



Supreme Court of New Zealand

17 April 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SUSTAIN OUR SOUNDS INC V THE NEW ZEALAND KING SALMON COMPANY LTD & ORS (SC 84/2013)

[2014] NZSC 40

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

New Zealand King Salmon applied in 2011 to establish nine new salmon farms in the Marlborough Sounds. Under the Marlborough District Council’s combined Regional District and Coastal Plan (the “Sounds Plan”), the Coastal Marine Area in the Marlborough Sounds is divided into two zones: Coastal Marine Zone 1 where marine farms are prohibited and Coastal Marine Zone 2 where they are usually a discretionary activity. With regard to eight of the sites, the application asked for a plan change so that these sites would be re-zoned to a new zone, Coastal Marine Zone 3, where the farming of salmon would be a discretionary (rather than prohibited) activity. Resource consents for the salmon farms at those eight sites were also sought. In addition, there was a separate resource consent application for the White Horse Rock site, which was situated in Zone 2.

The applications for the plan changes and the consents were referred by the Minister of Conservation to a Board of Inquiry and were heard and considered at the same time. The

Board granted plan changes in relation to four of the proposed sites (Papatua, Ngamahau, Waitata and Richmond). This meant that salmon farming became a discretionary rather than prohibited activity at those sites. Resource consents were also granted for those four sites, subject to detailed conditions of consent that were designed to monitor and address adverse effects of the farms under an adaptive management approach. The White Horse Rock site application for consent was declined.

SOS challenged the Board's decision with regard to all four sites. In the High Court, SOS's appeal was dismissed. In the judgment on the EDS appeal, released at the same time as this judgment, the EDS appeal with regard to the Papatua site in Port Gore has been allowed. In practical terms, this means the SOS appeal only relates to the three remaining sites.

SOS had three main arguments on appeal: first, it contended that there was inadequate information on water quality issues before the Board to grant the applications for plan changes at all and in particular at the maximum feed levels; secondly, that the Board was wrongly influenced by the adaptive management measures contained in the resource consents in deciding to make the plan change; thirdly, that, even if an adaptive management approach was available, the parameters of that approach should have been in the plan and not the resource consents.

The Supreme Court has unanimously dismissed the appeal against the decision of the High Court with regard to the Ngamahau, Waitata and Richmond sites. The Court has concluded that the plan changes and consents granted were in accordance with the Resource Management Act.

In relation to the first contention that there was inadequate information on water quality issues to grant the plan changes, the Court has held that the adaptive management approach utilised by the Board in making the plan changes and granting the consents was an available response to the uncertainty surrounding water quality issues and, in this case, a proper application of the precautionary approach required under the New Zealand Coastal Policy Statement.

In relation to the second issue, the Court has held that it was not improper in this case for the Board to have regard to the conditions that it considered should be attached to the consents when considering the plan change. In relation to the third issue, the Court rejected the proposition that the adaptive management measures should have been

contained in the plan and not the consents. In this case, there was no need for the plan to contain more than it did on water quality.

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