

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of a Board of Inquiry appointed under section 149J of the Resource Management Act 1991 to consider The New Zealand King Salmon Co. Limited's private plan change requests to the Marlborough Sounds Resource Management Plan and resource consent applications for marine farming at nine sites located in the Marlborough Sounds

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**SECOND MEMORANDUM OF COUNSEL ON BEHALF OF NZ KING SALMON:  
RELATING TO NON-PARTY CORRESPONDENCE**

**18 JANUARY 2012**

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**MAY IT PLEASE THE BOARD:**

**Introduction**

1. This is the second memorandum to the Board of Inquiry ("**Board**") on behalf of the New Zealand King Salmon Co. Limited ("**NZ King Salmon**") in respect of its proposal *Sustainably Growing King Salmon* ("**Proposal**").
2. This memorandum relates to the letter sent by the Environmental Defence Society ("**EDS**") to the Board on 16 December 2011 ("**Letter**"), which is understood to have been provided by the EPA to the Board for consideration at its first meeting on 17 December 2011.
3. This memorandum addresses:
  - (a) process/standing issues; and
  - (b) the substantive matters raised by EDS.

**Process and standing**

4. Counsel wish to record NZ King Salmon's concern that communication from EDS - a non-party - was provided to and considered by the Board when EDS has no standing at this stage:
  - (a) Currently, NZ King Salmon is the only party to the Board process.
  - (b) The Resource Management Act 1991 ("**RMA**") does not anticipate non-parties participating prior to notification in proposals of national significance before a board of inquiry - indeed, even the relevant Council's input is carefully prescribed (eg its 149G report).
  - (c) At this stage, the Board has the ability to request reports etc before it resolves to accept the plan change aspects of the Proposal (or otherwise), but there is no provision for third-party participation.
  - (d) It is only through submissions on the Proposal, subsequent directions from or memoranda to the Board, evidence exchange and the hearing that the RMA anticipates third party participation.
  - (e) If the Board of Inquiry is to entertain communication from third parties at this point, that could encourage further third-party lobbying outside the process set in the RMA. There is also the potential for significant costs to be added to the process in considering and responding to such communications.
5. The timing of the Board's consideration of the EDS Letter is also of concern:
  - (a) The Letter was received by the EPA and NZ King Salmon on the eve of the Board's first meeting.

- (b) This precluded NZ King Salmon making any response (procedural or otherwise) prior to consideration of the Letter by the Board.
  - (c) As a matter of fairness, NZ King Salmon's comments on the Letter should have been sought before the Letter was considered by the Board.
6. It may be appropriate for the Board to provide some direction to the EPA in respect of non-party communications to the Board at this stage of the process, and in particular whether such communication is appropriate (NZ King Salmon considers it is not); and, if such communication is to be allowed, then how NZ King Salmon should be given the opportunity to respond to any matters raised before the communications are considered by the Board.

### **Substantive matters**

7. It is important that the substantive matters raised in the EDS Letter are seen in light of its very public "political" position advocating for widespread marine spatial planning. EDS has already stated publically that it considers all new proposals including that by NZKS should be put on hold - in other words, a further moratorium be imposed on aquaculture generally - while a spatial planning exercise is undertaken. With respect, that totally undermines the government's objective to unlock aquaculture which had found expression in the recent legislative reforms.
8. Under the new legislation, only the Minister has the ability to put applications on hold in any particular area and there is no suggestion that the Minister intends to exercise that power here. Rather, that is highly unlikely, given the decision to refer the Proposal to the Board for consideration.
9. A full response to the matters raised in the EDS Letter will be made at the appropriate time (eg through evidence). However, given that the Letter has been provided to the Board, it is appropriate to provide an initial response on the matters of landscape and alternatives raised by EDS as follows.
10. In respect of landscape matters:
- (a) NZ King Salmon has, through Boffa Miskell, undertaken a robust landscape and natural character assessment which has been peer reviewed for completeness on behalf of the EPA by GHD Limited. That review (which was not a "preliminary review", like that admitted to have been undertaken by EDS) did not identify any deficiencies in the landscape assessment which would have prevented the Proposal from being accepted or processed by the EPA.
  - (b) NZ King Salmon accepts that the Board can form its own decision as to whether a landscape is of outstanding natural character, irrespective of the classifications of the relevant plan.
  - (c) *Any* application for a plan change or consents would benefit from a region wide assessment of the natural character of the relevant landscapes if this is available. However, were this is not available or

if any such study has not been completed and incorporated into the relevant plan, it is not a requirement for an applicant for a discrete plan changes/resource consents to do so, and would be unreasonable to expect an individual applicant to undertake such an inquiry.

- (d) The Proposal has addressed landscape matters appropriately:
  - (i) as necessary (and as it should) it has had regard to the Marlborough Sounds Resource Management Plan;
  - (ii) the assessment also contains an individual assessment of the landscape values of each selected site and the effects of the sites on any outstanding natural landscapes or features; and
  - (iii) accordingly, contrary to the assertions made by EDS (unsupported by any expert opinion), and consistent with the peer review completeness check undertaken by GHD Limited, the assessment of landscape and natural character in the Proposal is appropriate in the context of RMA requirements on individual applicants.
- (e) Finally, NZ King Salmon understands that the Marlborough District Council commissioned Boffa Miskell to undertake a region-wide assessment of landscape and natural character matters and that the draft results of this study are currently being consulted upon. That study was not publically released at the time the Proposal was lodged and so Boffa Miskell did not make specific mention of it in its report, although it was able to take into account that work. EDS does not seem to be aware that a region-wide study is underway, the results of which (even if a final report/position is not adopted by the Council) will no doubt be available to inform consideration of the Proposal through its Board process. NZ King Salmon understands that the EPA has referred EDS's queries on landscape matters to the Council, which will no doubt be able to elaborate more fully on work that it has done in this area.

11. In respect of alternatives:

- (a) NZ King Salmon undertook significant research into alternative sites in the Marlborough Sounds to determine which were the most appropriate for being consented as marine farms. The Proposal contained a summary of the site selection exercise and assessment of alternatives undertaken by NZ King Salmon (which may have been overlooked by EDS in its "preliminary" review of the application). The process included an intensive investigation of CMZ2 sites including possible existing mussel farm sites for conversion (which would undoubtedly be easier to consent), but no available sites were suitable. Hundreds of sites were considered before the sites now sought in the Proposal were finally selected.

- (b) In NZ King Salmon's view, the summary given as part of the application more than meets the requirements of s32 of the RMA (it also seems that the EPA, in its review of the Proposal, also did not identify any deficiencies in this regard).
- (c) NZ King Salmon would, however, be more than happy to provide to the Board a more fulsome description of the assessment of alternatives that it has undertaken should that be requested (or through evidence at the appropriate time).

**DATED** 16 January 2012

Handwritten signature of Derek Nolan in black ink.Handwritten signature of James D K Gardner-Hopkins in blue ink.

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Derek A Nolan / James D K Gardner-Hopkins  
**Counsel for NZ King Salmon**