

Marlborough Salmon Farm RELOCATION PROPOSAL



BY JUSTINE INNS BA, LLB SOLICITOR WITH OCEANLAW NEW ZEALAND

In October 2011, New Zealand King Salmon applied to the Environmental Protection Authority (EPA) for consent to establish nine new salmon farms in the Marlborough Sounds. These would have supplemented the six farms it then had operating in the Sounds, producing 7,000 tonnes to 7,500 tonnes of King salmon (Chinook) per annum, plus two small farms it had recently purchased that have never been brought into operation. The additional sites would have allowed the company to significantly increase its production.

Because eight of the nine sites sought by NZKS at that time were zoned as *prohibited* for aquaculture, the application also sought a change to the Marlborough Sounds Resource Management Plan. The application was made to the EPA, rather than the Marlborough District Council, and heard by a Board of Inquiry appointed by the Minister of Conservation, after that Minister determined that it constituted a matter of national significance. The process was a new one, established by the *Resource Management (Simplifying and Streamlining) Amendment Act 2009*, though whether much simplifying or streamlining was to result is debatable.

After almost two years, including a trip to the Supreme Court and some millions of dollars spent by NZKS and others, NZKS was granted consent to establish *three* of the new farms it had sought, but was declined consent for the other six. This took its total operation to eleven farms (of which two small sites remain non-operational).

The whole experience led industry participants and commentators at the 2013 Aquaculture New Zealand Conference to bemoan the difficulties companies faced in trying to obtain consent for new farms. Marine Farming Association executive director, Graeme Coates, suggested that it had cast doubt over the ability to realise the aquaculture industry's goal of \$1 billion per annum in exports by 2025, saying, "What King Salmon has gone through would put anyone else off."

That wasn't the end of the matter, however.

In 2014, NZKS joined with representatives of central and local government, the Marlborough Sounds'

community and scientists to develop *Best Practice Guidelines for salmon farming in the Marlborough Sounds: Benthic environmental quality standards and monitoring protocols* (the Guidelines). The intention of the Guidelines was to provide clear requirements for seabed monitoring and management of existing salmon farms. They set a series of Environmental Standards, key among which is ES5, which limits levels of nutrient enrichment of the seafloor beneath farms. These limits, in turn, restrict the amount of feed that can be used and thus the level of stock that can be produced.

It is recognised that farming in areas of higher water flow has lower environmental impacts than farming in lower flow areas and six of NZKS' current farm sites have lower flows than are seen as ideal for modern farming practices.

Compliance with the Guidelines, which NZKS has committed to, would require significantly reducing feed levels and stock densities at these sites or removing the farms altogether.

As a consequence, in early 2017 the Ministry for Primary Industries released a proposal for *Potential relocation of Marlborough Sounds Salmon Farms* for public consultation. In his foreword to the consultation document then Minister Nathan Guy referred to the value of salmon farming to the regional and local economies and recognised that it is "important – to the Government, iwi, the public and the industry – that the effects of salmon farming on the marine environment are managed well."

In essence, the proposal was to allow the relocation of six of NZKS' farms in low flow areas to six identified sites in higher flow areas where the Guidelines could more readily be met. The scheme was pitched as a 'win-win': a reduction in environmental effects coupled with increased production. The legal difficulty was that *all six* of the proposed new sites were in areas of the Sounds in which aquaculture is currently *prohibited*.

As with the previous application to the EPA, the mechanism proposed to create the opportunity for such relocations was a novel one. The Minister would consider using, *for the first time*, a power under

s.360A of the Resource Management Act (enacted in 2011) to *make regulations that would have the effect of amending the Marlborough Sounds Resource Management Plan*.

The Minister appointed a Panel, chaired by a former Environment Court judge, to hear from the public, consider technical advice and provide an independent report and recommendations to the Minister.

And hear from the public, they certainly did.

The Panel's report, publicly released by the current Minister of Fisheries Stuart Nash on 14 February, notes that 588 written submissions or comments were received on the proposal and 12 days' of hearings held. Unusually, for such a report, the Panel went out of its way to alert the Minister to the depth and tone of opposition to the proposal, describing "*very strong anger and frustration*" that was sometimes expressed using "intemperate language". The report's authors noted:

...the members of this Panel have collectively a long history of hearing environmental cases and we are agreed that none of us has ever experienced the level of vitriol that was palpable in the hearing room as these presentations continued.

And:

... the force of the opposition was sufficient for us to judge that the Minister, and the Government of which he is a part, should know that despite public surveys that tend to show otherwise, there is a substantial body of deep-seated resentment in the public arena against the Proposal. Given the depth of that feeling, we felt it was important for the Minister to appreciate that the salmon farming industry is almost certainly going to find its pathway into the future frustrated by continued deeply felt opposition through the RMA plan and consenting processes.

These concerns contributed to the Panel's opinion that the long-term future for the salmon farming industry must lie in land-based or open-sea farming, an opinion that influenced its ultimate recommendations.

In addition to cultural and environmental issues in relation to some of the proposed new farming sites (as well as some of those proposed for relocation), Te Tau Ihu (Top of the South) iwi presented the Panel



New Zealand's Supreme Court building in Wellington. Will this latest application end up being decided here?

with pointed concerns as to the Crown's conduct with respect to the proposal, as it related to their 2011 regional aquaculture settlement. Although the iwi had expressed a preference at that time for settlement redress in the form of farmable space that would allow them to participate in the industry, the Crown was not willing at that time, to undertake the in-depth site assessment work or to utilise the s.360A power in a way that it was now prepared to do for NZKS. The iwi accepted a cash settlement instead and remain unhappy at what some perceive as the 'second class' treatment they received.

The Panel concluded (perhaps with some relief) that these issues seemed to amount to *allegations of breaches of the Crown's Treaty of Waitangi responsibilities* and, as such, were beyond the scope of its role. It is worth noting, therefore, that in the media statement accompanying release of the Panel's report, the Minister noted that he was "some months from making a final decision" and that, among other things, during that period he intended "to ensure the voices of all iwi in the area are heard."

Ultimately, the Panel recommended that only three of the proposed new sites should proceed (Horseshoe Bay and Richmond Bay South in Te Hoiere/Pelorus Sound and Tio Point in Kura Te Au/Tory Channel), citing landscape, cultural and navigation issues as weighing against the others. Only three of the low flow sites NZKS sought to replace are currently operational, and it is

these that the Panel recommended should be permitted to relocate, rather than the non-operational sites. The result seems to be one that would allow NZKS to more-or-less maintain *current* levels of production, while reducing its environmental footprint – but not really enjoy the growth in production that all six sites would have permitted.

There was a further sting in the tail, with the Panel recommending that any resource consents issued for farms on the new sites should be *limited to a term of 20 years*, rather than the maximum of 35 years possible under the RMA. As well believing that a shorter term was more in line with the cautious approach that should be taken where the full scale of effects is difficult to predict, the Panel reiterated its view that this would send a message to the industry that its long-term future lay outside the Sounds, in land-based or open-water sites, and that it should begin planning accordingly.

Despite this, NZKS warmly welcomed the report, while hinting that it may try to encourage the government to go further than the Panel recommended, with company CEO Grant Rosewarne saying "We can see that a positive decision by the government would contribute to even better environmental, social and economic outcomes for our region without increasing the space we occupy. This proposal aligns very well with our new government's vision for swimmable waters, green jobs and strong regional

development." Investors seemed somewhat less optimistic – but not panicked – with NZKS shares falling just over two percent on the day the Panel report was released (as a listed company, NZKS was legally obliged to notify the stock market of this development).

A leading litigant against NZKS' 2011 applications, the Environmental Defence Society, supported the Minister's intended approach of seeking further advice over 'some months' before making a decision. The Society made clear its strong opposition to use of the s.360A regulation power, preferring that the matter be sent back to the Marlborough District Council to deal with as part of its review of aquaculture provisions of its Plan.

So where does that leave us?

Intense lobbying of the Minister is virtually guaranteed. Litigation can't be ruled out, given the history of this matter, though that seems more likely to become a focus once the Minister (and the Cabinet) make a decision. And there are some indications of a genuine intent from the government to respond to iwi concerns of unfair treatment.

All in all, it seems likely that we'll be following developments for some time yet.

[See full media statements page 14.]



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Partial green light FOR NZ KING SALMON

BY PETER ARANYI

New Zealand's new Fisheries Minister Stuart Nash has released the report of the Advisory Panel which considered a proposal to move up to six NZ King Salmon marine farms in the Marlborough Sounds to more suitable 'higher flow' sites.

The panel took in public, industry and local government submissions and, in the end, has recommended *three* of the proposed six farms be allowed to relocate; declining to recommend that action for the remaining three.

In releasing the panel's report on the Ministry of Primary Industries' proposal, Nash has indicated he's far from ready to make a final decision – indeed, he says, “I am some months from making a final decision” – and wants to conduct another round of community consultation based on the findings of the report.

Nash emphasised the need for the government to “work closely with the Marlborough District Council around the best process”. Concerns had been raised by critics of the MPI proposal to use government regulation powers that such a move side-stepped the environmental protection processes and district plans of local authorities.

Nash also specifically highlighted the need to consult with iwi.

Reproduced below, in whole, is the Minister's statement, followed by a statement from NZ King Salmon chief executive Grant Rosewarne, released to *Aquaculture* magazine, and statement by the Environmental Defence Society which opposed the move.

From Fisheries Minister Stuart Nash:
REPORT ON MARLBOROUGH SALMON FARMS

A report by an independent panel into the future location of six salmon farms in the Marlborough Sounds has been released by Fisheries Minister Stuart Nash.



The report was written by an independent Advisory Panel following public hearings in April-May 2017 and provided to the previous government in July 2017. Mr Nash is yet to form a view

on its findings. He has released it in order to update all interested parties.

“I am making the report public to enable the people and groups who made submissions to study it while I consider

the next steps. I also want to thank the members of the Advisory Panel for their work.

“I am some months from making a final decision,” Mr Nash said. “I intend to discuss the report with a number of people, agencies and iwi who are following this issue closely.

“In particular, I intend to work closely with the Marlborough District Council around the best process from here. I also intend to ensure the voices of all iwi in the area are heard. Further, I will allow time for the Ministry for Primary Industries to undertake scientific work around water quality and to test policy and legal advice.

“The management of aquaculture in the Marlborough Sounds is an issue where all interests are best served by the Crown working alongside local government and iwi to find the best outcome,” Mr Nash said.

The Advisory Panel considered written submissions and held hearings on a proposal to relocate up to six Marlborough Sounds salmon farms to more environmentally sustainable sites. It recommended that three salmon farms be relocated:

- Otanerau Bay in Queen Charlotte Sound to Tio Point in Tory Channel
- Waihinau Bay to Richmond Bay South, both in Pelorus Sound
- Ruakaka Bay to Horseshoe Bay in Pelorus Sound

The Panel considered relocation of the three farms would enable the New Zealand King Salmon Company to improve environmental outcomes without sacrificing jobs and economic returns. The company could implement management standards that ensure the effects of salmon farming on the seabed of these sites are effectively monitored and managed.

The report says relocation would reduce adverse effects on the seabed, lessen the visual impacts of the farm sites on the natural landscapes and features of the Sounds, and improve fish health. The Panel also believes relocation would be more consistent with resource management principles.

The panel declined to recommend the relocation of three other sites. Its decision was primarily based on cultural factors, landscape considerations under the New Zealand Coastal Policy Statement, and navigational safety considerations.

There are currently twelve sites in the Marlborough Sounds which have resource consent for finfish farming. The proposed new sites were put forward as potential substitutes for existing consented sites.

The report is available on the MPI



website here: <https://www.mpi.govt.nz/news-and-resources/consultations/marlborough-salmon-relocation/>

NZ King Salmon responds: **MPI SALMON FARM RELOCATION PROPOSAL ENTERS NEXT PHASE**

The Ministry for Primary Industries’ proposal to relocate up to six salmon farms to deeper locations with better water flow (‘high-flow sites’) in the Marlborough Sounds is set to advance to the next stage with today’s release of the Marlborough Salmon Farm Relocation Advisory Panel recommendations for Government to consider.

Grant Rosewarne, CEO of top of the South-based company New Zealand King Salmon (NZKS), says he is delighted that the report supports the growing recognition that aquaculture plays a key

role in sustainably feeding our planet.

“Salmon is rightly considered the most sustainable of farmed animal proteins for its minimal space utilisation, feed efficiency, low carbon footprint, and its ability to work harmoniously with the natural nitrogen cycle. Add in the benefits of high yield, an abundance of healthy Omega 3’s, traceability and a great tasting product, and it’s easy to see that this recognition is justified.

“We firmly believe we are contributing to a sustainable food future for New Zealand with our vision for best-practice salmon farming.”

Specifically, the panel acknowledged the ‘distinct environmental advantages’ for benthic (sea bed) health as a result of relocation, alongside ‘minor or less than minor’ effects on the local King shag species and the wider water column.

A thorough review of the recommendations and rationale behind ►



NZ King Salmon is selling as many of these Chinook salmon as it can grow. The company wants to expand and shift its operation

the report is already underway. "We need to look at the practical considerations around the relocations, and address the various cultural, landscape and navigation concerns raised more broadly in the report.

"We hope to work with Government, Council and the community to progress this proposal in as positive a direction as possible. We are committed to not only improving on our sustainability credentials but also on our value to our regional and rural communities as progressive employers."

If all nine hectares were relocated, about the size of a land-based hobby farm, it is estimated that up to 407 direct and indirect jobs would be created for the company and regional New Zealand once new sites were fully commissioned, Rosewarne says.

"The fact that the Panel has recommended three of the six sites under consideration be relocated upholds the scientific rationale that higher flow sites are most suitable, and that our existing low-flow salmon farms can and should be relocated," Rosewarne commented.

"We can see that a positive decision by the government would contribute to even better environmental, social and economic outcomes for our region without increasing the space we occupy. This proposal aligns very well with our new government's vision for swimmable waters, green jobs and strong regional development.

"We're not standing still in our innovative approaches. High-flow farms are just the first step in the vision to seek the best quality growing environment. The panel highlighted offshore farming as a future option, and NZKS is keen to explore this as part of our long term business model."

Conservation group responds:

EDS HAPPY WITH MINISTER'S APPROACH ON KING SALMON

The Environmental Defence Society has expressed support for the approach being taken by the Minister of Fisheries on the King Salmon report and recommendations that he released today [February 14].

The special hearings panel has recommended that he approve three of six sites. The three recommended for refusal are ones that EDS opposed on landscape and ecological grounds.

"The report is the product of a controversial fast-track process initiated by the previous Minister, which cut across the normal plan-making process," said EDS CEO Gary Taylor.

"Minister Nash has said that he intends to take "some months" to consider how he should proceed and will be consulting widely before making a final decision. Clearly he feels uncomfortable with the process he has inherited from his predecessor.

"That is the right approach. The current government is generally opposed to the use of Ministerial override powers in the Resource Management Act. It would be inconsistent for the Minister to use those powers himself.

"We look forward to considering the report and the best way forward. We will be expressing our views clearly to the Minister in due course.

"In general, we favour consideration of an approach where the issues are referred back to Marlborough District Council to address as part of its review of the aquaculture provisions of its plan. Precisely how that can be done needs more thought and we now have time for that.

"Meantime EDS contends that New Zealand needs a properly formulated aquaculture strategy that explores how innovation in the sector can deliver better outcomes. Persisting with attempts to locate industrial scale salmon farms in areas of great landscape value is a poor way forward," Mr Taylor concluded.



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