



**SALT-WATER SALMONID CULTURE
(SUPPLEMENTARY AGREEMENTS VALIDATION)
ACT 1992**

No. 19 of 1992

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AN ACT to validate certain agreements to vary or amend the Fish Farm Agreement and the Joint Venture Agreement under the *Salt-water Salmonid Culture Act 1985*

[Royal Assent 6 August 1992]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Salt-water Salmonid Culture (Supplementary Agreements Validation) Act 1992*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Interpretation

3—In this Act—

“the Fish Farm Agreement” has the meaning assigned to that expression by the *Salt-water Salmonid Culture Act 1985*;

“the Joint Venture Agreement” has the meaning assigned to that expression by the *Salt-water Salmonid Culture Act 1985*;

“Minister” means the Minister who was administering Part II of the *Fisheries Act 1959* on 28 July 1986;

“supplementary agreements” means—

- (a) the agreement signed on 28 July 1986 by the Minister and Noraqua Australia Pty. Limited to amend the Fish Farm Agreement, a copy of which is set out in Schedule 1; and
- (b) the agreement signed on 28 July 1986 by the Minister and Noraqua Australia Pty. Limited to amend the Joint Venture Agreement, a copy of which is set out in Schedule 2.

Validation

4—(1) The supplementary agreements are valid with effect on and from 28 July 1986 even though the terms of the supplementary agreements were not accepted by the Treasurer and approved by the Governor in accordance with section 5 of the *Salt-water Salmonid Culture Act 1985*.

(2) The Fish Farm Agreement and the Joint Venture Agreement are validly amended by the supplementary agreements.

(3) Any act, matter or thing purportedly done or omitted to be done under the Fish Farm Agreement or the Joint Venture Agreement, as amended by the supplementary agreements, is valid as far as it would have been valid if the Fish Farm Agreement or the Joint Venture Agreement had been amended and varied by supplementary agreements made in accordance with section 5 of the *Salt-water Salmonid Culture Act 1985*.

Administration of Act

5—Until provision is made in relation to this Act by an order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Primary Industry, Fisheries and Energy; and
 - (b) the Department responsible to the Minister for Primary Industry, Fisheries and Energy in relation to the administration of this Act is the Department of Primary Industry, Fisheries and Energy.
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SCHEDULE 1**Section 3****SUPPLEMENTARY AGREEMENT TO THE FISH FARM AGREEMENT**

THIS DEED made the 28th day of July 1986 BETWEEN THE HONOURABLE RAYMOND JOHN GROOM being and as the MINISTER FOR SEA FISHERIES OF THE STATE OF TASMANIA (hereinafter called "MSF" which expression shall include his successors in office) of the one part

AND

NORAQUA AUSTRALIA PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office at 60 Martin Place, Sydney in the State of New South Wales and recognised in the State of Tasmania having its principal office at Messrs. Murdoch Clarke Cosgrove and Drake, Solicitors, 10 Victoria Street, Hobart in the said State (hereinafter called "NA") of the other part

WHEREAS

- A. MSF and NA are parties to The Fish Farm Agreement dated 16th April 1985 (hereinafter called "the FFA") and to a Joint Venture Agreement of even date therewith (hereinafter called "the JVA") providing for the establishment of Salmon Enterprises of Tasmania Pty. Limited (hereinafter called "SalTas").
- B. The FFA and the JVA were approved and ratified by the Salt-water Salmonid Culture Act 1985, of the State of Tasmania ("the Act") which by Section 5 empowered the MSF to inter alia agree to amend or vary the FFA and the JVA upon terms acceptable to the Treasurer and approved by the Governor.
- C. The parties hereto by a Deed of Agreement of even date herewith have agreed certain amendments to the JVA to permit the establishment and operation of Tasmanian Atlantic Salmon Limited (hereinafter called "TASMAS").
- D. Pursuant to Section 5 paragraph (c) of the Act, the MSF and NA with the approval of the Treasurer and the Governor have agreed to amend and vary the terms of the FFA as the same are hereinafter provided:

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Clause 6 is hereby varied by:

- (i) omitting the words "SalTas and Tassal" and inserting in substitution therefor the words "TASMAS and Tassal"; and
- (ii) adding after the word "Point" the words "Further MSF shall not without the prior written consent of NA permit TASMAS to produce at its commercial fish farm in Port Esperance an amount of Atlantic Salmon or rainbow trout or an amount of Atlantic Salmon and rainbow trout greater than that which TASMAS is able to produce from eighty thousand smolt or fingerlings or from an aggregate of eighty thousand smolt and fingerlings purchased on an annual basis".

2. Clause 8 is hereby varied:

- (i) omitting the words "sufficient smolts to allow production of 2,500 tonnes dressed weight (head-on and gutted) of Atlantic Salmon"; and
- (ii) inserting in substitution therefor the words "at least one million and forty thousand (1,040,000) Atlantic Salmon smolts".

3. Clause 13 is hereby varied by:

- (i) omitting from paragraph (a) thereof the words "production of Tassal to 500 tonnes dressed weight of Atlantic Salmon" and inserting in substitution therefor the words "purchases of smolt by Tassal to 200,000 per annum";
- (ii) omitting paragraph (c) thereof which is wholly deleted; and
- (iii) inserting after paragraph (c) the following paragraph in substitution therefor:
 - "(e) Such review shall not result in a reduction of supply to Tassal of less than 200,000 smolt per annum and shall permit Tassal to acquire not less than forty per cent (40%) of the production of smolts in excess of the five hundred and forty thousand (540,000) so as to allow Tassal to acquire up to a maximum of four hundred thousand (400,000) smolts per year provided that Tassal or NA holds not less than nineteen per cent (19%) of the issued capital of SalTas."

4. Clause 14 is hereby varied by omitting the words "sufficient smolts in each year to allow SalTas to produce 100 tonnes dressed weight of fish" and inserting in substitution therefor the words "forty thousand (40,000) smolt".

5. Clause 15 is hereby varied by omitting the date "30th April 1985" and inserting in substitution therefor the date "31st May 1985".

IN WITNESS whereof the parties hereunto have set their hands and seals the day and year first hereinbefore written.

SIGNED SEALED AND
DELIVERED by THE
HONOURABLE RAYMOND
JOHN GROOM in the presence
of:—

.....
(Minister for Sea Fisheries)

.....
(Witness)

SIGNED SEALED AND
DELIVERED by DAVID MILNE
WHITEHOUSE being and as the
Duly Appointed Attorney for
NORAQUA AUSTRALIA PTY.
LIMITED in the presence of:—

.....
(Duly Appointed Attorney)

.....
(Witness)

SCHEDULE 2**Section 3****SUPPLEMENTARY AGREEMENT TO THE JOINT VENTURE
AGREEMENT**

THIS DEED made the 28th day of July 1986 BETWEEN THE HONOURABLE RAYMOND JOHN GROOM being and as the MINISTER FOR SEA FISHERIES OF THE STATE OF TASMANIA (hereinafter called "MSF" which expression shall include his successors in office) of the one part

AND

NORAQUA AUSTRALIA PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office at 60 Martin Place, Sydney in the State of New South Wales and recognised in the State of Tasmania having its principal office at Messrs. Murdoch Clarke Cosgrove and Drake, Solicitors, 10 Victoria Street, Hobart in the said State (hereinafter called "NA") of the other part

WHEREAS

- A. MSF and NA are parties to a Joint Venture Agreement dated 16th April 1985 (which said Agreement is hereinafter called "the JVA") for the establishment of a new Company which has been duly incorporated under the name Salmon Enterprises of Tasmania (hereinafter called "SalTas").
- B. The JVA was approved and ratified by the Salt-water Salmonid Culture Act 1985, of the State of Tasmania ("the Act") which by Section 5 empowered the MSF to inter alia agree to amend or vary the JVA upon terms acceptable to the Treasurer and approved by the Governor.
- C. The JVA provides for Local Industry to become parties thereto with the MSF and NA but no Local Industry has so joined as a party with the MSF and NA.
- D. Pursuant to Section 5 paragraph (c) of the Act, the MSF and NA with the approval of the Treasurer and the Governor have agreed to amend and vary the terms of the JVA as the same are hereinafter provided.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Article 6 of the JVA is hereby rescinded and wholly deleted.

2. Article 9 is hereby varied by:—

(1) omitting paragraph (a) and substituting therefor:

(i) “(a) Definitions

For the purposes of this Agreement a reference to certified smolt shall be deemed to be a reference to Atlantic Salmon acclimatized to saltwater in accordance with the procedures from time to time adopted by the New Company and vaccinated against vibriosis”;

(ii) by:—

(a) deleting the words “and retaining” from paragraph (b) 2 and inserting after the word “research” the words “and selling forty thousand (40,000) smolt to Tasmanian Atlantic Salmon Limited” (hereinafter called TASMAS);

(b) substituting a full stop for the comma after the word “same” last appearing and deleting the words “sufficient smolts to produce approximately 100 tonnes of fish per year” appearing thereafter;

(c) deleting the words “and an experimental farm which is capable of producing approximately 100 tonnes of fish per year” in paragraph (b) 6 and substituting therefor the words “and an experimental sea station comprising acclimatization facilities, broodstock holding facilities, nutrition and other research and experimental facilities”;

(d) deleting the words “smolts sufficient to produce 2,500 tonnes of fish” in paragraph (c) 1 and inserting in substitution therefor the words “one million and forty thousand (1,040,000) smolts”;

(e) omitting sub-paragraph 2 of paragraph (c) and inserting in substitution therefor the following:

“2. (1) Until 31st December 1988 smolt produced by the New Company shall be available for purchase by TASMAS, Tassal and Local Industry in accordance with the following priorities:

(i) TASMAS shall have a first priority right to purchase forty thousand (40,000) smolts per year.

(ii) The balance shall be available for purchase by Tassal and the holders of C class shares. Tassal shall have a first priority right to purchase from the New Company two hundred thousand (200,000) smolt per year, always providing that Local Industry shall have the right to a reasonable quantity of smolts as determined by the Board of Directors of the New Company consistent with the desirability of ensuring a spread of locations and provided that the allocation to such C class shareholders shall not exceed 50% of the amount of smolt allocated to Tassal.

(2) After 31st December 1988, but subject to priority in favour of TASMAS in accordance with subparagraph 1 hereof, Tassal shall have a first priority right to purchase additional smolts comprising at least 40% of the total available Atlantic salmon smolts produced by the New Company in excess of the production of 540,000 smolts per year.”

(f) inserting in paragraph (c) 3 after the word “Tassal” the words “and TASMAS”;

- (g) omitting from paragraph (c) 6 the words “the holders of the ‘A’ and ‘B’ class shares and inserting in substitution therefor the words “all of the holders of ‘A’, ‘B’ and ‘C’ class shares”;
- (h) omitting from paragraph (c) 7 the words “from the Minister administering Part III of the Fisheries Act 1959 a fish farming licence” and inserting in substitution therefor the words “all fish farming licences”.

3. Article 14 paragraph 3 is hereby rescinded and wholly deleted the following paragraphs being inserted in substitution therefor:

“3. The Board of Directors are empowered by the Articles of Association to manage the business of the New Company.

4. The parties hereto hereby covenant with each of the other parties that he shall ensure that the representative of each party on the Board of Directors of the New Company votes so as to ensure the fair and equitable distribution between the shareholders of the New Company of smolts according to their physical and genetic characteristics.

5. The parties shall cause the directors representing them to vote on the Board of Directors to ensure that a minimum of 25% of the New Company's gross revenue from the sale of smolts are applied for research and development including the provision of a selective breeding facility and the operation thereof in each financial year commencing with the financial year of the Company which starts on 1st July 1988. This condition may be waived only by the unanimous resolution of all directors in office and in any case may only be waived for one year by a single resolution made during that year.

6. Regulations giving effect to paragraphs 4 and 5 herein shall be inserted in the Articles of the New Company and shall not thereafter be amended or deleted save by the unanimous consent of all the parties hereto.”

4. Paragraph 4 of Article 18 is hereby rescinded and wholly deleted therefrom.

5. Article 19 is hereby varied:—

- (i) by omitting from paragraph 1 thereof all words after the word “hatchery” and inserting in substitution thereof the words “capable of producing one million and forty thousand (1,040,000) smolt per year and an experimental sea station comprising acclimatization facilities, broodstock holding facilities and such other research and experimental facilities as may be required”; and
- (ii) by omitting from paragraph 2 the word “farm” and inserting in substitution therefor the words “sea stations”.

6. Article 20 is hereby varied by omitting and deleting paragraph 3 thereof.

7. Article 23 is hereby varied:—

- (i) by omitting from paragraph 1 thereof the words: “smolt equivalent sold by the New Company reaching a rate of 2,500 tonnes per annum” and inserting in substitution therefor the words: “smolt sales of the New Company reaching one million and forty thousand (1,040,000) per year”;
- (ii) by omitting from paragraph 2 thereof the words “the smolt equivalent of 2,500 tonnes per annum” and inserting in substitution therefor the words: “one million and forty thousand (1,040,000) per year”; and
- (iii) by omitting and deleting therefrom paragraphs 5 and 6.

8. Article 29 is hereby varied by omitting the address of NA in paragraph 2 thereof and inserting in substitution therefor after the word “To” the words

“Noraqua Australia Pty. Limited
C/- K/S Norlax A/S
P.O. Box 5101 Majorstua
N O 301 OSLO 3
NORWAY
Telex (56) 76162 EXCAN N.
Facsimile (47) (2) 468134.”

9. Article 34 is hereby varied by omitting the words “referred to in Article 19” and inserting in substitution therefor the words “entitled Seawater Salmonid Farming—A Development Prospect for Tasmania”.

10. It is hereby acknowledged that the variation to Article 33 made on the 29th day of April 1985, substituting the “30th day of May 1985” in place of the “30th day of April 1985” was by their mutual agreement and is hereby further acknowledged and confirmed.

IN WITNESS whereof the parties hereto have set their hands and seals the day and year first hereinbefore written.

<u>SIGNED</u> <u>SEALED</u> <u>AND</u> <u>DELIVERED</u> by <u>THE</u> <u>HONOURABLE</u> <u>RAYMOND</u> <u>JOHN GROOM</u> in the presence of:—	} (Minister for Sea Fisheries)
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.....
(Witness)

<u>SIGNED</u> <u>SEALED</u> <u>AND</u> <u>DELIVERED</u> by <u>DAVID MILNE</u> <u>WHITEHOUSE</u> being and as the Duly Appointed Attorney for <u>NORAQUA AUSTRALIA PTY.</u> <u>LIMITED</u> in the presence of:—	} (Duly Appointed Attorney)
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(Witness)