

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of a Board of Inquiry appointed under section 149J 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

**SUBMISSIONS OF MCGUINNESS INSTITUTE ON PROPOSED
CONDITIONS OF CONSENT
16 OCTOBER 2012**

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MAY IT PLEASE THE BOARD:

1. These submissions are for the McGuiness Institute on the proposed resource consent conditions, in accordance with paragraph 1 (e)(i) of Minute No. 11, dated 27 September 2012.

Lack of individual site consideration

2. The Institute notes introductory text to the conditions, which indicates that there will be separate conditions for each farm, and that where there are differences between farms these have been shown on the draft conditions of consent document. The Institute submits that there appears to be relatively little differentiation between farms throughout the conditions document, and this does not give the Institute confidence that an appropriately rigorous assessment of the particular environment or amenities of each farm have been taken into account and addressed in conditions.
3. The Institute acknowledges that proposed condition 59 obliges NZKS to exercise the consent 'generally in accordance with' all of the application information and evidence presented, except to the extent of a conflict between that information/evidence and the matters set out in the conditions themselves; but the Institute considers that is an insufficient mechanism to provide for an appropriate degree of differentiation between individual farm sites, if indeed the application and evidence arguably creates such a differentiation.

Term

4. The Institute remains opposed to the term being 35 years from the date of commencement of consent. The Institute acknowledges NZKS's assertion that such term is necessary to enable a return to be realised that will justify the significant investment in the development and operation of the farm; but observes that the forecasting undertaken by NZKS' experts consistently uses 25 years as the timeframe for assessment. On this basis, the Institute submits that there is not an appropriate evidential basis for the term to be set at 35 years, and the Institute supports the imposition of a 25 year term.
5. In further support, the Institute observes that the Aquaculture Legislation Amendment Bill (No 3) expressly provides for periods of less than 20 years where necessary to ensure that adverse effects on the environment are

adequately managed – as conceded by Ms Dawson under cross-examination.

Lapse

6. The Institute endorses the principle in condition 1A as to lapsing.
7. However, the Institute is concerned that NZKS has overstated the cost and effort that is actually required under condition 1A. The Institute accepts that the costs and effort would be significant to **undertake** the baseline monitoring, but condition 1A does not require that the monitoring be undertaken, merely that it has commenced.
8. Considering that there is relatively little differentiation between each of the nine sites apparent in the proposed conditions of consent, the Institute anticipates that there may be relatively little differentiation between the sites in terms of the Baseline Plan required for each farm. In other words, NZKS may be able to develop a Baseline Plan template that is applicable across all sites, or requires only minimal tailoring between sites. The cost and effort in compiling such a Baseline Plan could hardly be characterised as “very significant”. The same can be said of the cost and effort of “commencing” monitoring and confirming that to MDC. Therefore, the lapsing condition in its present form would seem to enable NZKS to claim to have implemented its consents, and thereby preclude them from lapsing, with relatively little work.
9. The Institute submits that a more stringent standard should to be imposed. The Institute submits that the standard to prevent lapsing should be the completion of the Baseline Report (and provision of that Report to MDC), rather than mere commencement of monitoring.
10. Should NZKS be unable to complete (and provide to MDC) the Baseline Reports within three years from the date of commencement, the Institute submits that it would be more appropriate to enlarge the lapse period by another year, than to ‘water down’ the level of work required of NZKS to prevent lapse. This would ensure that NZKS really will incur “significant cost” as asserted.

Certification of plans and reports

11. The Institute supports the inclusion of a requirement that the plans and reports specified in condition 71 be provided to MDC for certification.
12. The basis of NZKS' objection to certification seems to be a desire to avoid delay, and avoid MDC making a decision that NZKS does not agree with, which NZKS says would leave it with the remedy of a judicial review or a declaration against MDC's actions.
13. However, if certification is not required, then MDC will be placed in an equally invidious position, being left only with the options of commence enforcement proceedings or initiate a review of the relevant condition, or prosecuting NZKS.
14. The Institute objects strongly to MDC being forced to take enforcement action in order to ensure compliance with a condition of consent, when a simple certification process would prevent this outcome. The Institute submits that the reasons put forward by NZKS are not compelling. MDC is legally obliged to avoid unreasonable delay, and in the certification process would simply be certifying whether the requirements of the conditions have been met. In other words, MDC's role as certifier would be to examine the material that is presented to it, and form a view whether it is up to the standards required by the relevant conditions of consent. It is not up to MDC to stray beyond that and make decisions that might have other operational consequences.
15. The Institute is particularly concerned that NZKS is seeking to avoid MDC having a certification role, when it is well established that NZKS is the largest and longest standing salmon farm operator in the country, with a significant presence already in the Marlborough Sounds. The Institute's view is that NZKS could have used its existing operations to obtain a range of information or data that would have lessened the need for adaptive management techniques to be relied upon so heavily for the (potential) granting of these current consents. That NZKS might be exposed to some (limited) risk from having to submit its plans for a certification process is in no small part due to NZKS being either unable or unwilling to foresee the likely effects of its proposal in a way that ensures that management techniques devised now will be appropriate for managing future operations.

16. Further, the Institute has some difficulty in discerning what real difference there is between certification as it is worded in proposed condition 74, and the alternative wording proposed by NZKS that MDC is "to satisfy itself as to compliance with this condition". The only real difference would seem to be that perhaps NZKS does not anticipate that it would need to await MDC's confirmation that it were satisfied under the NZKS wording.

Structures

17. The Institute is concerned that the specification of colours and materials for structures in proposed conditions 23-25 does not cover equipment or machinery for transferring fish or collecting waste, and that some such equipment will likely be of dimensions that would make it appropriate to be finished in non-reflective materials and painted in dark recessive colours akin to the requirements for other structures.
18. Further, the institute remains concerned that the allowance for structures up to 7.5m high in condition 20 is unnecessary, and that it would be appropriate for the condition to be more restrictive, so as to encourage NZKS to pursue a minimal height design adopting best international practice.

Disease

19. The Institute is concerned that the conditions have not put in place any appropriate protection around reporting of disease found in the farms, and proposes that there be a condition requiring that within one week of detection of significant mortality, there be a requirement on NZKS to provide notice of that to MDC, the Ministry for Primary Industries, the Ministry of Conservation and the Ministry for the Environment.

Remediation

20. The Institute is concerned that condition 40 (removal of farm structures) does not provide for any action other than the removal of structures in the event that the farm is no longer being operated, or the relevant consent has expired. The Institute submits that it would be appropriate that there be minimum remediation standards, requiring not only that structures, plant and equipment are removed from site, but also that NZKS undertake other reasonable steps to assist or accelerate natural processes for remediation to return the sites and their surrounds to their original condition.

Publication of documents

21. The Institute submits that the plans and reports listed in condition 71 should also be made readily publicly available. The Institute acknowledges that they may be publicly accessible once they have been provided to MDC, but feels strongly that there should be no barriers to the obtaining of that information by interested members of the public. This could be achieved by imposing an obligation on NZKS to publicise the availability of the documents and/or make those available in hard copy or in electronic form.

Navigation or information and safety

22. The Institute submits that the Navigation Risk Reduction and Management Plan should specifically be required to address risks of navigation after dark, which could be achieved by adding the words outlined below:

“... the navigation risk reduction and management plan shall provide details of the risk controls (design criteria, processes and procedures), including specifically lighting or reflective materials as appropriate, to be put into place to operate the salmon farm in compliance with conditions 28-38 ...”

Dawson (e)

23. Finally, the Board provided leave for the Institute to provide a paragraph setting out its concerns with the exhibit Dawson (e) (having refused Mr Nolan's request for leave to withdraw the exhibit).
24. The applicant has stated that: “NZ King Salmon currently produces 8,900 tonnes of salmon annually”¹, yet Dawson (e) states sales in June 2011 and June 2012 was 7,660 and 7,032 respectively. This means that the applicant is currently operating at 79% of capacity (7,032/8,900) and does not currently need the new farms to meet consumer demand in the near future. The economic figures are further muddied by Dr Fairgray who uses 8,250 tonnes (at NZ\$13.00/pkg) in his 25-year model forecasting benefits². The Institute's concern is that the public will lose a great deal from this proposal – public access, a pristine environment, and a national icon – yet their remains

¹ NZ King Salmon Report, 13 August 2011, page 32, para 104.

² Fairgray, Statement of Evidence, paragraphs 3.4. 3.5.

uncertainty over, (i) the figures to demonstrate that the financial benefits exist and (ii) that NZ King Salmon need this proposal to meet consumer demand.

Wendy McGuinness
on behalf of the McGuinness Institute
15 October 2012