

Next Stage FOR KING SALMON

BY JUSTINE INNS, LLB



As you are probably aware, New Zealand King Salmon was the first company to seek approval to establish new marine farms through the Environmental Protection Agency, commencing the process shortly after amendments to the suite of legislation governing aquaculture were enacted in 2011. The application was determined by the Minister of Conservation to be of national significance and a Board of Inquiry was appointed by the Minister for the Environment to consider and determine it.

On December 14, 2012 that Board released its draft decision and report on the application.

The Board's decision runs to 356 pages, plus appendices, and represents the consideration of thousands of pages of expert evidence, 1273 written submissions and eight weeks of hearings. Both the decision itself and the vast body of information on which it is based will no doubt be of importance to any subsequent applications for finfish farming.

The application was in respect of nine sites, only one of which was in an area in which salmon farming was permitted under the Marlborough Sounds Resource Management Plan (MSRMP). The application therefore comprised plan changes with concurrent applications for resource consent in respect of eight sites, with a further resource consent application alone in respect of the ninth site.

In summary, the Board's decision would:

- Allow the plan change and consent applications for four of the sites. The draft report and decision sets out the terms of the plan change and conditions of the resource consents;
- Decline the plan change request and consent applications for four other sites; and
- Decline the resource consent application for the ninth site.


The draft decision gives extensive consideration to the complicated matrix of legislation, plans and policies which must be considered in making such a decision, including: the Resource Management Act, the New Zealand Coastal Policy Statement, the Marlborough Sounds Regional Policy Statement, the MSRMP, the Nelson-Marlborough Conservation Management Strategy and at least one Iwi management plan. To the extent that the provisions of the various statutory plans and policy statements did not always agree with each other or, the Board found it necessary to make, "judgment ... as whether the instrument as a whole has been given effect to".

Another preliminary issue requiring the Board's attention were the arguments by many submitters that alternative sites for salmon farming should be considered or an alternative process utilised, namely, waiting until the Marlborough District Council

undertook a full review of the MSRMP. The Board concluded that, if it is determined that an activity would have significant adverse effects on the environment, it then becomes a question of fact in each case as to whether or not an applicant should be required to look at alternatives, including undertaking a cost/benefit analysis and in this case, the Board was satisfied that King Salmon had adequately considered alternatives. The call to wait for a full review of the MSRMP was rejected on the basis that that would defeat the purpose of the provisions introduced into the RMA in 2011 for the specific purpose of allowing private plan changes and concurrent resource consent applications for aquaculture activities.

Much of the focus of submitters, and thus of the Board's decision, was on the issues of natural character and landscape. The Board accepted that the structures necessary for finfish farming had visual impacts on landscapes and seascapes, and described an outstanding natural landscape as being "usually so obvious in general terms that there is no need for expert analysis. Landscape does not require precise definition. It is an aspect of the environment and includes natural and physical features and social and cultural attributes." Adverse effects on landscape and natural character were relevant factors in the Board's decision to decline several of the sites. Ultimately, the Board took the view that granting all of the sites would not give effect to the statutory provisions in respect of natural character, landscape, Maori, or ecological matters as the overall cumulative effects would be too high.

The Board did, however, approve a site in Port Gore on the basis that its effects on the outstanding natural character and landscape values of the area would be outweighed by the fact that the site would play an important risk management role for King Salmon due to its isolation from other sites in the Sounds. This is interesting, in that the Environment Court recently decided not to re-consent mussel farms in the same area, largely on landscape grounds, and demonstrates the merits of having a comprehensive development proposal considered as a whole.

Comments have been sought on the draft decision from the applicant, submitters and other parties, though any amendments to it can be of only a "minor or technical" nature. The Board's final report should be released in late February and will inevitably be the subject of appeals to the High Court. 

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