

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 82/2013  
[2013] NZSC 101**

BETWEEN ENVIRONMENTAL DEFENCE  
SOCIETY INCORPORATED  
Applicant

AND THE NEW ZEALAND KING SALMON  
COMPANY LIMITED  
First Respondent

SUSTAIN OUR SOUNDS  
INCORPORATED  
Second Respondent

MARLBOROUGH DISTRICT  
COUNCIL  
Third Respondent

MINISTER OF CONSERVATION and  
DIRECTOR-GENERAL OF MINISTRY  
FOR PRIMARY INDUSTRIES  
Fourth Respondents

**SC 84/2013**

BETWEEN SUSTAIN OUR SOUNDS  
INCORPORATED  
Applicant

AND NEW ZEALAND KING SALMON  
COMPANY LIMITED  
First Respondent

ENVIRONMENTAL DEFENCE  
SOCIETY  
Second Respondent

MARLBOROUGH DISTRICT  
COUNCIL  
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MINISTER OF CONSERVATION and  
DIRECTOR-GENERAL OF MINISTRY  
FOR PRIMARY INDUSTRIES  
Fourth Respondents

Hearing: 16 October 2013

Court: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ

Counsel: D A Kirkpatrick, R B Enright and N M de Wit for  
Environmental Defence Society Incorporated  
D A Nolan, A S Butler and D J Minhinnick for New Zealand  
King Salmon Company Limited  
M S R Palmer and K R M Littlejohn for Sustain Our Sounds  
Incorporated  
P A McCarthy for Minister of Conservation and  
Director-General of Ministry for Primary Industries  
S F Quinn for Marlborough District Council  
P T Beverley and D G Allen for the Board of Inquiry

Judgment: 18 October 2013

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### JUDGMENT OF THE COURT

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1. **The application under s 149V of the Resource Management Act 1991 by the Environmental Defence Society for leave to appeal the decision of the High Court dated 8 August 2013 is granted. The questions of law for determination on the appeal are:**
  - (a) **Was the Board of Inquiry's approval of the Papatua plan change one made contrary to ss 66 and 67 of the Act through misinterpretation and misapplication of Policies 8, 13, and 15 of the New Zealand Coastal Policy Statement? This turns on:**
    - (i) **Whether, on its proper interpretation, the New Zealand Coastal Policy Statement has standards which must be complied with in relation to outstanding coastal landscape and natural character areas and, if so, whether the Papatua Plan Change complied with s 67(3)(b) of the Act because it did not give effect to Policies 13 and 15 of the New Zealand Coastal Policy Statement.**
    - (ii) **Whether the Board properly applied the provisions of the Act and the need to give effect to the New Zealand Coastal Policy Statement under s 67(3)(b) of the Act in coming to a "balanced judgment" or assessment "in the round" in considering conflicting policies.**
  - (b) **Was the Board obliged to consider alternative sites or methods when determining a private plan change that is located in, or**

**results in significant adverse effects on, an outstanding natural landscape or feature or outstanding natural character area within the coastal environment? This question raises the correctness of the approach taken by the High Court in *Brown v Dunedin City Council* [2003] NZRMA 420 and whether, if sound, the present case should properly have been treated as an exception to the general approach. Whether any error in approach was material to the decision made will need to be addressed if necessary.**

- 2. The application under s 149V of the Resource Management Act 1991 by Sustain Our Sounds Incorporated for leave to appeal the decision of the High Court dated is granted. The question of law for determination on the appeal is:**

**Was the conclusion of the Board of Inquiry that the key environmental effects of the plan change in issue would be adequately managed by the maximum feed discharge levels set in the plan and the consent conditions it proposed to impose in granting the resource consent to King Salmon one made in accordance with the Act and open to it?**

- 3. Both appeals are set down for hearing for the three days commencing 19 November 2013.**

**Solicitors:**

DLA Phillips Fox, Auckland for Environmental Defence Society Incorporated

DLA Phillips Fox, Wellington for Marlborough District Council

Russell McVeagh, Wellington for The New Zealand King Salmon Company Limited

Dyhrberg Drayton, Wellington for Sustain Our Sounds Incorporated

Crown Law Office for Minister of Conservation and Director-General of Ministry for Primary Industries

Buddle Findlay, Wellington for Board of Inquiry