

Reform in Paradise II

Coastal Reform

Thursday 3rd June Aotea Centre

Hon Sir Douglas Kidd

Text as delivered.

Designing Policy Reform to Support Sustainable Aquaculture

Kia Ora tatou.

I guess I was invited to speak because of my having chaired the Aquaculture Technical Advisory Group (TAG) which reported to Ministers in October 2009.

Following a targeted submissions process papers were prepared for Cabinet and Cabinet decisions were made on 15 March this year – exactly 5 months to the day after our report was delivered.

It is important that you understand our mandate ended with the delivery of our report. We have no ongoing existence – I downloaded the decisions after I heard they had been publicly released. I do not speak for the members of the TAG. I most certainly do not speak for the Government, any Ministers in it, or even the National Party.

Even more important, I must make it clear I do not appear here in any way at all relating to my being a member of the Waitangi Tribunal. And just to be absolutely clear let me state that if any Treaty claims are lodged in relation to acts or omissions of the Crown in relation to aquaculture I would not accept appointment to any panel formed to hear such claims.

In considering what I might discuss today I could present the case set out in our report. Rather, I will take the risk of assuming anyone seriously interested will have read it. I could present the Cabinet decisions and re-argue those of our recommendations which were not adopted. But our arguments are in our report. Others can pick them up. Actually, I am rather proud that our team scored such a high rate of take-up of our recommendations. Today's panel includes Keir Volkerling who made a great contribution on our TAG. He lives and breathes RMA and CMA issues. He can address any specifics of our recommendations if time allows.

The debate needs to move to the new ground created with the Cabinet decisions. On that ground I have no responsibility and no role. What appears in the Bill introduced into Parliament may be somewhat different given the difficulty of translating the Cabinet decisions into amendments to two terribly complex Acts. What comes out of Parliament in the form of amending Acts will inevitably be different again.

When I use the word sustainable in relation to aquaculture I mean sustainable both in terms of profitable to investors and being so without doing any permanent harm to the marine ecosystem.

The most fundamental point that there is to make about aquaculture is this: There is no ongoing aquaculture production unless it is sustainable by both measures. The standard of water quality required for aquaculture is arguably higher than for other human interactions with the marine environment. Nor can impacts on the benthic environment reach levels which may imperil stock health-something I learnt graphically when visiting the Japanese pearl oyster industry in the early 1990's.

I might mention in passing that it is far from unknown for the real reason a marine farm application is opposed is the constraint it might put on further coastal residential subdivision or the pressure it might create for higher standards of sewage disposal in established settlements. Marine farming, at least with filter feeders, is close to being the marine equivalent of the canary in the coal mine.

It is not even enough for marine farming to have established first in an area. The nature the RMA and its processes means there is little long term constraint on coastal development.

Farmers complain to me that recent arrivals organise to drive them from bays where they were having no adverse impact on anyone or the natural environment.

I sum up the points I have been making by linking my comments to the theme of this conference. Aquaculture will thrive best in a green economy. It is more sensitive to environmental conditions than most other food producing activities. It is also very sensitive to what comes off the land into the sea, an area where regional councils, in their enforcement roles, have not performed well.

Here I want to mention information that has come to me since the TAG, explicable only by reason that I might be thought to have a sympathetic ear. I have been told of Councillors wanting Government to take over decision making on coastal space allocation for aquaculture because they can't stand the heat from objectors, especially in local body election years. From another region I hear of Councillors being vigorously campaigned against at elections because they did their duty on the evidence as required by the processes and law laid down in the Resource Management Act.

If this is how national resources, such as coastal space are to be allocated, New Zealand has real problems. Our talent will take their expertise, to more encouraging waters – currently, mainly, to South Australia. It seems to me that where we led, in the roughly 25 years up to 2000, with much brilliant innovation and entrepreneurship, we have fallen behind in the new millennium.

Throughout our TAG's work I would, when we were getting bogged down, say to my colleagues: "Well then, its off to South Australia." It seemed to break the tension and spur them on. I haven't the time to spell out the South Australian regime nor am I going to give them a free commercial,

So what the Government is embarking on may be our last chance to get momentum into aquaculture again. Because things have moved on, aquaculture will not be restarted from where it had stopped.

I was in Parliament throughout both the Labour and National phases of enacting the RMA at the beginning of the 1990's. It seemed a great idea. Who could really be opposed to the sustainable use of natural resources. Who could not see the point of getting rid of something over 50, if I remember rightly, different statutory jurisdictions/cum consent processes. Who could not agree to decisions being made near the people at district or regional council level. The RMA took on the planning role, to the extent it still had a place; the environmental impact protection and enforcement role, which previously had been quite inadequate; and became the allocator of public renewable resources – coastal space and freshwater being two of the obvious examples. It seems to me to be struggling under the load. But it is all we have got, so we must make it work.

When I was first involved with 3 partners in greenshell mussel longlines in the mid 1970's it was possible to get started with little capital and a lot of enthusiasm and hard work. Getting a licence under the Marine Farming Act was so simple and cheap. You can't do that today. Even with the changes the TAG recommended you will have spent all the money we ever put into developing a farm on Council fees and lawyers before you get started.

I gave up my involvement soon after entering Parliament in late 1978 – defending my 343 vote majority was more than a fulltime job! In 1990 I became Minister of Fisheries to confront several hundred applications, many waiting for years. With a herculean effort by a few devoted staff and one or two really knowledgeable outsiders we got them sorted and, for the most part granted. Of the some hundreds of applications I granted and the relatively small number I declined, only a few were taken on judicial review, none successfully, if I remember correctly. A decade or so later it seemed to me that perhaps a handful were in the wrong place but a major industry had got going. No permanent harm had been done. That industry development phase, I hesitate to use the word pioneering out of respect for the real marine farm pioneers, is so recent that I can stand here without physical support, to both speak of it and acknowledge it has passed.

The succeeding phase has been legislated, planned and litigated to a standstill.

In our TAG we strove throughout to respect each others contribution. Apart from me, each had real and current expertise. We sought to maximise consensus, and by and large were

very successful in that. There was one area where I quickly determined we could not go far without running the risk of seriously diminishing what we could achieve overall. That area, where we were able to suggest some, hopefully, worthwhile process improvements, centred on the Undue Adverse Effects test in relation, mainly, to the impact of an aquaculture consent on the ability of commercial fishers to catch their quota. Here I need to stress again I most definitely do not speak for my colleagues.

It was only after our report was settled that I learnt how the Ministry operated the UAE test. Its working premise, if I may call it that, might be stated thus: if the adverse impacts on commercial fishing were assessed as exceeding 7.5 per cent then those effects were unduly adverse and the aquacultural project could not proceed. I remember enough from my days as Minister, that fluctuations in the incomes of fishing companies due to the effect of, for instance, movements in exchange rates, could impact on export fish market prices and fuel costs several times more than that percentage. If ready access to a free swimming fishstock is so finely poised then surely the TAC and TACC should be reviewed.

I eventually discovered that the problem in such cases could well be the applicant – if it wasn't one or more quota holders in that management area. Once 'outside' applicants had given up and gone away, sooner or later the UAE might be expected to disappear - if an appropriate applicant(s) stepped up. What could be happening is perfectly legal, but it is a completely unintended consequence of the introduction (in 1986) of the Quota Management System, re-expressed during my time in the Fisheries Act 1996, and as now amended by the UAE related provisions of the so-called Aquaculture Reforms of 2004.

If what I have been told is anywhere near close to the mark, the prospects of the Governments proposals achieving much in the medium term are not encouraging.

Having said that, I acknowledge there is a place for a rather more focused UAE test or something like it. Further, I cannot see why it could not be re-developed so as to be able to migrate from the Fisheries Act to the RMA.

For example, no-one should expect to set up mussel longlines over prime oyster beds and effectively prevent quota holders from dredging the oysters. The adverse impact on the quota holder in that case could be nigh on 100% and totally unacceptable. That anyone would attempt to do such seems inconceivable, but everything at sea is a matter of degree. Clearly not every oyster or modest cluster across a vast embayment needs to be exposed to being able to be dredged. The art, for it is much more an art than a science, is to know where to draw the line. Whatever is the process it can never be other than subjective-as well informed as possible, but subjective none the less. There is some recognition of that in the Courts, but in an environment of finite supply of space all the incentives are to beggar other parties.

The extraordinary case of Tasman Bay is instructive. We were urged not to let it overwhelm our work-and we didn't. I am told millions of dollars have been spent on council charges, consultants and lawyers fees, mainly the latter, over several years and no-one, be it existing quota holders or would be marine farmers, has produced anything.

This is particularly sad for me personally because one of my early achievements, or so I thought, was to legislate the Enhanced Southern Scallop fishery in the Fisheries Amendment (No2) Act 1992. Since then something has gone terribly wrong and this may be the 5th non harvest year in Tasman Bay. Before anti-fishing industry types leap in gleefully, let me say that the probable cause is siltation from land disturbance and runoff, in effect, choking the scallops.

As far as I know, New Zealand doesn't have the skills or techniques to grow scallops suspended from longlines -early trials in my time were abandoned as impractical or uneconomic or both, so the scallops I buy in my Wellington supermarket come from China. Maybe we need another round of foreign aid –the spat catching and rotational seeding techniques came from Japan thanks to a spot of foreign aid/technology transfer about 25 years ago.

What I have to contemplate is that my great achievement has been overtaken by as sorry a case of unintended consequences as might ever be described. I fondly hope not, but let this cautionary tale, serve as a warning to others now afoot with legislative proposals in hand.

The origins of the problem go back to at least the early 1990's. Cabinet directed that the Marine Farming Act 1973 was to be repealed and marine farm licensing was to be replaced by coastal permits under the RMA. The momentum of the RMA was unstoppable even though it was unproven. The Quota Management system was still less than a decade old and being amended every year to deal with the problems which kept appearing. Confidence in Fisheries legislation around our Cabinet table was very low. We never did get to think through this resource allocation role in what was overwhelmingly a culture of environmental effects based management where two sets of rights were being set up to collide – the spacial right for aquaculture on the one hand and the right to catch a given quantity of a particular species of fish each year wherever they were to be found in a large management area, on the other.

This country has never really had the debate on how existing and new rights' conflicts should be resolved. It is not even possible for the new to buy out the old and effectively open an area for aquaculture even if it could be argued to be in the national interest.

Coupled with the rights issue is the nature of the UAE as a threshold test against the RMA balancing act. Further, it can be argued that quota rights are established only in terms of stock assessment and fisheries management processes, but not through a full Assessment of Environmental Effects across fisheries resources and ecosystems, as is required in establishing any use rights in the Coastal Marine Area under the RMA.

I thought to look at what insights were brought to bear on these matters when Parliament last addressed them in 2004. On reading the Hansard reports, I was overcome with a feeling of embarrassment.

Both of the issues I have addressed might be called 'elephants in the room,' certain to be quickly attended upon by phalanxes of lawyers and lobbyists if there is any attempt to address them systematically. I fear they are doomed to be dealt with tangentially, always in the slipstream of other more pressing matters.

This issue of the contest for space between competing interests is not unrelated to our recommendations centred on and around possible aquaculture zones. In order to deal with UAE type issues in advance of site specific proposals and in order to find practical ways of addressing the Maori Settlement entitlement we saw a place for a zones option. We felt the Crown could better manage the Treaty right if it was able to generate space and look to cover its costs (and those of regional councils) by a combination of a levy and tender proceeds. The alternative consenting environment, which we see as the norm, is going to create complex interactions and lots of parcels of space which while workable, in the absence of anything else, is not ideal. The reality in Aotearoa/New Zealand in the new millennium, post the Maori Commercial Aquaculture Settlement of 2004 - which never delivered one hectare to any iwi - is that 20% of the area approved on a application for a coastal permit is to be issued direct to iwi separately, at no cost to iwi, and the remaining 80% is to issue as a separate consent to the applicant.

We were required by our instructions to maintain the principles and integrity of the Settlement and we have complied to the best of our collective ability.

Finally, this speech gives me the opportunity to say something that I have wanted to say somewhere since I heard the Ministers announcing the 2004 Settlement say it was "unfinished business from the Sealord Deal." I was the Minister (at that time of both Fisheries and Maori Affairs) who negotiated that deal in my office on the 6th floor of the Beehive in marathon, emotion charged sessions. I am and have always been clear about this: the Sealord settlement had nothing whatsoever to do with any issues relating to space for aquaculture in the Coastal Marine Environment or anywhere else.