

King Salmon KING HIT?

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The progress of applications by The New Zealand King Salmon Company Ltd to expand its operations in Marlborough Sounds has been closely followed by many in the marine farming industry over the past couple of years. In 2011, NZKS applied for consent to farm nine new sites, only one of which was in an area where salmon farming was permitted under the Marlborough Sounds Resource Management Plan. The applications (which were made to the Environmental Protection Authority on the grounds that they were of national significance) were therefore for changes to that plan; concurrent applications for resource consent were made in respect of eight sites, with a further resource consent application alone in respect of the ninth site.

A board of inquiry was appointed by the Minister for the Environment to consider and determine the applications. The board's final decision, released on February 22, 2013 (see *New Zealand Aquaculture May/June 2013*), allowed the plan change and consent applications for four of the sites and declined the remaining applications. That decision was appealed to the High Court, and subsequently, the Supreme Court. The Supreme Court's decisions on the appeals by the Environmental Defence Society Inc and Sustain Our Sounds Inc were issued on 17 April 2014.

While the Supreme Court dismissed the appeal by SOS and the EDS appeal (which it upheld) related to only one of the four sites approved by the board. That decision is seen as having far-reaching implications for aquaculture and other coastal developments.

The EDS appeal focused on concurrent plan change and consent applications in respect of a site at Papatua in Port Gore. The board had found that Papatua was an area of outstanding natural character and an outstanding natural landscape and the proposed farm would have significant adverse effects on that character and

landscape, such that policies 13(1)(a) and 15(1)(a) of the New Zealand Coastal Policy Statement would not be complied with. Those policies require persons exercising functions and powers under the Resource Management Act 1991 to:

Preserve the natural character of the coastal environment and protect it from inappropriate subdivision, use, and development, to avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character, and;

Protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development, to avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment.

Notwithstanding this finding, the board approved the plan change in respect of the Papatua site on the basis that it regarded itself as obliged to give effect to the NZCPS "as a whole", including objectives and policies supportive of aquaculture and appropriate economic development in general.

The Supreme Court rejected the "overall judgment" approach adopted by the board and took a different view on the fundamental question of how the provisions of the NZCPS should be applied, finding that:

"Give effect to" simply means "implement". On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it."

Also finding that: "...we consider that "avoid" has its ordinary meaning of "not allow" or "prevent the occurrence of."

And, to the extent that the relevant NZCPS policies refer to the need to preserve the natural character of the

coastal environment and protect natural features and natural landscapes by avoiding "inappropriate" use and development:

"We consider that where the term "inappropriate" is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that "inappropriateness" should be assessed by reference to what it is that is sought to be protected."

The decision will almost certainly have an impact on proposals to establish new aquaculture operations adjacent to outstanding natural features or areas of outstanding natural landscape or character. Of even greater concern is that this decision will almost certainly impact on renewal of

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consents in respect of operational farms in such areas, unless plan rules designate those farms as controlled activities in respect of which consent cannot be declined.

Marine farming is far from the only activity that will feel the effect of this significant decision, however. Federated Farmers has already signalled its intention to seek changes to the NZCPS that will minimise the effect of this decision on the activities of coastal farmers, particularly within the Marlborough Sounds. The marine farming industry might have good reason to join in such calls.



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