

**BOARD OF INQUIRY
NEW ZEALAND KING SALMON PROPOSAL**

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of a Board of Inquiry appointed under Section 149J of the Act to consider plan change requests and resource consent applications made by The New Zealand King Salmon Company Limited

The Board of Inquiry

Environment Judge Gordon Whiting (Chairman)

Environment Commissioner Helen Beaumont (Board Member)

Mr Edward Ellison (Board Member)

Mr Mark Farnsworth (Board Member)

Mr Michael Briggs (Board Member)

Date: 14 February 2012

**DECISION OF THE BOARD ON ACCEPTANCE/REJECTION OF PLAN
CHANGE REQUESTS**

Introduction

[1] On 3 October 2011, New Zealand King Salmon (NZKS) lodged two plan change requests to the Marlborough Sounds Resource Management Plan (MSRMP) with the Environmental Protection Authority (EPA).

[2] This was accompanied by nine (9) resource consent applications for salmon farms in the Marlborough Sounds. NZKS stated that the purpose of the proposal is to enable NZKS to secure new water space for marine farming to meet demand for its product, King Salmon, in a sustainable way.

[3] The NZKS proposal comprised the following requests:

[a] A plan change request (the “Main” plan change request titled “Sustainably Growing King Salmon”) to create a new salmon farming zone (Coastal Marine Zone 3) in eight (8) specific areas in the MSRMP; and

[b] A plan change request (the “Ancillary” plan change request) addressing the plan provisions relating to the allocation of the right to apply for coastal permits for marine farming in the MSRMP.

[4] The EPA deemed the proposal to be complete on 10 October 2011 in accordance with Section 88, Schedule 4 and Clause 22 of Schedule 1 of the Act.

[5] A map showing the location of the proposed plan change and the nine resource consent sites is provided in Appendix 1.

[6] The Board has consulted with the Marlborough District Council, as is required by Section 149M(3)(b) of the Act.

Statutory basis for rejecting requests

[7] Clause 25(4) of the First Schedule of the Act states:

- (4) The local authority may reject the request in whole or in part, but only on the grounds that—
 - (a) the request or part of the request is frivolous or vexatious; or

- (b) within the last 2 years, the substance of the request or part of the request—
 - (i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
 - (ii) has been given effect to by regulations made under section 360A; or
- (c) the request or part of the request is not in accordance with sound resource management practice; or
- (d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
- (e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

We assess the plan requests against these criteria.

The request or part of the request is frivolous or vexatious

[8] The King Salmon plan change requests are thorough, have been prepared by professional planners and are supported by assessments by a number of qualified environmental specialists. A significant amount of background investigation work and discussion with the District Council has taken place in the development of the plan changes.

[9] The plan change requests have largely been enabled by the Resource Management Amendment Act 2011, which significantly altered the aquaculture provisions of the Act. These reforms were deliberately enacted by central government to facilitate the development of the aquaculture industry. Further, the applicant has previously successfully promoted private plan changes in the MSRMP.

[10] In our view the plan change requests cannot be regarded as frivolous or vexatious.

Within the last 2 years the substance of the requests, or part of the request –

- (i) Has been considered and given effect to, or rejected by, the local authority or the Environment Court; or**
- (ii) Has been given effect to by regulations made under Section 360A**

[11] The substance of the plan change requests are essentially to establish a new zone in the Coastal Marine Area in the Marlborough Sounds. It would allow consent to be sought for the establishment of salmon farming.

[12] The substance of the plan change has not been considered by either the District Council or the Environment Court within the last two years. There has been a legislatively imposed moratorium on the establishment of new aquaculture activities in the New Zealand coastal marine area since 2004. That moratorium was lifted in 2011 by amendments to the Resource Management Act. No regulations have been made under Sections 360A of the Act that are relevant to the substance of the requests.

The request or part of the request is not in accordance with sound resource management practice

[13] Neither of the plan change requests infringe this criteria, either in terms of their substance or their timing and procedure. The primary plan change request proposes the traditional planning technique of zoning with associated regulatory methods to manage the establishment of salmon farming in the Marlborough Sounds. The ancillary plan change is necessary in order to ensure that the primary plan change provisions are implementable, should they be approved.

[14] The timing of the requests, while ahead of the review of the MSRMP, are sound in that there is no certainty as to when the proposed MSRMP will be notified. The applicant is entitled to utilise the provisions and procedures of the Act available to them to initiate consideration of the issues addressed in the plan change requests.

The request of part of the request would make the policy statement or plan inconsistent with Part 5

[15] Part 5 of the Act addresses standards, policy statements and plans. We address each of the relevant statutory instruments.

National Environmental Standards

[16] There are currently no National Environment Standards that apply to aquaculture.

National Policy Statements

[17] Other than the New Zealand Coastal Policy Statement, none of the other three national policy statements currently in force have any implications for the King Salmon request for plan changes.

[18] Section 67(3)(b) and (c) of the Act respectively stipulate that a Regional Plan must give effect to “*any New Zealand coastal policy statement*” and “*any regional policy statement*”.

[19] The New Zealand Coastal Policy Statement took effect on 3 December 2010. The Policy Statement provides a high level management framework and policy guidance for the sustainable management of the coastal environments.

[20] For the purposes of this assessment, there is no need to provide a detailed analysis of the relationship of the plan changes to the coastal policy statement. That is for later in the process. Suffice it to say, that at this point our view is that the MSRMP (as sought to be changed) would not be inconsistent with the New Zealand Coastal Policy Statement, for the following reasons:

- [a] The New Zealand Coastal Policy Statement contains policy that requires recognition, in regional policy statements and regional coastal plans, of the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities, through providing for aquaculture in appropriate places in the coastal environment;
- [b] The New Zealand Coastal Policy Statement contains policy that recognises the functional need for some activities to locate within the coastal marine area; and
- [c] Other objectives and policies within the New Zealand Coastal Policy Statement seek to ensure that the ecosystems and natural character within the coastal environment are preserved and protected, partly through the identification of areas where development could be allowed to occur, subject to appropriate controls.

Marlborough Regional Policy Statement

[21] It is our view, at this point of the process, that the plan change requests will not be inconsistent with the Marlborough Regional Policy Statement for the following reasons:

- [a] The Regional Policy Statement contains policies and proposes a number of methods seeking to avoid, remedy or mitigate the adverse effects on coastal water quality and marine habitats of activities occurring within the coastal environment. The changes sought by King Salmon to the MSRMP will allow for such assessment to occur;
- [b] The Regional Policy Statement promotes the well-being of the Marlborough community by allowing the use, development and protection of resources, provided that adverse effects are avoided, remedied or mitigated. One of the methods proposed for doing this is through the location of activities in areas where their effects can be addressed, by way of rules and plans. The specific location zoning and associated standards and criteria set forth in the plan change requests are not inconsistent with this direction; and
- [c] The plan change requests are not generally inconsistent with the remainder of the policy direction set out in the Regional Policy Statement.

Marlborough Sounds Resource Management Plan

[22] The Marlborough Sounds Resource Management Plan is a combined district and regional plan. Sections 67(1) and (2) of the Resource Management Act respectively set out what a regional plan must and may state.

[23] The provisions that are sought to be introduced into the MSRMP by the proposed plan changes are within the ambit of those sections.

In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years

[24] The MSRMP was made operative on 28 February 2003. The Regional Coastal Plan (being part of the MSRMP) was made operative on 28 March 2003, after having

been approved by the Minister of Conservation. Thus the MSRMP in its entirety has been operative for almost 9 years.

Marlborough District Council's Views

[25] As we have already stated, the Board has consulted with the Marlborough District Council as is required by Section 149M(3)(b) of the Act. For their part, the District Council has considered the grounds set out in Clause 25(4) of the First Schedule of the Act, and believe that none of those apply to the King Salmon request. The District Council is therefore also of the view that the Board should accept the requests.

[26] On the basis of the assessment against Clause 25(4) criteria, and having regard to the view of the District Council, we consider that the plan change requests should be accepted.

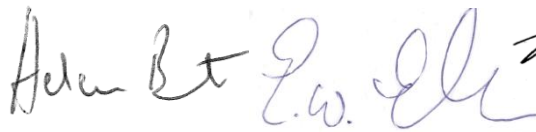
Determination

A. Pursuant to Section 149M(2)(b) of the Act, and Clause 25(2)(b) of the First Schedule of the Act, we accept the requests by New Zealand King Salmon, namely:

- 1. The plan change request (the “Main” plan change request titled “Sustainably Growing King Salmon”) to create a new salmon farming zone (Coastal Marine Zone 3) and eight (8) specific areas in the MSRMP; and**
- 2. The plan change request (the “Ancillary” plan change request) addressing the plan provisions relating to the allocation of the right to apply for coastal permits to marine farming in the MSRMP.**



Gordon Whiting
Environment
Judge/Chairman



Helen Beaumont
Member

Edward Ellison
Member



Mark Farnsworth
Member

Michael Briggs
Member

Appendix 1: Map showing the location of the proposed plan change and the nine resource consent sites



This map and plan change have been produced as a guide only. It is not intended to be used as a legal document. It is the responsibility of the user to ensure that the information provided is accurate and up-to-date. The map is provided for reference purposes only. It is not intended to be used as a legal document. It is the responsibility of the user to ensure that the information provided is accurate and up-to-date. The map is provided for reference purposes only.

Projection: NZTM
Date Source: Topographic Map Series 2013
Scale: 1:150,000 @ A3

Legend

- Proposed Plan Change and Resource Consent Sites
- Proposed Resource Consent Site
- Indicative Cages