

Before the Environment Court

ENV-2017-WLG-000010

In the Matter of the Resource Management Act 1991

And

In the Matter An appeal under clause 14(1) of the First Schedule to the Act in relation to Plan Change 61 to the Tasman Resource Management Plan

Between **FRIENDS OF NELSON HAVEN AND TASMAN BAY INC**

Appellant

And **TASMAN DISTRICT COUNCIL** a local authority carrying out the functions of both a regional council and a territorial authority within Tasman District

Respondent

And **WAINUI SPAT CATCHING GROUP**

Applicant

Brief of Evidence of Craig Potton for Friends of Nelson Haven and Tasman Bay Inc

Counsel acting: K E Mitchell
Tasman Law Limited
PO Box 3663
Richmond
Nelson
Tel: (03) 539 4330
Email: kmitchell@tasmanlaw.co.nz

Brief of Evidence of Craig Potton

INTRODUCTION

1. My full name is Craig Potton. I was born in Nelson and live in Nelson. I own a bach at Totara Avenue, near Collingwood, in Golden Bay and I know the Golden Bay area very well.
2. I am a landscape photographer having written and published over 40 books. For more than three decades, I have documented the New Zealand wilderness, exploring the relationship between the concept of artistic beauty and wilderness in the natural world. In 2013, I received the Insignia of the New Zealand Order of Merit for services to conservation and photography over the past 35 years.
3. I am a co-owner of Potton & Burton publishing, which is an independent publishing house. Potton & Burton was previously Craig Potton Publishing. Craig Potton Publishing was started by myself in 1987 with an original motivation of creating high quality photographic and outdoor books.
4. I have had a long career in environmental advocacy. I served a decade on the Federated Mountain Clubs executive (from 1991 – 2001).
5. I am a member of the Friends of Nelson Haven and Tasman Bay Inc and the Royal Forest and Bird Protection Society of New Zealand.
6. I also served on the executive of Forest and Bird and I am currently a member of the Forest and Bird Nelson branch committee. In 2016 I was named as a Distinguished Life Member of Forest and Bird.
7. After a term (three years) on the Nelson Marlborough Conservation Board where I was appointed as a Board member, I was then appointed by the Minister of Conservation to the New Zealand Conservation Authority as Forest and Bird's appointee for nine years from 1993 – 2002.
8. Over a 12 year period I was active in local government, first as a Board Member on the Nelson Catchment Board and later as an elected Nelson City Councillor

and on the Nelson/Marlborough Regional Council (from 1980 – 1986). I have been Chairperson of the Nelson Provincial Museum and am at present the Chairperson of the Bishop Suter Art Gallery.

9. For South Pacific (New Zealand's largest TV and movie production company) I was commissioned to script write and present a television series on New Zealand¹ which I entitled 'Wild Coast' (2011)². That showed widely not only in New Zealand and overseas (discovery channels). In one programme in the series I extolled the wonders of the Golden Bay coastline and related them to Colin McCahon's painting of the same coast called "The Promised Land".
10. I have attended and given evidence at many hearings on marine farming in the Marlborough Sounds over the last four decades. I presented evidence on behalf of the Tasman District Council to the Environment Court in *Golden Bay Marine Farmers v Tasman District Council*³ regarding the aesthetics of the Golden Bay area and its qualities from a point of view of its beauty. My evidence is referred to at paragraphs 713 and 714 of the Environment Court's first interim decision, although I am mistakenly referred to as Chris Potton.
11. My evidence in this case for the Friends of Nelson Haven and Tasman Bay also relates to the aesthetics and visual and other associated qualities of Wainui Bay within the context of the Golden Bay area. I give this evidence as a landscape photographer and a person with a detailed knowledge of the landscapes of both Wainui Bay and the wider Golden Bay region. In addition, in my role as a landscaper photographer, I have visited many coastal areas in New Zealand, so I am familiar with how Golden Bay, and in particular Wainui Bay, fits into this wider context.

¹ For South Pacific, New Zealand's largest TV and movie production company.

² Following a successful series on rivers entitled 'wild rivers'.

³ *Golden Bay Marine Farmers, William J Wallace, Challenger Scallop Enhancement Company, First Wave Limited, New Zealand Marine Farming Association, Ngati Tama Manawhenua ki e Tau Ihu Trust v Tasman District Council* Interim Report and Findings 42/2001, refer also the Court's Final Report (Stage III of the Inquiry) W89/2004.

Landscape and Natural Character Values of Wainui Bay

12. Wainui Bay fits within the larger context of the Golden Bay scenic qualities. The Golden Bay region has a high percentage of land and water in its natural state; and has high scenic values as a result.
13. Wainui forms part of Golden Bay's often tranquil enclosed eastern coastline, which contains some of the most extensive tidal sand and mudflats on New Zealand's open coast.
14. The complexity of geology and geomorphology of Golden Bay is the base reason why the biodiversity and scenic qualities are more significant and diverse than in other parts of New Zealand. Golden Bay's isolation means that it has had less development and it has a higher relative percentage of land that is in public ownership. The scenic land and seascape of Golden Bay is relatively continuous with three protected landscapes that have outstanding scenic and ecological features:
 - a. Farewell Spit (protected and managed by the Department of Conservation as a Nature Reserve and Shorebird Network Site);
 - b. Kahurangi National Park;
 - c. Abel Tasman National Park.
15. Wainui Bay, located on the south-eastern side of Golden bay, is very distinct. It holds the visual qualities of an enclosed bay framed by significant headlands which makes it unique in this part of Golden Bay. I note that there are similar bays in the Abel Tasman National Park but they are not in Golden Bay and, with the exception of Awaroa, they are not north facing.
16. The bay of Wainui is founded from the granite which is a feature of the Abel Tasman coastline. The headlands of the bay reflect the basic structure of granite as do the beach and sands at Wainui. It is the granite rock that creates the golden sand of the Abel Tasman beaches that the Abel Tasman is renowned for internationally. The golden hue that is caused in the sand is created by the disintegration of granite into its component rock types which includes feldspar and mica.

17. As one moves west from Wainui to Tata Beach and Ligar Bay, limestone starts to feature more prominently in the landscape. At Ligar and Tata Bays the intrusion of limestone into the granite stone changes the substrata and visual nature of the beaches. Because of the underlying geology, the bays become more sedimentary as you proceed west from Wainui Bay.
18. In addition, as one proceeds west around the coast to Pohara, rivers bring down sediment into the coastal environment. This comes principally from two large rivers, the Takaka and Aorere rivers. The changing sand composition and the introduction of sediment changes the visual clarity and colour of the seawater. The water in Wainui Bay and other Abel Tasman bays has a different quality with a more turquoise colour, and less sediment from rivers. The sand is coarser so it does not float as easily, meaning less turbid water and not such a substantial mud base.
19. The beaches in the Abel Tasman National Park are now an iconic international landscape frequently used in promoting New Zealand's tourism industry.
20. Wainui Bay is little developed compared with the two other 'Abel Tasman' like beaches of Tata Beach and Ligar Bay and by comparison with much of the rest of the coastline within the relatively pristine Golden Bay. Thus, as well as its intrinsic values Wainui Bay sits as a gem within the bigger picture of the Golden Bay region. The Golden Bay region is in itself deserving of recognition for its very high scenic and ecological values.
21. Wainui Bay itself has exceptional visual qualities. It has two prominent granite headlands on both east and western sides, that demark and enclose it with dense regenerating native bush on each headland. Also, being in the eastern quarter of Golden Bay it has the granite derived golden sands of the Abel Tasman National Park. These sands spread wide and long to create a magnificent mosaic of ponds on low tides.
22. Wainui Bay is thus a powerful scenic entrance to the Abel Tasman National Park to the south-east and Tata beach and other Golden Bay beaches to the north-west, both by land and by sea.
23. I have visited the beach at Wainui Bay many times and accessed it from sea and from land. I have walked out to the headland at Uarau Point and to Taupo

Point on other side. I have traversed across and into Wainui Bay in boats in various times and walked on land flats at Wainui at low tide. I believe Wainui is special, and indeed unique, because it has the features of both open and enclosed coast, Abel Tasman beaches and granite foundations, and significant granite natural features with regenerating native bush on the western and eastern points of the Bay. It also contains beautiful sand flats which have special scenic qualities in photos when the tide is out.

24. There is a nationally significant shag roosting colony at Tata Beach⁴. These shags travel round into and feed within Wainui Bay. I have observed seals in Wainui Bay, extended from the west coast of Farewell Spit breeding grounds and Separation Point. During the many times that I have visited Wainui Bay I have observed an increase in these seal numbers. I have also observed dolphins at various times in Wainui Bay, and have had a wonderful encounter with bottlenose dolphins there. I have also observed little blue penguins and various seabird species over the years.
25. I have observed that where there are headlands and enclosed spaces there are often more birds than on big long open beaches. From my experience, a number of native local coastal birds favour headlands and enclosed spaces. I don't know the science of this but it is an observation I have made for Wainui Bay compared to the open coast between Tata beach and Farewell Spit. It is also likely that Wainui beach has high numbers of birds and marine mammals because of the variety of habitats available and the fact that it is less populated than other Golden Bay beaches, and borders the Abel Tasman National Park.

Effects of Spat Catching Farms on Wainui Bay

26. I consider that there is a negative perceptual impact on people when viewing rows upon rows of mussel buoys and industrial boats servicing them in the context of the stunning natural and wild landscape of Wainui Bay. Within the human psyche there is a need to find peace in ourselves through seeking times and spaces in places that are beyond our conscious control and not part of our human constructed world. In short, the beauty of great spaces and natural

⁴ The largest spotted shag colony in New Zealand is located at the Tata Islands – see Appendix 1, article by Hindmarsh, Gerard, *Golden Bay's Shag Assembly Scene of Natural spectacle*.

features and landscapes that are not at all of our making are essential to our souls and to our happiness.

27. Gazing from the beaches into the open ocean, the horizon line and the ever-changing sky is vital to many peoples' wellbeing which I am sure is why many live by, holiday at or visit the coast and take walks on beaches.
28. In Golden Bay, because the beaches face east or north east the sun and moon rise directly above the singularity of the horizon line, and that view to the horizon line is unbroken by swells or land. An unfettered horizon line is the strongest straight line in our landscape, carrying great power in the work of the New Zealand artist Colin McCahon.
29. In my book of New Zealand landscape photography, called *Moment and Memory*, I have exhibited five images of the land and seascape in Golden Bay. These reflect the elemental power of where the ocean meets the sky in a wild and undisturbed matter. These are attached to my evidence as Appendix 2, photos 1 - 5. No other landscape figures this strongly in the rest of the book. The text of the book contains a statement I wrote while living at Totara Ave (10km north of Collingwood) in Golden Bay. It that conveys something of the significance of the Golden Bay coastline to me:

There is nothing more primary to the eye than the sky meeting the oceans line late in the day. Glorious colour washes through the ether while below an alchemical mix occurs as the oceans softly rippling metallic surface exudes the coloured faces of its own depths and the sky's reflected light. The horizon line is so long and absolute that its singularity astounds me. How can I possibly make an image that does justice to that that captures those metaphysical particulars as obvious as space and yet as subtle as the turning of yellow to blue green? The fall of light, the reflections from earth, the density of the atmosphere, these play out before me and I am reminded of the American photographer Robert Adams comment that "At our best and most fortunate we make pictures because of what stands in front of the camera, to honour what is greater and more interesting than we are..."⁵.

30. I consider that the coastal marine environment in Golden Bay is an area that is shared by us all, and the need for enclosures and marine farming on it needs

⁵ The full quote is: At our best and most fortunate we make pictures because of what stands in front of the camera, to honor what is greater and more interesting than we are. We never accomplish this perfectly, though in return we are given something perfect - a sense of inclusion. Our subject thus redefines us, and is part of the biography by which we want to be known."

to be considered very carefully, particularly in a place such as Wainui Bay which has such important landscape and natural character values that are experienced and shared by all who visit it.

31. Many artists have been inspired by the Golden Bay coastline. New Zealand's most important painter Colin McCahon painted the Golden Bay landscapes again and again, invoking a biblical redemptive value in its wildness. One painting he titled the "Promised Land". Perhaps his strong obsession with the sea, sky, and horizon line, that permeates so much of all his life's work, began when he ventured to the Bay time and time again during his summer fruit picking sojourns to the Nelson apple orchards.
32. However, the artist who returned throughout his life to the eastern corner of Golden Bay was Leo Benseman, a modernist painter involved with a group of significant Christchurch artists which included Rita Angus⁶. These artists, including Benseman, made frequent trips to Nelson and were fundamental to New Zealand artists seeing the land through New Zealand eyes rather than transposing it through European art eyes. Benseman produced a prolific amount of art depicting the Golden Bay and Takaka hill area. In fact, his last self-portrait in 1975⁷ captures the sense of belonging he found in the granite hills and headlands, the sweeping sandy coves and pristine ocean blues of the Ligar, Tata and Wainui Bay end of Golden Bay. A copy of this self-portrait is included at Appendix 3 (page 1) and another of his paintings inspired by the south-eastern Golden Bay beaches is included at page 2 of Appendix 3.
33. Within this stunning coastal landscape, as I have identified earlier, I consider that Wainui Bay is particularly significant.
34. It has been my experience in past marine farming cases that some witnesses at hearings try to assess the visual effects, or effects on natural character of marine farms by applying numbers or values that arise from these effects (for example how much of a percentage of the total view does this structure take? Or what percentage of the surrounding landscape has been 'modified').

⁶ Known as "the Group", a collection of Christchurch artists between 1927-1977

⁷ Retained as part of the permanent collection of The Suter Art Gallery.

35. From my experience as a landscape photographer, there is a risk that this approach can displace any meaningful comment on the less tangible aspects of what makes a landscape, seascape or a particular feature in the coastal environment meaningful for many people. For most of us, however, the way we feel about the more familiar parts of our coast and other treasured landscapes is not simply a matter of what happens to be visible at a particular moment, but also depends on what our past involvement with that place has been and how we experience it. It can be a relationship that develops over time and it can be very complex.
36. Of course, these things are much more difficult to be definitive about than the size of a marine farm or mussel buoy, the distance it is from land and the elevation of a particular coastal lookout point. But in my view, these less tangible and less easily measured elements are of critical importance in any assessment of landscape and amenity values that is to have some relevance to actual communities and real people.
37. From my experience as a landscaper photographer in Golden Bay and my interactions with the people of Golden Bay, it is difficult to describe in evidence how strongly the people of Golden Bay feel about their landscapes and seascapes. The notification of the aquaculture provisions in the Tasman Resource Management Plan (TRMP) in 1996, and previous mussel farm and cockle farm applications have drawn hundreds of objections and submissions from a small community. At the time the aquaculture provisions in the TRMP were notified in 1996, the Golden Bay community's strong view was that marine farms should not be located within 3km from shore. This was reflected in the Environment Court's decision and the final aquaculture Plan provisions.
38. I understand that the Resource Management Act 1991 (RMA) provides a very wide definition of what forms the 'environment'. It captures "social, economic, aesthetic, and cultural conditions" which means that how people appreciate the environment is relevant in the RMA decision making context. Scenic qualities, or in more general terms how we appreciate the environment, is part of the environment.
39. I own at bach at Totara Avenue which looks directly out to the sea. We look out on the buoys of the Waikato marine farm. They are approximately 2.7km

offshore. I consider the buoys to be highly visible from my property. They break the horizon into a braille of plastic dots. When guests come and look at the view from my bach, they ask what the black things on the horizon are.

40. We also have significant noise effects from the farms. It frequently begins very early in the morning – I have experienced it as early as 5am in the morning and late at night. It is disturbing. From my experience at Totara Ave, the noise from the mussel farms has three elements: the thunk and clunk from boats as lines are pulled up, the noise of radio on the boats and the constant hum from the boat motors.
41. The marker lights on the mussel farms are on all night and there are also lights from the boats that go out to service the farms after dark. The lighting at night interferes with the scenic qualities and natural sense and experience of the Bay, and the inability to encounter nature in its own terms.
42. I consider that all of these effects from spat catching farms are also present for the Wainui Bay farms, as well as the visual effects I have already discussed. I think these effects are significantly adverse in the context of the Wainui Bay environment and therefore there needs to be provisions in the TRMP that enable a thorough assessment of the effects on the environment. I think that the New Zealand Coastal Policy Statement provides for this.
43. I have included at Appendix 4 photos 1 - 9 photographs that emphasise the beauty of Wainui Bay and the impact of the industrial structures of mussel farming buoys on that beauty.

SUMMARY

44. While it is hard to make objective comparisons of scenic values there is no doubt the seascape at Wainui Bay and surrounding coastal land is one of New Zealand's most extraordinary landscapes. The industrial structures of spat catching farms within Wainui Bay severely compromise its beauty, its essential "otherness". For this reason, I think that it is important that the TRMP contains provisions that enable a full assessment of spat catching farms and their effect on the environment.

10 August 2017

LISTENER

Golden Bay's shag assembly scene of natural spectacle

by Gerard Hindmarsh / 11 June, 2011

If you're willing to get up early, it's not hard to spot the large assembly of shags on Golden Bay's Tata Beach. But the reason for the natural spectacle still has scientists baffled.



At first the birds come in twos and threes, flying in from their cliff-side roosts on the Tata Islands, about 1km from the beach. But the numbers steadily increase until the groups relentlessly flying in number two dozen or more. The daily gathering of spotted shags (*Stictocarbo punctatus*) is under way at Golden Bay's Tata Beach, and it becomes a right raucous melee.

By the time they all fly off to feed out at sea some 20 to 30 minutes later, up to 5000 birds have congregated along this 100-200m stretch of beach.

It's not a unique event. Whariwharangi Bay in Abel Tasman National Park and some beaches around Banks Peninsula have similar recorded spectacles, but at Tata the shags have been consistently coming since earliest memories. The logs of passing sailing ships often referred to seeing the birds there in their thousands, and in his reminiscences of the area, Reverend Ray Blampied remembers them "standing like soldiers" on the beach.

Exactly what the birds do after turning up each morning is intriguing, and perhaps holds the key to their behaviour. At first they shuffle about, making croaky calls and flapping noises with their wings, which can become quite a din when huge numbers are involved. Increasingly, they become restless, with many waddling in the shallows to splash and dive, presumably to peruse the bottom for gizzard stones, which are only collected underwater.

Back on the beach, many can be seen dry-retching up a small pile of pebbles, a move that is always preceded by a fluffing and throwing up of their tails. Opportunist red-billed gulls stalk concertedly through the melee, cleaning up slimy stomach contents from among the little pebble mounds. The whole scene looks chaotic, but there's no sign of conflict anywhere.

Around sunrise, the shags' brief ritual is over and they fly off in groups out to sea where they swim and dive for small fish.

Retired GP Helen Kingston of adjoining Ligar Bay believes the birds go to Tata because they roost nearby and it's reliably sheltered, but also because the pebbles at Tata Beach are probably the perfect size for their gizzards.

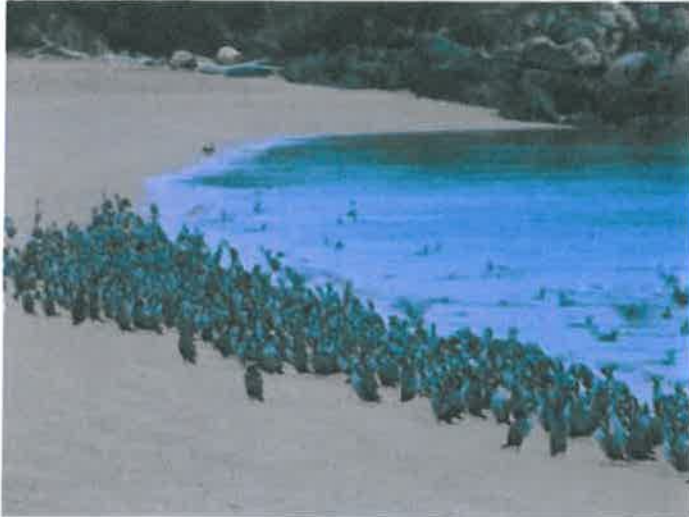
"They're still fussy about exactly which stones they pick up. By just looking at all the piles after the birds leave, it is obvious some of them prefer swallowing bluey-green stones. The average size of all the stones is around one centimetre across. But you do find the odd one that's around three centimetres. That's big to be carrying around in your gut, especially if you're a bird," she says.

"Some ornithologists believe the purpose of the stones is for ballast when fishing, while others say it helps the birds with their digestion of fish. Another group think the stones cleanse their stomachs of parasitic worms, which we sometimes find in with the regurgitated stones. It's not a question that can be answered simply."

New Zealand's shag population is estimated at between 10,000 and 50,000. And the Tata Islands boast the country's largest spotted shag colony. For a great part of the year, the spotted shag (1m long) is rather plain, but at the start of the winter breeding season their nuptial plumage develops; the crown of the head sprouts a rising double crest of feathers that turns greyish black with a faint metallic gloss. Around their eyes becomes conspicuously bright blue-green, and the feathers at the back of the neck turn a dark metallic colour. The same colour appears on the lower back and rump, and conspicuous white feathers sprout from areas of darker plumage.

The glamour makeover is short-lived, however, for once the breeding season is over, the birds' clear white areas are invaded by mottled feathers, toning them down again.

Entirely marine but rather sedentary when not fishing, spotted shags typically occupy the roosts in fissures and ledges of seaside cliffs, which is why the Tata Islands and to a lesser extent the high cliffs around Tarakohe, 13km from Takaka, have become their preferred habitat.



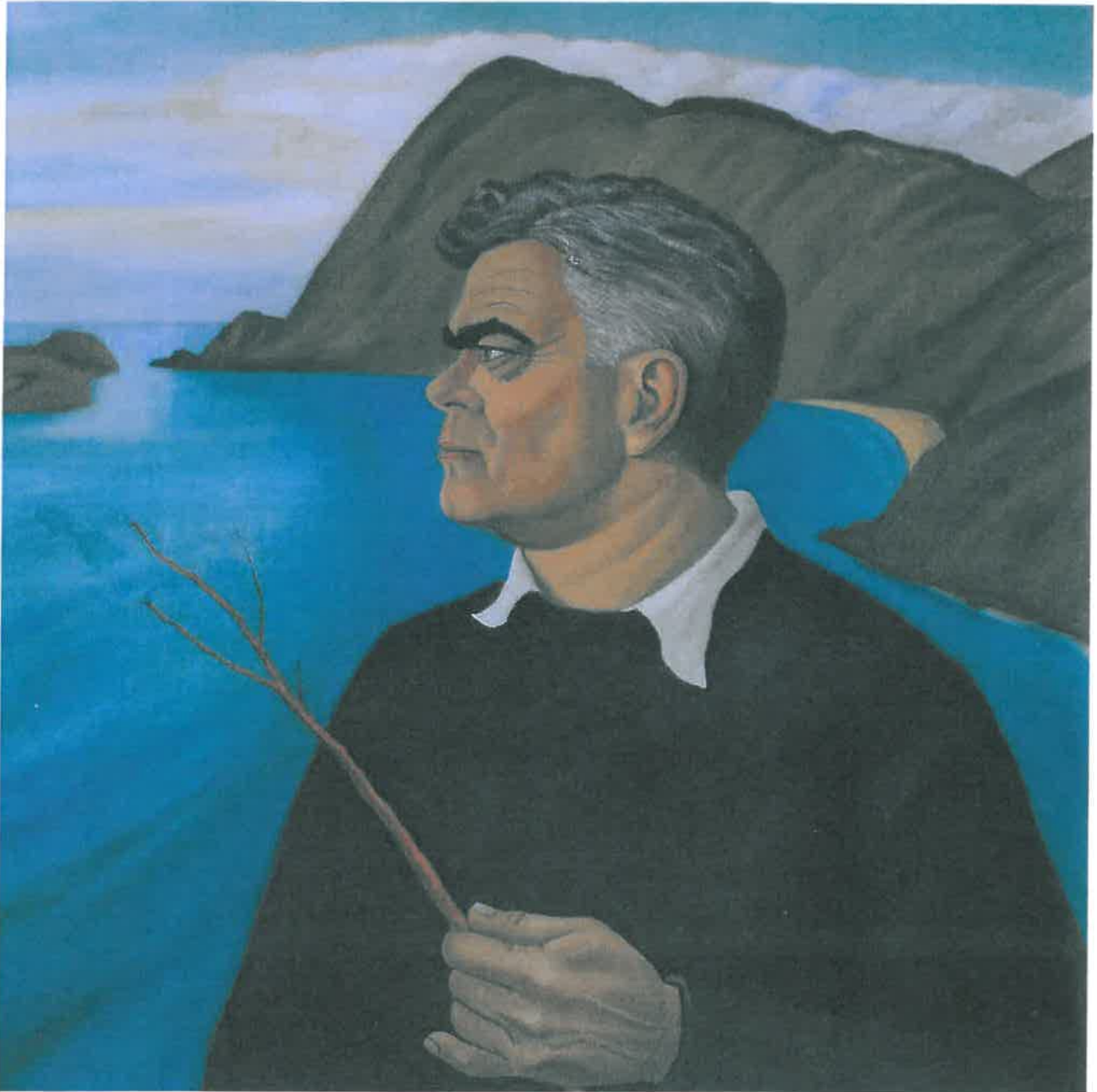
But there is another mystery involving the Golden Bay shags. People walking along the high tide line of any beach there last June couldn't help but notice scores of shags washed up dead.

When autopsies on 11 birds were performed at the Department of Conservation's Takaka office, the results revealed empty stomachs infested with nematode worms. The birds were lean but not emaciated, suggesting more than simple starvation. Explained Ralph Powlesland, who did the autopsies: "These were probably birds living on the edge of the population, not coping well. They're the first to go if something adverse happens, like a storm event. We can't say for sure in this case."

So, was it a matter of overpopulation, and so something had to give? No exact cause of the deaths was ever pinpointed.

Golden Bay's shag gatherings have long generated local interest, but it was keen Tauranga ornithologist Ann Graeme who about three years ago revved up national interest, suggesting local Forest & Bird and Ornithological Society members get involved in a co-ordinated study of the birds. For over two years, a dedicated handful of bird lovers rose before dawn and headed down to the beach to sit in the dim light quietly waiting for the first shags to fly in. Even though that study is now finished, volunteers still take bird counts at least twice a week.

Kingston, who helped with the two-year study, continues to be fascinated by the shags. "You just don't often get this level of natural spectacle so easily accessible; it's a totally absorbing thing to watch. Why shags congregate like this is not something that even a lot of experts know much about. Maybe one day we'll understand exactly how these shags live their complex lives. Exactly why quite a few died last year just adds to their mystery."



Leo Bensemann self-portrait in Golden Bay (possibly Tata islands in background) Collection of Suter Art Gallery in Nelson



**Leo Bensemman Golden Bay Beach (untitled) this painting is definitely inspired by the south-eastern beaches of Wainui and Tata because of the evident golden hue of the sand. The shore line rocks are almost definitely denoting Taupo Point in Wainui Bay.
Collection of Suter Art Gallery in Nelson**



Wainui Bay from the very popular Abel Tasman coast track at altitude of 30m and approximately 2.5km from Mussel farms take on Nikon FM2 with 135mm Lens



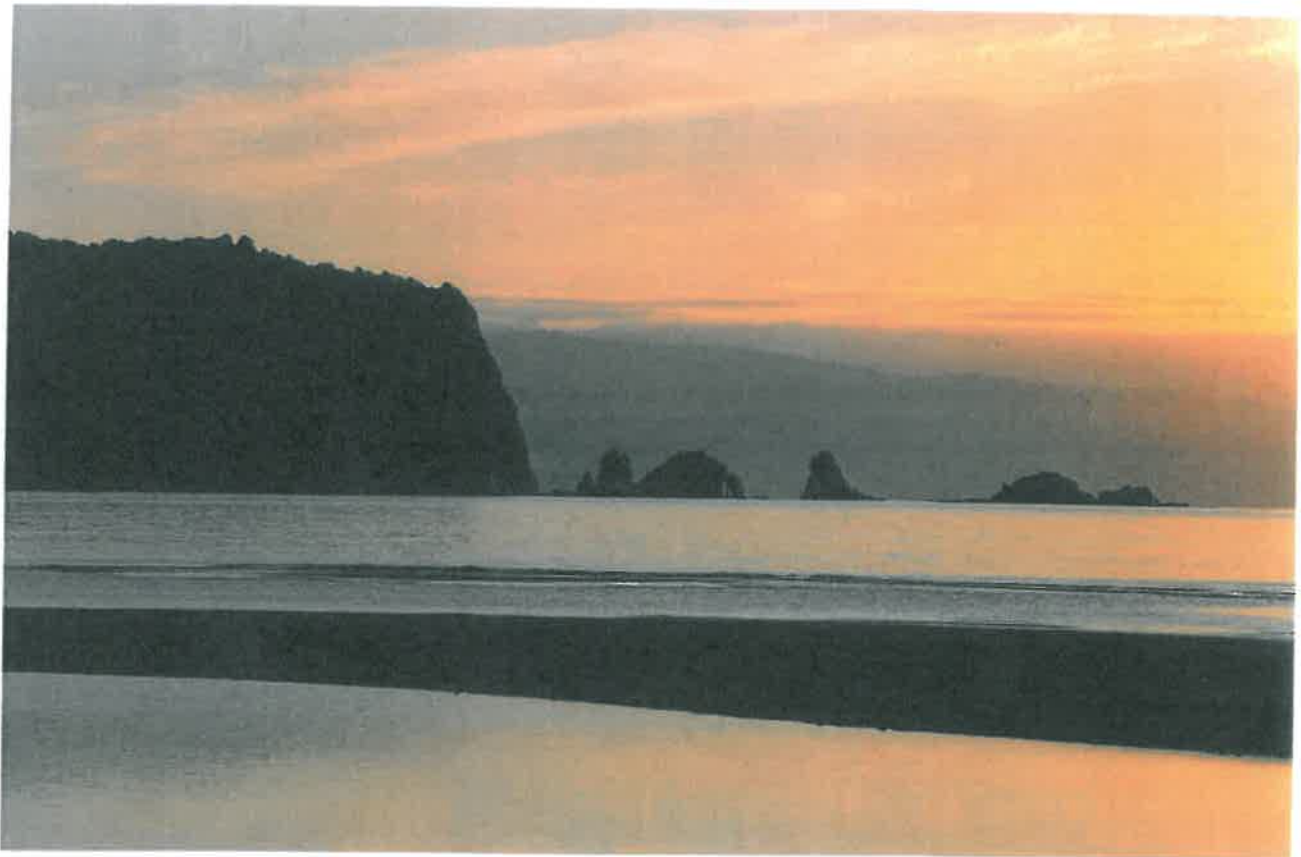
Wainui Bay from the very popular Abel Tasman coast track at altitude of 30m and approximately 2.5km from Mussel farms take on Nikon FM2 with 50mm Lens



**Aerial view of Wainui Bay from west showing extensive intertidal sand patterns.
Nikon FM2 50mm lens**



Main beach Wainui Bay high tide. Nikon FM2 35mm lens



**Beach level of western point from the eastern end of
Wainui beach looking west to Abel Tasman point. Nikon FM2 135m**



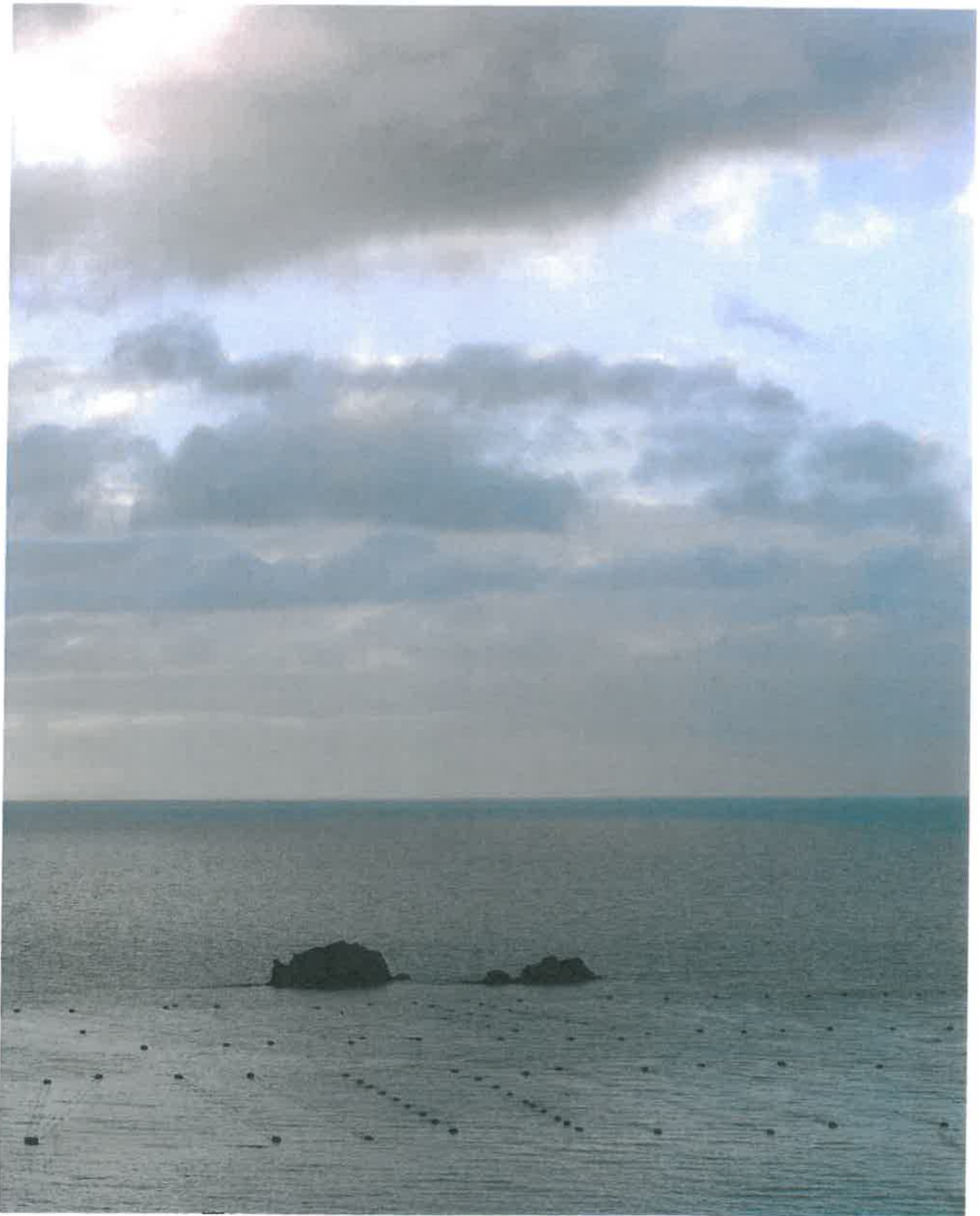
Headland (western side) Wainui Bay Mussel farms taken from public road to Wainui looking north in the evening light. Nikon D800E with 105mm lens.



Headland (western side) Wainui Bay Mussel farms taken from public road to Wainui looking north in the evening light. Nikon D800E with 50mm lens.



Headland (western side) Wainui Bay Mussel farms taken from public road to Wainui looking north in the evening light. Nikon D800E with 105mm lens.



Headland (western side) Wainui Bay Mussel farms taken from public road to Wainui looking north in the evening light. Nikon D800E with 105mm lens.