities are not declining.

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5. Following on the Board of Inquiry's decision to grant NZKS a number of farms in the aquaculture prohibited areas of the Sounds, MDC brought Prof. Kenny Black (Scottish Assoc of Marine Sciences) to NZ for an external review on salmon farms to lay the basis for "Best Practice Guidelines for Salmon Farming". Rob Schuckard has been asked, as a member of the Sounds Advisory Group, to participate in this project. The process is almost completed and a draft document will be publically available and open for submissions.

6. There has been a gold rush in applications for new aquaculture space in the Sounds recently, likely fuelled by the new draft of the Regional Policy Statement and the Marlborough Sounds Resource Management Plan. We are not opposed to aquaculture, in fact want long term sustainability, but we are concerned that too much space is granted before knowing the environmental impact and effects on the open character of the Sounds. We are well aware that concepts such as "prohibited" and "open space" are becoming rare in parts of the Sounds. Below are some of the applications on which Friends has submitted.

#### 6.1. Submissions on Salmon Farm Applications or S.127 changes of consent conditions (2013-214)

a. Port Ligar. KPF Investments applied to have a mussel farm application changed to a salmon farm. MDC granted consent, but the decision was appealed by Pelorus Wildlife. Friends joined the appeal as an S.274 party. The Environment Court decision was postponed until the Supreme Court decision on NZ King Salmon was known. Since then the appeal has been granted so no salmon farm will be allowed near the entrance to Port Ligar.

b. Clay Point applications by NZ King Salmon for additional feed of 500 tonnes beyond what their conditions allow, retrospectively, plus a change of consent conditions to synchronise with BOI ruling has been granted, which means greater pollution will be allowed.

c. Crail Bay application to synchronise conditions with BOI ruling through S.127, similarly as above.

#### 6.2. Mussel farm applications and extensions (2013-2014).

a. Most of the resource consents were granted, effectively allowing further encroaching on aquaculture non-complying area into deeper water (CMZ 2, i.e. >200m from shore).

\* Anakoha Bay and Beatrix Bay applications by Ngai Tahu Seafoods - Granted

\* Orchard Bay application by Clearwater Mussels Ltd – Granted

\* Beatrix Bay application by Knight Somerville Ltd. Site is 450 metres into CMZ 2, the non-complying zone. Granted – Appealed by Friends – Lost.

\* Beatrix Bay application by Davidson Family Trust to develop new farm – Refused.

b. Other Mussel Farm applications that are still pending:

\*Blow Hole Point, Outer Pelorus application by Marlborough Aquaculture Ltd to develop an area in front of an MDC designated Outstanding Natural Landscape (ONL) and close to a King Shag colony

\*Pig Bay, Port Gore. Two applications for renewal of farms by Swampy Mussel Co., despite the area being prohibited for Aquaculture and a designated Outstanding Natural Landscape (ONL). This is the same area where NZ King Salmon lost its Supreme Court case to establish a new salmon farm.

\*Waitata Bay, Outer Pelorus application by Goulding Trustees Ltd for a site in front of an ONL.

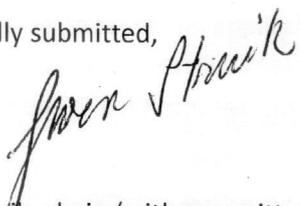
\*Yellow Cliff, Outer Pelorus application by Goulding Trustees Ltd for a site in front of an ONL.

Friends of Nelson Haven are not submitting on every application to expand aquaculture in the non-complying area of the Sounds. We are strategic in our approach by carefully selecting the most obvious examples in regard to ecological and landscape issues. It is our strong belief that MDC has been procrastinating on the overall impact of aquaculture on the Sounds environment. Recently these shortcomings have been highlighted as a problem for future expansion and also for existing sustainability of the overall industry. If we get past the tipping point, then going back to previous productivity is difficult to impossible. The precautionary approach is the only way to a long term future for the industry. Friends will continue to participate in this process for achieving sustainable management of the Marlborough Sounds.

#### **E. Acknowledgements**

1. The work of committee members is what makes all of the above possible. Without this input deterioration of our coastal environment would be even faster than at present.
2. Support from our membership is much appreciated.
3. The pro-bono and reduced fee work by various experts is very much appreciated.
4. Financial assistance from The N.Z. T-GEAR Charitable Trust has been invaluable.
5. Thanks to the New Zealand Nature Co. (107 Bolt Road, Nelson, [www.nznature.co.nz](http://www.nznature.co.nz)) who support us and who feature Friends of Nelson Haven on their personalised children's growth charts and placemats.
6. Thanks to Nimbus Software of Nelson for support.
7. Thanks to the N.Z. Ornithological Society for voluntary assistance in research projects.
8. Thanks to Network Tasman Charitable Trust for funds to update Friends' history.

Respectfully submitted,



Gwen Struk, chair (with committee assistance)

# If it ain't broke

Does the Supreme Court's rejection of a salmon farm proposal prove that tinkering with resource law is uncalled for? by REBECCA MACFIE



**P**ort Gore sits at the outer reaches of the Marlborough Sounds, flanked by two long pincer-like landforms reaching out into Cook Strait. It's wild, remote and exposed. Unusually for the Sounds, there is not a single jetty in the bay and it is seldom visited by yachties. There are a dozen baches scattered along the shore and a permanent population of three people.

On the western side of the bay is Papatua, a place of rocky cliffs, small beaches, folded pastoral hills and regenerating bush. It is classed by the Marlborough District Council

as an outstanding natural landscape.

It was at Papatua that aquaculture company King Salmon applied in 2011 to develop a 91ha salmon farm. The application triggered a legal battle that ended up in the Supreme Court, producing what some say is the most significant judicial decision on the Resource Management Act (RMA) since it was introduced 22 years ago.

According to RMA-architect Sir Geoffrey Palmer, the court's April ruling has also "spiked" the Government's claim that the RMA needs far-reaching reform.

The King Salmon plan was successfully challenged in the Supreme Court by the Environmental Defence Society after a Government-appointed board of inquiry gave the proposed fish farm the go-ahead.

In essence, the board of inquiry made an "overall broad judgment" that although the development would have an adverse impact on Papatua's landscape and was contrary to the New Zealand Coastal Policy Statement, the site was suitable for a salmon farm. The ruling was upheld by the High Court.

According to barrister Rob Enright, who

acted for the Environmental Protection Society in the case, this "overall judgment" approach was in line with the previous two decades of decision-making under the RMA, in which lower courts weighed up a range of environmental, economic and social evidence – as well as any relevant national and regional policy statements – in arriving at their decisions.

"It's been described as a 'black box' approach, where all these different considerations are fed in and you don't have any certainty as to the outcome."

In the King Salmon case the Supreme Court declared this approach was wrong, and that where there were policy statements drawn up under the RMA – in this case the Coastal Policy Statement – that set rules as to what can and can't be done, they have to be complied with.

"If there is no bottom line, and development is possible in any coastal area no matter how outstanding, there is no certainty of outcome, [with] one result being complex and protracted decision-making processes," it said in its 89-page majority ruling.

King Salmon's proposed farm site





Not a remote chance: Port Gore, where plans for a salmon farm have been blocked

## THE POLITICAL BATTLE

What does this mean for the political battle over National's proposed RMA reform?

Environment Minister Amy Adams argues the Act's problems can't be fixed without fundamental reform to bring "consistency and guidance", "stronger environmental outcomes" and more efficient consenting.

The most controversial aspect of her proposal is an amendment to Part 2 of the legislation, which lays out the RMA's core purpose and principles. In particular, she wants to change sections 6 and 7 of Part 2.

Section 6 lists matters of national importance that must be recognised and provided for by decision makers, including the preservation of the coastal and freshwater environment, protection of areas of significant native vegetation, and the relationship of Maori to their ancestral sites. Section 7 covers issues including the efficient use of natural resources, the use and development of renewable energy and the effects of climate change that must also be taken account of.

Adams wants to collapse sections 6 and 7 into one list that decision-makers must

consider when making "overall broad judgments" about development proposals.

She would delete some existing items – including reference to the "ethic of stewardship" and "amenity values" – and add new pro-development items, including the benefits from the use and development of natural resources, the efficient provision of infrastructure and the availability of land for housing. An amended section 7 would focus on speeding up the RMA's processes and limit the restrictions councils can impose on private land.

The Government has failed to win the backing of its minority support partners to get the reforms through during this parliamentary term and says it will campaign on the reform package as an election issue.

Adams says the suggestion from Palmer and other critics that "somehow we're making development more important than the environment is absolutely wrong". She denies there is any dilution of environmental protection and argues the "fundamental" problems with the RMA can't be fixed without changing Part 2 to "align" with issues such as the need for land for housing.

But Palmer claims the King Salmon case makes it impossible for the Government to sustain the claim that the proposals are a simple "rebalancing" of the law.

In an opinion for Fish & Game, he says the Supreme Court has underscored the importance of the existing sections 6 and 7 in establishing environmental protections and rejected the idea that decision-makers can make an "overall broad judgment" on proposals rather than complying with the environmental bottom lines contained in the RMA and national and regional plans.

Enright says if the problem with the RMA is a lack of clarity and certainty, the Supreme Court has delivered the solution – decision-makers have to follow the rules set down in national and regional policy documents. "It's simple really – just use the tools we already have. It's a far better way to the same outcome."

Enright says Adams's proposed section 6 will force decision-makers to weigh up a raft of competing values, with no guidance as to which are the most important. He predicts it will create a new era of litigation and uncertainty and be a policy "own goal" if enacted.

Rob Enright: "It's simple – just use the tools we have."

## It moves from a rule of law approach to a political approach, which can lead to pork-barrelling of infrastructure projects and corruption.

### "EXCESSIVE DISCRETION AND UNCERTAINTY"

Veteran environmentalist Guy Salmon – who has been influential in National Party policy in the past – says Adams's proposed changes turn the core of the RMA into a "mush, with no clarity and no hierarchy as to which is more important". The lineup of competing considerations would mean equal priority could be accorded to outstanding landscapes or rare biodiversity as to proposed motorways or irrigation schemes.

He says the reform proposal needs to be considered in the context of the changes already made to the RMA – in particular the introduction of politically appointed boards of inquiry, set up under the Environmental Protection Authority to decide on projects of national importance.

He fears that this, combined with a set of competing principles at the core of the Act, would increase the risk of political interference in decisions over big projects. "It moves away from a rule of law approach to an arbitrary political approach, which some other countries have and they get pork-barrelling of infrastructure projects, and they get corruption."

Salmon says the problem with the RMA is not that too many projects are blocked by the law – most get approved. "The problem is the slow process that arises from excessive discretion and uncertainty."

Martin Williams, a Hawke's Bay environmental lawyer who chairs the Resource Management Law Association, says one certain outcome of Adams's proposed changes will be more work for lawyers as the courts figure out what they mean. "It will bring new opportunities to retest and relitigate approaches that have been well bedded down and

that everyone really understands. It will be an absolute boon for me – but would that be a good thing?" ■

