



tourism
INDUSTRY
ASSOCIATION NEW ZEALAND

**Concession Allocation by the Department of Conservation -
where supply is limited
Submission**

December 2006

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Executive Summary

Conservation and Tourism

1. The Tourism Industry Association New Zealand (TIA) is committed to maintaining and strengthening the strong links between the Department of Conservation (DOC) and tourism. We believe this is a mutually beneficial relationship which is essential given the importance of public conservation resources to tourism, and the reciprocal community support that tourism brings to conservation.

Concessions are a privilege

2. The Association recognises that concessions in relation to public conservation land and resources are a privilege, not a right. The Association is not seeking to secure property rights over public conservation resources for its members; to do so would be inappropriate.

TIA's position

3. The Association's position on the key issue of demand for opportunities exceeding the supply is that incumbent operators who are performing well should be given a preference to apply for a replacement concession at the expiry of their existing concession. This right would be subject to the incumbent's record of compliance with the conditions of its existing concession.

DOC is not compelled to competitively allocate opportunities

4. There is no compulsion under either the conservation legislation or the Commerce Act 1986 for DOC to undertake open concession allocation processes. There is an option for the Minister to tender the opportunity to apply for a concession under the Conservation Act, but similarly there is an option to invite applications from existing operators. The Commerce Act does not require DOC to tender these opportunities, and giving existing operators a preference does not in legal terms create a monopoly.

Achieving desired objectives

5. Conservation values can be protected, visitor experience maximised and a fair market return achieved through existing mechanisms, while giving preferential rights to incumbent operators. There are well established mechanisms in place for ensuring that conditions are complied with and for encouraging incumbent operators to continuously improve and provide the highest quality service. The use of competitive allocation processes at the end of the concession term would be a blunt instrument and the wrong mechanism to achieve these outcomes.

DOC's strategic direction

6. TIA's position is consistent with the Department's new strategic direction. In particular, incumbent concessionaires are often community leaders in the conservation area and help communities to see value in conservation. The tourism industry in Southland is a good example. It is difficult to see how running competitive allocation processes which may remove long established incumbent operators from local communities and replace them with, for example, overseas operators, will assist in achieving the strategic direction.

General Policies

7. There is no suggestion in either the Conservation General Policy or the General Policy for National Parks that there is any need to run open allocation processes for public conservation land or resources. It is a requirement under legislation that conservation land and resources are managed in accordance with General Policies, and it is difficult to justify an open allocation approach where there is no basis for it in the recently approved General Policy.

Consistency with Government policy

8. TIA's approach is consistent with that taken by this Government in relation to giving preference to incumbent consent holders in the context of aquaculture and public resources under the RMA. The Government amended the RMA in 2004 and 2005 specifically to provide for this preference. In addition, in the 2005 reforms of the RMA this Government specifically recognised the value of investment by existing operators. As such, TIA's position is entirely consistent with, and is supported by, existing Government policy concerning the use of public resources.

Concessionaires are a key stakeholder group for DOC

9. The importance of relationships and working with communities is essential to conservation in New Zealand. This is reflected in both DOC's strategic direction and in the General Policies that were approved last year. Incumbent concessionaires form an integral part of many communities, and have often committed substantial investment to their businesses and to the communities within which they live and operate. The Department relies heavily on strong relationships with local communities to achieve its conservation outcomes and the wider effect of open allocation processes on concessionaires and the communities in which they live would impact significantly.
10. Concessionaires play a crucial role in enabling DOC to meet its statutory obligations to provide access to and education about the conservation lands which belong to all New Zealanders. Concessionaires have committed themselves to providing visitor experiences which enable both New Zealanders and international visitors to enjoy our National Parks. They have often contributed significant amounts of their own resources to conserving

aspects of the Parks. Their individual and cumulative experience operating daily in National Parks is an extraordinary resource.

Noise

11. If an incumbent concessionaire who has established a business over many years, employs members of the local community and has been complying with concession conditions, is displaced in favour of another tourism investor (who may simply have greater resources), this is likely to attract significant community attention.

Litigation risk

12. The reality of running open allocation processes is very difficult in legal terms and the Association believes that there is significant risk of litigation in these circumstances. This could and has tied up significant Departmental funds and resources, which would be better used achieving positive conservation outcomes.

Fairness to existing concessionaires

13. Fair and reasonable treatment of concessionaires is an essential outcome of any management policy. We recommend existing concessionaires are recognised for the work they have done, the risks they have taken, their significant investment over a long period and their goodwill and cooperation. For concessionaires who have not complied with the conditions of their concession and/or have faced enforcement action, reallocation will not be a straight forward process and may result in their failure to secure a renewal – this too is fair and reasonable. The tourism industry does not support deliberate breaches of concession conditions. We support a system that retains professional, quality-driven businesses.

A choice and an opportunity

14. Finally, the government has a **choice** and an **opportunity**. There is no legal compulsion to adopt an open allocation approach. TIA believes that there are far more negatives (in terms of damage to concessionaires and community relationships, and litigation risk) in adopting an open allocation approach than there are positives. TIA also believes that any potential positives can also be achieved by working constructively with existing concessionaires. There is a significant opportunity to cement concessionaire and community relationships, and for the Department to move forward on this issue in a constructive and positive manner.

Recommendations

Recommendation 1

Scenario 1

'Monitoring (at a site) shows that concession opportunities need to be limited to existing levels. The incumbent concessionaire(s) that use the site are at the end of their concession term and wish to apply for a renewal. What is the best method of allocation?'

- Existing 'incumbent' concessionaires receive a preferential right to apply for new concessions to replace existing concessions once they expire.

And

- Any other concession applications for the same opportunity are placed on hold until the existing concessionaire's application has been determined.

The incumbent concessionaire(s) to be judged primarily against:

Previous compliance with concession conditions

The extent to which they have been subject to enforcement action

Recommendation 1

Scenario 2

1. Monitoring (at a site) shows that activity levels can be increased beyond that currently allocated to incumbents. How should that additional capacity be allocated?
2. DOC identifies a new concession opportunity for which it is expected that demand will exceed supply. How should this new opportunity be allocated?

- That allocation of additional capacity to be considered in the same way as allocation of a new opportunity.
- That, in general, opportunities of this nature should be allocated via competitive allocation.
- That DOC continues to work with the tourism industry to develop criteria (and criteria weighting) against which applicants shall be assessed and selected.
- Prior to each competitive process, DOC establishes an activity fee (market price) common to all operators i.e. allocation is decided upon primary criteria only.

Recommendation 2: Concession Terms

- Concessionaires enter a 'rolling renewal' agreement with DOC after negotiating terms and conditions.
- Preferred length of tenure: 10 years on a 'rolling renewal' basis.
- Annual reviews and a subsequent one-year extension of tenure on the basis of the operator achieving established operating standards during the previous 12 months (this would provide operators with a continual 10-year horizon as long as they met operating requirements – hence the term 'rolling renewal').
- Five-year reviews undertaken, permitting DOC to assess/renegotiate the financial basis of the agreement in light of market forces i.e. the equivalent of a 'rent review'.
- Non-complying operators would not have their tenure automatically extended. Serious or repeated cases of non-compliance would lead to cancellation of an operator's licence.
- That DOC fully investigate the 'rolling renewal' concept as it may apply to the New Zealand situation
- If, after thorough research, 'rolling renewals' are found not to be the best fit for New Zealand, we recommend that 10 years be the minimum fixed term with a maximum of 30 years for capital intensive operations.
- DOC establishes a system to regularly review (and when necessary enforce) concession compliance with agreed conditions and established operating procedures.

Recommendation 3: Setting limits of use

- DOC gives priority to addressing the issues surrounding limit setting, with particular emphasis placed on 114, page 22 of this submission.

Recommendation 4: Activity fees

- DOC adopts a nationally consistent concession fee structure based on payment in arrears for actual use.
- Concessionaire allocation be reviewed and adjusted as appropriate, by mutual agreement and in an informed manner, to better reflect actual use.
- DOC work with the tourism industry to develop a nationally consistent approach to setting concession fees.

Background

1. TIA became directly involved in the issue of 'tendering' and 'competitive allocation' on public conservation land after a Department of Conservation (DOC) concessionaire workshop held in Te Anau on 22 September 2005. At that meeting representatives from DOC introduced tendering as an option for allocating concessions when demand for opportunities exceeded supply. For most, if not all the attending concessionaires this was the first time that they had been exposed to the notion that their concession may be effectively 'put on the open market' at the time of renewal.
2. Concessionaires left the meeting feeling perplexed, threatened and angry. The questions about tendering that were not answered at the meeting included:
 - Where has the idea (suddenly) come from?
 - What is the process?
 - What are the criteria?
 - When and what will be tendered?
 - When will tendering be used?
 - What is the implementation plan?
 - What transition arrangements will apply?
3. The Regional Tourism Organisation, Destination Fiordland (DF) was immediately contacted by operators who were very concerned by a number of issues raised at the meeting. Both DF and concessionaires also contacted TIA seeking support.
4. On 10 and 11 November 2005 two meetings were held in Te Anau. At the first, TIA Chief Executive (CE) Fiona Luhrs and Sector Manager Geoff Ensor, together with Sharon Flood representing the Ministry of Tourism (TMT), met with approximately 40 concessionaires. The objective of the meeting was to document key concerns that could then be carried forward to a meeting with DOC representatives the following day. Accordingly, a range of issues, questions and possible solutions were agreed upon and documented – this together with a cover letter from Fiona Luhrs provided the basis for discussion with DOC on 11 November 2005.
5. A copy of the cover letter written for the meeting on 11 November is attached as Appendix One.
6. Concessionaires expressed a number of concerns that fell under ten broad headings:
 - Concession conditions

- Term of concession
 - Renewal of concession
 - Processing of concessions
 - DOC/Concessionaire relationships and the expertise of DOC staff
 - Hotspots – how are they defined?
 - Limit setting
 - Tendering
 - Regulatory framework
 - Fees
7. While this submission deals primarily with the issue of concession allocation 'when demand exceeds supply', we think the generally negative reaction to tendering should also be viewed within the context of other strains between DOC and concessionaires.
 8. Fiordland was the catalyst for propelling concession allocation to the national stage, but the strains and stresses that surfaced there are not unique to that area and should not be viewed as such.
 9. On 11 November, TIA, TMT, DF and concessionaires met with representatives from DOC's Southland Conservancy. As well as exploring potential solutions to the range of issues, the meeting provided the opportunity for DOC to clarify many of the questions pertaining to tendering. The DOC Community Relations Manager - Southland, gave a PowerPoint presentation and invited feedback from concessionaires about the type of tender criteria that could guide DOC during tender processes i.e. a set of objective criteria against which applicants for a concession opportunity could then be measured and ranked.
 10. Because tendering (or competitive allocation) was presented as the only option for allocating concessions when demand exceeds supply, concessionaires felt relieved that they were able to influence the criteria (and weighting of that criteria) to favour the incumbent operator. Generally, however, concessionaires remained perplexed that when their concession expired, irrespective of their commitment to quality, safety and the environment, they could still lose their livelihood via competitive allocation.
 11. Considerable concern was also expressed by concessionaires at the lack of robust monitoring and/or DOC/concessionaire liaison when setting limits.
 12. It was agreed that at a national level TIA should seek to facilitate discussions that would lead to a consistent and transparent national policy on concession allocation issues when demand exceeds supply.
 13. Commencing in July 2006 and finishing in September, TIA and DOC, with an observer from the Ministry of Tourism, facilitated a series of meetings with

concessionaires (Motueka, Christchurch, Wellington, Wanaka, Queenstown, Te Anau and Franz Josef) to seek their feedback on some key concession questions.

14. For background information see Appendix Two.

15. This submission is based on analysis of feedback received from those meetings and subsequent written submissions from operators.

Context

Can allocation be open or closed?

16. Prior to commencing industry consultation, it was vital that TIA 'put to rest' the myth that when demand exceeds supply, some form of competitive allocation process is legally required.

17. Our research shows that there is no direction in the legislation for how a concession opportunity is to be allocated. The Minister has the right to run a tender, which may include an open tender, but there is no obligation to do so. In fact, section 17ZG(2)(a) of the Conservation Act states that the Minister may:

"Tender the right to make an application, invite applications, or carry out other actions that may encourage specific applications."

18. It is clear from this that while the use of a tender process is one option, there are other options, including inviting applications or encouraging specific applications from, for example, incumbent operators.

The monopoly argument

19. Research shows DOC is not required under the Commerce Act 1986 to openly tender concession opportunities.

20. DOC is able to set limits on opportunities as long as these are for genuine conservation reasons, however, there is no requirement for them to competitively allocate these limited opportunities.

21. By providing an incumbent with a preferential right to apply for a concession does not create a monopoly.

22. In fact, the definition of a monopoly is complex in legal terms, and even where there is one operator in an area that does not necessarily constitute a monopoly under competition law.

23. DOC is not creating property rights by giving preference to incumbent concessionaires (the Government made this clear in the recent RMA reforms when giving preference to existing consent holders).

Aquaculture/public resources

24. Giving preference to incumbent concessionaires is consistent with the approach taken by this Government of giving preference to incumbent consent holders in the context of aquaculture space and other public resources under the RMA.

25. The Government amended the RMA in 2004 and 2005 specifically to provide preference for existing consent holders. In addition, in the 2005 reforms of the RMA this Government specifically recognised the value of investment by existing operators.

26. The Association believes that its approach on this concession issue is entirely consistent and is supported by, existing Government policy concerning the use of public resources. A more detailed description of these RMA reforms and their precedent value is contained in Appendix three.

Allocation

27. Every concession must have an allocation process undertaken by DOC. For the majority, they will simply be allocated in response to applications; this applies when there is no limit on the number of concessions at a particular location.

28. However, a number of other situations exist and agreed allocation policies need to be developed for these by the tourism industry and DOC:

- Monitoring at a site shows that concession opportunities need to be limited to existing levels while incumbent concessionaire(s) are at the end of their concession term and wish to apply for a renewal.
- Allocation of additional capacity and it is expected that demand will exceed supply
- A new opportunity is identified and it is expected that demand will exceed supply.

29. TIA's allocation objectives are:

- Sustainability in every respect: environmental, economic, social and cultural.
- Fair and reasonable treatment of concessionaires.

30. Our submission has been developed around the belief that both objectives can and must be achieved.

SUBSTANTIVE ARGUMENTS

Recommendation 1

Scenario 1

'Monitoring (at a site) shows that concession opportunities need to be limited to existing levels. The incumbent concessionaire(s) that use the site are at the end of their concession term and wish to apply for a renewal. What is the best method of allocation?'

31. Existing 'incumbent' concessionaires receive a preferential right to apply for new concessions to replace existing concessions once they expire.

And

32. Any other concession applications for the same opportunity are placed on hold until the existing concessionaire's application has been determined.

- The incumbent concessionaire(s) to be judged primarily against:
- Previous compliance with concession conditions
- The extent to which they have been subject to enforcement action

We are convinced that preferential rights will deliver the very best outcome for DOC, the environment, the Government, concessionaires, communities, the tourism industry and the public of New Zealand.

Positive benefits of Recommendation 1

Sustainability:

33. Concessionaires will be encouraged and confident to invest in their businesses. Better staff training, facilities and equipment will all flow from realistic business horizons

34. Concessionaires will be encouraged and confident to invest in environmental initiatives.

35. Managed growth will occur, increasing economic and social benefits to local communities - while increasing the value of tourism to New Zealand.

36. Strong professional relationships will develop between concessionaires and DOC based on trust and a mutual understanding of the issues.

37. Wholesalers and inbound operators will get the continuity and reliability they require when dealing with tourism operators.

38. Concessionaires will confidently invest in marketing and brand development – key components to a vibrant business.

Our objectives could be expressed as:

- *Quality visitor services and experience*
- *Fair market return on investments made*
- *Retention of business value*
- *Protection of the conservation estate*

On this basis, We fully support the view that has been expressed by TIA that provided an incumbent concession holder has performed to the conditions of their concession; they should receive a renewal of that concession. This would help ensure each of the above outcomes.

Further, we believe it is unreasonable for DOC to consider trading or selling to the highest bidder the value that has been created by an existing operator who will have invested significant time and money in developing an enterprise.

The place for a competitive process should be where no entity has already invested in creation of an enterprise. The core example would be if DOC creates a new opportunity in the sector, which currently does not exist.

*Dean Lawrie
Business Development Manager
Ngai Tahu Tourism*

*John Davies
Chairman
Trojan Holdings*

*Dave Hawkey
Chief Executive
Real Journeys*

*John Thorburn
General Manager
Ngai Tahu Tourism*

*Mark Quickfall
Managing Director
Totally Tourism*

A fair and reasonable outcome for existing concessionaires:

39. For concessionaires who have not complied with the conditions of their concession and/or have faced enforcement action, reallocation will not be a straightforward process and may result in their failure to secure a renewal – this too is fair and reasonable. The tourism industry does not support deliberate breaches of concession conditions. We too wish to retain and support professional, quality-driven businesses.

40. Existing concessionaires will be recognised for the work they have done, the risks they have taken, their significant investment over a long period and their goodwill and cooperation.
41. Preferential rights recognise business reality. Often businesses are losing money in the first 3-4 years as they invest in infrastructure and equipment, market their product and build their brand in a competitive environment. It may not be until years 8-10 that some real commercial success is achieved. It would not then be fair and reasonable to openly allocate the opportunity.

We believe that priority should be given to the operation in place provided that the operation is being run to industry standards. Existing operators have put significant investment into building businesses that have created employment and contributed significantly to the local economy.

*Kevin Boekholt
Methven Heliski*

Major objections to competitive allocation for incumbent operators

42. Subjecting incumbents to competitive allocation is completely contrary to the efforts of both DOC and the tourism industry to develop a collaborative approach to environmental management.
43. Applying competitive processes to incumbents signals a return to a more hierarchical management approach. It is regarded as threatening behaviour by many established concessionaires who are experiencing a sense of betrayal and vulnerability.

Whilst the principle [of competitive allocation] is important, it must be balanced against the competing need to recognise incumbents – the work they have done, the money and time they have spent developing the business, the risks they have taken and the importance of their businesses to the local community. In order to make the sort of long term community contributions of stable employment and spin offs for other businesses, operators must feel that the goodwill in their business is secure and that their investment is realisable at some point.

Good concessionaires build good long term businesses. They build brands, invest in infrastructure and invest in their relationships with DOC.

At Fox Glacier Guiding, we spend hundreds of thousands of dollars per annum on marketing the township of Fox Glacier, the Glacier region and our own business. To the extent this references the quality of the physical attributes of the concession, it benefits the wider tourism provider community (i.e. NZ as a whole). We have built a strong brand over 31 years. We also spend time and money investing in our relationship with DOC and helping to manage the DOC estate. We have invested in the town also. We have built a base building that we own freehold and we provide housing for 45 staff.

The short point is that we have taken a long term approach to building a quality, sustainable business. Why? Because our concession allows us to do this!

Quality Control?

44. Competitive allocation has been described as a tool to exit poor concessionaires and install those of better quality. There are two principal points to make on this issue.
45. The first is that using an allocation process to address poor operators results in the issue being addressed only at the end of a concession term. If there are performance issues with operators, these should be addressed throughout the term of the concession by using the mechanisms that are available.
46. In fact, if DOC does not address poor performance during the concession process, but uses this as a reason not to allocate a further concession, then the operator may be able to argue it has been unfairly treated as the matters were not raised at the appropriate time, i.e. DOC has failed to meet its contractual obligations as well.
47. The second point is that there are other mechanisms for dealing with poor operators. In particular, there are provisions in the legislation, and standard conditions in concession documents that give DOC considerable scope to raise performance issues with concessionaires during the term of concession. For example, an operator could be prosecuted if it was found to be breaching the conditions of its concession.
48. Further, there are standard clauses in concession documents that DOC could use to address poor performance issues. These include the clause that requires the concessionaire to comply with the reasonable directions of the Department, and this power of direction could be used at any point during the term of the concession to address performance issues. The same applies to standard conditions of concessions relating to suspension and termination of concessions where there have been breaches.
49. Similarly, there are other methods of ensuring a continual improvement of concessionaire performance (even for good concessionaires), and this does not necessarily require an allocation process to be run when concessions expire.

Our (and many other) concession is operated by entrepreneurial owner/operators who have created a new business through an invention/new idea. The capital investment and intellectual property [created by such creations] should be respected by DOC concession allocation decisions, especially where a new/unique business idea has been established - our business is an example of a part of a DOC reserve being utilised (and generating money for DOC) when otherwise previously was completely unused. At the end of the concession tenure, if it were to be opened up for others to attempt to take over there would be a significant advantage to a new

business because the infrastructure, systems and product awareness could be walked straight into without the costs of a start-up - this is completely unsatisfactory for incumbent concessionaires.

*Matt Hollyer
Shotover Canyon Swing*

Business Investment and Value:

50. It is recognised that competitive allocation of concessions encourages competition and could provide opportunities for new operators to establish. However as previously stated, open tendering completely disregards the significant investment of incumbent operators over a long period of time, their goodwill and cooperation, and their role in creating the business opportunities being tendered.
51. Operators have been of one voice in expressing their concern that competitive allocation will be a disincentive for those wishing to invest in quality tourism businesses and of even more concern, a disincentive for existing concessionaires to maintain quality standards and invest in their own businesses – particularly towards the end of the concession period.
52. A strong relationship exists between investment on and off public conservation land. Any lack of investment by operators on public conservation land will be mirrored by a decline in investment surrounding it. This will negatively affect communities and the visitor experience.
53. A serious risk to the industry is that financiers and investors may be unwilling to commit funds to a business that is facing competitive allocation in the short or medium term. This has major implications for concessionaires seeking to invest in their business.
54. Businesses do change hands via the natural laws of supply and demand. New operators seeking an opportunity can and do offer to buy existing businesses. Competitive allocation though completely disrupts this natural turnover by dramatically reducing the value of businesses, making them a poor proposition to sell, while the threat of competitive allocation becomes a disincentive to prospective buyers.

Legal Ramifications:

55. Given the crucial nature of decisions that will affect people's ability to stay in communities, we believe that DOC is exposing itself to frequent and determined legal battles. If a competitive process were adopted these challenges are likely to come from both existing concessionaires and new applicants – whichever fails to win a concession and feels the process has failed them. DOC would need to allocate significant resources to defend these challenges.
56. The competitive allocation process has the potential to anger both incumbents and new applicants.

57. Incumbents, because they see absolutely no reason to be subjected to competitive allocation when they have performed well over the life of their previous concession. Irrespective of weighted criteria, they will feel their livelihood is threatened and deeply resent the enormous imposition of such a process.
58. New applicants because they see weighted criteria so clearly favouring incumbents that to even apply for a concession seems futile.
59. And both parties, because of the cost and time involved - many will view it as simply revenue gathering by DOC.
60. A complicating legal factor will be concessionaires that are subject to different consents for differing time frames issued by different regulatory authorities. Real Journey's for example has consents from three different agencies (DOC, Southland District Council and Environment Southland) for the privilege of operating in the Doubtful Sound environ.

Weighted Criteria:

61. Significant emphasis has been put on the development of tendering using 'weighted' criteria to favour incumbents. The impression has been given that tendering can be designed in a way that will give 'good' concessionaires security that they will obtain a new concession.
62. We consider there are risks in this approach, and it may not be legally possible to design tender processes that give existing concessionaires any guarantees or assurances in terms of obtaining new concessions.
63. The only way that existing concessionaires could be favoured in a tender or allocation process would be on the basis of criteria that focused on particular attributes held by those concessionaires. For example, there may be criteria in a tender process that relates to knowledge of the area and the ability to carry out a safe and informative operation in that area.
64. On the face of it, this may appear to favour an existing concessionaire who may be able to demonstrate an extensive knowledge of the area and experience in running a safe and informative operation. However, there is nothing to prevent an overseas operator also satisfying the criteria by demonstrating overseas experience in running similar operations and by acquiring staff with local knowledge who can satisfy the "*local knowledge*" criteria. While the existing concessionaire may be successful in the tender process, there is no assurance of that outcome.
65. Further, we consider that DOC could face legal difficulties if it attempts to design tender processes that are intended to favour existing operators. That is not to say that there cannot be criteria in the tender (with appropriate weightings) that reflect the attributes that DOC is seeking, and that existing concessionaires may well possess. The "*local knowledge*" attribute would be a good example of this. However, DOC would have to do this for the purpose of ensuring that the successful tenderer possessed local knowledge, rather than to ensure that the existing concessionaire obtained a new concession.

66. For all these all these reasons TIA has very little faith on assurances that 'good' concessionaires will be successful through tender or other allocation processes.
67. As part of a written submission received on this issue, TIA and DOC received a template and model example showing proposed assessment criteria 'in case' competitive allocation is chosen. The document is impressive in its level of detail, but this in itself highlights the challenges facing DOC if it decides to pursue a regime of competitive allocation. It is complex and subjective and we believe that resulting decisions would be continually challenged.

If limits are to be imposed (as they have been) then in the absence of any major operational flaws the company that developed the business should have prior rights. We therefore disagree strongly with the Department's use of tendering in some activities, as it is possible the financial return to the Department to be more important than safety standards.

*Bryan Carter
Alpine Guides (Aoraki) Ltd*

Equity and Business Reality:

68. DOC has indicated that certain concessionaires will never face competitive allocation because they have such significant infrastructure, that to do so would be inappropriate. A major challenge then for DOC is deciding when concessionaires become exempt from competitive allocation?

The existing operator should be given first opportunity to apply for the concession.

Reason- There may not have been that opportunity prior to the existing operator making a business in the area.

To be able to provide the best possible service to the customer, existing operators need to have some security of tenure. Even a small operator has a huge chunk of their resources tied up.

*Joyce Kolk and Johan Groters
Wairaurahiri Jet*

69. Many small concessionaires have invested hugely in their business and carry levels of financial risk that may be proportionately equal to or greater than that of large concessionaires. Additionally they will have a huge commitment to their business, community and their environment.
70. While we are aware that tendering is 'a way of life' for many in business, small tourism businesses are often established in remote locations among small communities and are ill suited for such a process. Concessionaires, their families and staff are generally fully involved in their communities. They have chosen a particular lifestyle and any threat to this, will (and has) provoked an immediate and heartfelt response.
71. Put bluntly, for many concessionaires their business is their life. They live and breathe the day to day challenges and they contribute in every way to the

environment in which they have chosen to live. They provide visitors with a unique product because of their experience, passion and commitment.

72. To subject this type of operator to competitive allocation we believe to be a travesty of justice.
73. Creating 'winners' and 'losers' i.e. pitching established (and new) operators against each other within communities that exist on tourism, is a recipe for social unease and a fragmented tourism industry.
74. Many concessionaires are taking forward visitor bookings two to three years in advance. Competitive allocation threatens these bookings and has the potential to completely disrupt visitor itineraries and cause damage to the reputation of the New Zealand tourism industry.
75. We believe competitive allocation will have a significant impact for concessionaires trying to attract, retain and develop staff. Just as concessionaires feel threatened by allocation of this type, staff too will suffer a major drop in morale; it will be impossible for business owners to provide any long-term assurances of employment, leading to a range of staffing issues.
76. Should a concessionaire fail in their renewal attempt, staff redundancy may become a complicated and expensive issue.

Resources:

77. TIA is concerned that DOC doesn't have sufficient resources in skilled personnel to run competitive allocation processes. Early attempts have already highlighted different interpretation of tendering material leading to confusion for both concessionaires and DOC. The ability of DOC staff to accurately and consistently judge applicants against complex, weighted and often subjective criteria concerns us. Decisions will be challenged.

Air Safaris has been in the tourist and charter aviation business for 35 years. Although never a concession holder itself, Air Safaris works amongst operations that do hold concessions and I have personally observed and followed concession issues throughout this period.

It is our view that a concessionaire who has built a sound business and is providing a high quality service with the best available equipment for the operation, and who is working to the best industry standards, should not be threatened with losing its concession in a tendering process. It is our view that reasonable security and term of concession is imperative for an operator to be able to have the confidence to invest in the highest quality equipment, training, and resources, thus enabling them to develop a top class operation.

We, as a company, would not actively work to challenge an existing concessionaire if we considered they were running a good operation. Rather we would look to new opportunities, or buying in to an existing concession. Conversely, we would be very concerned to see an operator holding on to a concession if they were not maintaining high standards of equipment and service. Richard Rayward, CEO Air Safaris

Recommendation 1

Scenario 2

Monitoring (at a site) shows that activity levels can be increased beyond that currently allocated to incumbents. How should that additional capacity be allocated?

OR

DOC identifies a new concession opportunity for which it is expected that demand will exceed supply. How should this new opportunity be allocated?

78. That allocation of additional capacity to be considered in the same way as allocation of a new opportunity.
79. That in general, opportunities of this nature should be allocated via competitive allocation.
80. That DOC continues to work with the tourism industry to develop criteria (and criteria weighting) against which applicants shall be assessed and selected.
81. DOC establishes an activity fee (for each competitive process) common to all operators prior to the competitive allocation process i.e. allocation is decided upon primary criteria only.

While we are firmly opposed to competitive allocation when incumbent operators are involved, we do believe in the case of 'additional' or 'new' opportunities it is generally the fairest option.

82. We wish to signal the tourism industry's desire to assist and be involved as DOC develops measurable and appropriately weighted allocation criteria.
83. We are opposed to the current 'two envelope' tendering approach that introduces a bidding element into the allocation process. We believe concessionaires should be selected from the primary criteria only; activity fees should be the same for all applicants.
84. The 'second envelope' system introduces a level of confusion and suspicion that threatens to undermine the entire process. It does nothing to help attract or select the best concessionaires.
85. Below we have listed a range of primary criteria suggested by operators that could form the basis for a nationally agreed cluster. We have not ranked, weighted or expanded on the criteria sent to us because we believe further industry engagement will be required to achieve this.
86. Suggestions for primary criteria:
 - Previous tourism experience
 - Operator experience (in tourism and in the activity applied for)

- Local experience in that terrain
- Commitment and ties to the local community
- Safety record
- Appropriate insurance cover
- Risk management approach
- Quality (including Qualmark and/or other independent assessment marks)
- Record of compliance and non compliance (for previous concessionaires)
- Awareness of likely impacts and mitigation plan
- Industry referees
- Proof of viability of proposed business
- Past and intended contribution to the environment
- Customer feedback
- Interpretive material

Recommendation 2: Concession terms

87. Concessionaires enter a 'rolling renewal' agreement with DOC after negotiating terms and conditions.
88. Preferred length of tenure: 10 years on a 'rolling renewal' basis.
89. Annual reviews and a subsequent 1-year extension of tenure on the basis of the operator achieving established operating standards during the previous 12 months (this would provide operators with a continual 10-year horizon as long as they met operating requirements – hence the term 'rolling renewal').
90. 5-year reviews undertaken, permitting DOC to assess/renege the financial basis of the agreement in light of market forces.
91. Non complying operators would not have their tenure automatically extended. Serious or repeated cases of non-compliance would lead to cancellation of an operator's licence.
92. That DOC fully investigate the 'rolling renewal' concept as it may apply to the New Zealand situation.

93. If, after thorough research, 'rolling renewals' are found not to be the best fit for New Zealand, we recommend that 10 years be the minimum fixed term with a maximum of 30 years for capital intensive operations.

94. DOC establishes a system to regularly review (and when necessary enforce) concession compliance with agreed conditions and established operating procedures.

Rolling renewals:

95. In 2003 a paper was produced by a government/industry working group in Queensland Australia to investigate issues considered to be constraining the development of a commercially viable and ecologically sustainable tourism industry in that State.

96. Members of the group included Queensland Parks and Wildlife Service, Tourism Council Australia, Department of Natural Resources (State Forests) and the Great Barrier Reef Marine Park Authority.

97. One of the issues addressed by the group was length of tenure.

Short term or finite period businesses often have a "get the money and run" mentality. And realistically if they have no long term security why should they be otherwise? The Public also deserve high quality, knowledgeable and experienced concessionaires for the best possible experience. It often takes many years to build that level of experience and particularly in the subtle nuances of their own particular niche.

*Peter Tait
Sails Ashore*

98. The recommendation from the group was the 'rolling renewal' which they believed would provide for ongoing operational improvements to be implemented, greater business certainty with a 10-year horizon and pricing certainty for at least 5 years.

99. From our discussions with operators, it is clear that they favour a pragmatic allocation solution like this – a solution that provides business certainty, but also ensures a far more proactive approach from DOC to auditing, supporting and if necessary disciplining operators during the term of their concession.

100. It is an option that appears to provide a good balance between greater business certainty for operators and the opportunity for regular reviews by DOC.

101. We are not aware if 'rolling renewals' has been considered for New Zealand, however the concept fits very well with the outcomes sought by both DOC, the New Zealand government and concessionaires i.e. Business certainty for 'good', complying operators / business uncertainty (and ultimately expulsion) for 'poor', non-complying concessionaires – and a much closer DOC/concessionaire relationship.

102. Workshop feedback and subsequent submissions indicated strongly the need for longer terms that will encourage forward planning, investment, marketing and employment. Longer terms are also likely to stimulate increased investment in environmental initiatives and reduce the burden of administration processes.

If our concession was for a short period, we would probably still find a way to realize a reasonable return on our investment. However, we would approach our business differently and take a short term view. If we only had say 10 years to make our money, we may not invest in relationships, buildings, infrastructure, long term brand building. We would be forced to take a much shorter term view to ensure we realize a return.

*Adrian Januskiewicz
Fox Glacier Guides*

Regular Reviews:

103. A common theme throughout the consultation has been a call from concessionaires for DOC representatives to periodically visit their business. Concessionaires want to know immediately if DOC has concerns about any areas of activity so these can be quickly addressed – not surface as a surprise at the time of renewal. At least some of these visits could be used to check actual performance against concession conditions and discuss possible changes or additions to conditions.
104. This regular contact throughout the life of the concession would have a range of positive outcomes including:
105. Assisting in the development of a strong professional relationship between DOC and concessionaires based on a common understanding of the issues.
106. Contributing to a shared management vision.
107. Lowering the likelihood of concessionaires unintentionally breaching their concession conditions.
108. Assisting DOC staff and concessionaires to better understand each others roles and challenges.

If it is a low-impact activity such as guided walking, a minimum of 10 years is needed. Where substantial capital investment is required a longer term, 20-30 years should be granted, but with regular monitoring.

*Daniel Murphy
Hiking New Zealand*

Recommendation 3: Limit setting

109. DOC gives priority to addressing the issues surrounding limit setting, with particular emphasis placed on 114 below.

Triggers for Setting Limits:

110. At every workshop and in subsequent written submissions, a lot of concern has been expressed by concessionaires about the origin of limits. There is no doubt that lack of confidence in the methodology underpinning limits is a key issue for DOC to address.
111. The lack of faith shown by many operators in carrying capacities set by DOC may largely be due to a lack of consultation, but it is also affected by perceptions of inequity between restrictions on commercial operators and open access for free independent travellers (FITs).
112. There is a growing industry opinion that in many cases, under-management rather than overcrowding is the real issue.
113. TIA is aware that concession allocation mechanisms are the focus of this submission, but we believe the risk to DOC of introducing competitive allocation over the top of poorly substantiated limits is a significant one. Unless concessionaires understand and are involved with the limit setting process it is unlikely that any concession allocation process will be particularly successful.
114. TIA believes it is vital that:
- DOC accelerates its monitoring programme to ensure management decisions (especially those involving limits) are well founded and can be substantiated. Any allocation process will be threatened by concessionaire perceptions that limits are invalid or unsubstantiated.
 - Development of monitoring tools and the monitoring itself is undertaken with the involvement of concessionaires. Good examples exist now of such a collaborative approach e.g. aircraft noise monitoring in the Franz Josef and Fox Valleys. The closer DOC and concessionaires can work on monitoring, the greater the chance of jointly agreed and successfully implemented management responses.
 - Prior to setting limits, DOC must liaise with concessionaires about *their* observations and management suggestions. Concessionaires 'live and breath' their environment, they observe change day to day and year to year and have much to offer DOC in terms of advice and practical management solutions.
 - Gross under-use (or nil use) of concession allocation must be addressed before classifying an area as 'full'. It is in no ones interest to have concessionaires using none (or only a small portion) of their allocation – yet contributing to limit setting because of their *potential* impact.

- That DOC seeks to address the inequity of placing limits on commercial operations while doing little to manage the Free Independent Traveller (FIT). Concessionaires are more and more feeling the pressure of limits, while in many situations little attention is being paid to the often far more damaging impact of unguided visitors. Followed to its conclusion, this management philosophy will lead to the loss of the most tightly controlled and low impact visitor groups.

Restricting numbers of the guided sector of the user spectrum without applying similar measures to the unguided public achieves very little to reduce crowding. Users are simply being pushed into the unguided sector.

*Gottlieb Braun-Elwert
Alpine Recreation*

Recommendation 4: Activity fees

115. DOC adopts a nationally consistent concession fee structure based on payment in arrears for actual use.
116. Concessionaire allocation be reviewed and adjusted as appropriate, by mutual agreement and in an informed manner, to better reflect actual use.
117. DOC work with the tourism industry to develop a nationally consistent approach to setting concession fees.

Activity fees:

118. As with 'limit setting', issues about activity fees are not the focus of this submission process; however fee structures are a component of competitive and non-competitive allocation that is hugely important to concessionaires.
119. Adoption of a nationally consistent fee structure and payment regime reflecting business reality is pivotal to industry acceptance and the ultimate success of allocation processes.
120. TIA is vehemently opposed to a 'use it or lose it' condition that requires concessionaires to pay for their entire allocation in advance, irrespective of actual use.
121. This is an unfair condition for any concessionaire – how can they estimate (with any accuracy) annual usage for the next 10 years (for example) when the opportunity may be new and untested? Concessionaire profit margins are often tight – if poor weather and global events mean low usage, enforced payment of the full allocation could be a savage financial blow.
122. We believe a measure of actual activity versus that allocated should form part of the annual or biennial discussions between DOC and concessionaires –

allocation may then be adjusted (by mutual agreement and in an informed manner) to better reflect actual use. This is a fairer system that recognises operational reality.

123. The Association believes that it is imperative that the Department adopts a consistent approach to setting concession fees around the country. There are a wide range of different fees charged from turnover percentages, to fixed fees, to fees based on the number of people guided by the concessionaires.
124. TIA believes this creates uncertainty in terms of forward planning by concessionaires, particularly where a number of concessionaires operate widely throughout the country and are subjected to different regimes in different conservancies.

TIA's approach to conservation and tourism

Conservation and Tourism

"...enjoying public conservation lands and waters is a popular activity for many New Zealanders and overseas visitors, and outdoor recreation is often perceived by many to be central to our identity and way of life..."¹

125. The tourism industry supports balanced conservation management policies that sustain economic development, provide a social return for New Zealanders and allow memorable visitor experiences to be delivered. Sustainable tourism businesses that provide a high quality product are dependant on a collaborative working relationship with the Department of Conservation (DOC).
126. New Zealand's environment and scenery is a major draw card for overseas visitors forming the basis of the "100% pure" marketing brand, which underpins the country's gross domestic product (GDP) and economic growth. The land, sea and air operators that ply the national parks and public estates ensure domestic and international visitors are able to enjoy New Zealand's natural environment and it is essential that this access is continued. Tourism businesses also invest and develop public amenities and infrastructure that improve the quality of the visitor experience.
127. TIA supports the following principles for conservation management:
 - a) polices that sustain economic development and tourism businesses while protecting the environment in which they operate;
 - b) legislation interpreted and applied in a way that leads to the achievement of a mutual relationship between use and conservation;

¹ General Policy for National Parks, New Zealand Conservation Authority, April 2005, p.7.

- c) lands that provide an economic and social return to New Zealand in a way that is consistent with the values that New Zealanders place on them;
 - d) a fair rate paid by concessionaires for use of public lands to run their businesses in return for a fair consultative process in the management of that land;
 - e) meeting visitor expectations of excellence by insisting concession holders meet quality industry standards;
 - f) ongoing and robust review of DOC's research priorities and capabilities so future decisions are always made on a sound evidence basis;
 - g) policies that are cognisant of the variety of effects imposed by each user group and the nature of benefits they receive from this use; and
 - h) consistent New Zealand wide conservation management policies and standard operating procedures that acknowledge locally justified variations
128. TIA acknowledges that visitor numbers are growing and increasing the pressure on the natural resources and infrastructure of New Zealand's national parks and public lands and believes it is vital that DOC continues to work closely with the tourism sector to effectively manage this growth. In many cases we believe the issue is one of under-management rather than overcrowding – prescriptive limits are one tool, but a stronger more effective one is collaborative management that seeks operational and facility based solutions. In this way a park's visitor-carrying capacity can be increased to meet demand without increasing social or environmental impact.
129. TIA believes that mutual acceptance of the above principles lays the foundation for a sound and effective working relationship with DOC, based on a "no-surprises", consultative approach to the management of issues as they arise, as well as encouraging free and frank discussion. It is essential that conservation management strategies or plans are disseminated appropriately, at a national level, and are consistent with legislative criteria.
130. The submission on concession allocation is consistent with the above stated aims of TIA for a balanced conservation management strategy that acknowledges the contribution tourism makes to the economy along with the need to preserve New Zealand's natural environment for future generations.

Background Information on the Tourism Industry Association New Zealand (TIA)

131. The Tourism Industry Association New Zealand (TIA) advocates for the interests of the tourism industry in New Zealand. The businesses we represent generate more than 85% of New Zealand's tourism-related revenue.
132. Tourism is a \$17.2 billion industry (\$7.4b from international and \$9.8 from domestic tourism) with international tourist expenditure accounting for 18.5% of New Zealand's total export earnings.² The industry, directly and indirectly, employs 1 in 10 New Zealanders in a diverse range of businesses – the majority of which are small and medium sized enterprises. Not only is tourism important because of its size, representing 9.4% of New Zealand's GDP, it is:
- Highly employment intensive;
 - Regionally disparate; and
 - Very diverse - ranging from large stock exchange listed companies to small cottage industries.
133. These businesses cover a range of tourism-related activities – hospitality, transport, adventure and activities, attractions and retail and related tourism services. In many cases, regional tourism businesses have developed around regional assets divested by other industries and have revitalised those assets and the communities that depend on them.
134. The tourism industry in New Zealand consists of more than 8,000 small and medium sized businesses. Of these businesses, most employ less than five people.
135. New Zealand welcomes more than two million overseas visitors to its shores every year. The domestic tourism industry is also important in helping to sustain a vibrant tourism industry. TIA estimates that over 75 million visitor nights are spent by New Zealanders every year.

Tourism Industry Association New Zealand (TIA) December 2006

² "Key Tourism Statistics – March 2006", Ministry of Tourism website

Appendix one

A copy of the letter written for the meeting on 11 November 2005 between DOC, concessionaires and TIA.

Suggested ways forward between DOC and Fiordland Concessionaires.

Background

Fiordland concessionaires are in the main small business people who have:

- chosen to live outside mainstream New Zealand
- committed themselves to providing visitor experiences which enable both New Zealanders and international tourists to enjoy our icon National Park
- contributed significant amounts of their own resources to conserving aspects of Fiordland National Park.

In doing this they play a crucial role enabling DOC to meet its statutory obligations to provide access to, and education about, the conservation lands which belong to all New Zealanders and, in this case, to our most iconic National Park. Milford Sound in particular has been an international visitor icon for many decades. Mitre Peak has graced everything from government advertising campaigns, to our chocolate boxes and cake tins, to travel brochures found on the high street in UK, Europe, North America, Asia and Australia.

Concessionaires are well aware of the international visitor growth that has occurred over the past ten to twenty years and the impact – both positive and negative – on Fiordland National Park. Their individual and cumulative experience operating daily in the Park is an extraordinary resource which they would willingly make available to DOC. This is particularly relevant in the light of the high turnover of DOC staff in Fiordland and Southland.

Most Concessionaires run that most vulnerable of businesses – the small owner operated business. It's a lifestyle they have chosen and love. It's also very risky and very demanding on their personal resources. They don't have salaries that arrive fortnightly in their bank accounts. Rather – in good part because of their passion and commitment to the environment, conservation and Fiordland National Park – their ability to feed their families and pay their mortgage is somewhat reliant on their commercial arrangements and business partnerships with DOC.

It is not well understood that small owner operated tourism businesses make very little, if any financial return in New Zealand. Tourism Industry Association and Ministry of Tourism have a three year study underway at Lincoln University to understand why this and to develop tools to enable operators to improve this situation.

In recent times high levels of uncertainty, one can best be described as 'shifting ground' and a general 'angst' have crept into operators' arrangements and partnerships with DOC. This has resulted in worry and stress for Concessionaires

and made it very difficult to plan and manage their businesses in commercially accepted ways.

Core to these concerns is a lack of clarity and documentation about new policies, procedures, allocation mechanisms and the like. If these were shared and if DOC's vision and agenda for Fiordland National Park was jointly thrashed out with Concessionaires (who are after all on the ground daily) to the point where something rigorous and workable was on the table, the power of collaboration and everyone working together in a mutually respectful way would be enormous.

It is generally understood that change is a given. Operators want sustainability. They can accept fair and reasonable treatment if they understand the context, the big picture and the motivations. To date, mistakes have been made by both Concessionaires and DOC. The current situation cannot continue – it is affecting economic and personal wellbeing.

It is time to put our relationship onto a new footing to work together to create a new era of management of Fiordland National Park.

Attached are the key areas requiring clarification for Concessionaires at this time.

Fiona Luhrs
Chief Executive
Tourism Industry Association New Zealand

On behalf of Fiordland Concessionaires
11 November 2005

Appendix two

Invitation, background information and submission sheet sent to concessionaires in areas most likely to be affected by concession issues relating to demand exceeding supply.

30 June 2006

Name
Company
Address 1
Address 2
City

Dear

Invitation to Forum on Concession Allocations

The Tourism Industry Association New Zealand (TIA) and the Department of Conservation (DOC) warmly invite you to a meeting in your region to discuss the allocation of concessions by DOC.

Over time, it has become clear that the current concession allocation process is a source of real concern to many DOC concessionaires.

TIA is also very aware that your businesses and livelihoods rely on the availability of concession opportunities.

Following the forums we will be requesting written feedback from you which both organisations will use to establish some agreed principles and practices that can be applied to future allocation processes.

Please read the background information we've attached, as well as the schedule of proposed meetings.

We would really appreciate your participation – this is a chance to have your views heard and acted upon.

We look forward to seeing you on the night – no RSVP is necessary.

Kind regards



Alastair Morrison
Acting Chief Executive
Department of Conservation



Fiona Luhrs
Chief Executive
Tourism Industry Association

**The Tourism Industry Association (TIA) invites you
to a meeting to discuss the allocation of concessions by the
Department of Conservation (DOC) where supply is limited**

**Please see the meeting
schedule within this document**

Entry is free

No RSVP is necessary – just turn up on the night

Background to Meeting with DOC Concessionaires

1. The issue

More and more key tourist destinations in National Parks and other conservation areas are feeling increasing pressure from visitors. Evidence is emerging that some sites may be reaching their capacity to handle the effects of high visitor use. In some places the effects are associated with perceived crowding and the impact on the visitor experience. In other places low visitor numbers may still have physical impacts on fragile areas such as sub-alpine vegetation.

2. Government Key Objectives

When considering the allocation of concessions in limited supply situations, the government has several key objectives that must be met. These are:

- Protection of conservation values,
- Quality visitor services and experiences,
- Open and equitable allocation processes, including the attributes and performance of incumbent concessionaires and other applicants recognised,
- A fair market return on crown assets, and
- Avoiding long term monopolies, while recognising that in limited circumstances, it may be sensible and practical to have sole concessionaires.

3. The management response

DOC is increasingly responding to this growing pressure by proposing limits on the amount of commercial tourism activity that should be permitted at particularly busy or fragile sites.

- This can have a direct effect on tourism operators by limiting the supply of concession opportunities. For example, the supply of helicopter landing opportunities on the Fox and Franz Josef Glaciers has been limited for many years (to three companies with three machines each, permitted to land at only five sites) as a mechanism to control the noise effects on people walking on the glaciers below.

As places become subject to limits through management plans and other planning processes, the matter of how these limited opportunities are to be allocated to concessionaires becomes an important issue.

- The approach of DOC to this allocation issue depends to a great extent on the relationship between the supply of concession opportunities and the demand for them.
- For example, when the demand is much less than the available supply, the concessions can be allocated by a wide range of mechanisms including “first-

in-first-served". There may be no need to use allocation processes in these situations. On the other hand, where there is significantly more demand for a set of concession opportunities than there is supply of them, it may be necessary to conduct a more open, 'contestable' process to ensure equitable allocation of the concessions.

Note: Most concessions will continue to be allocated in response to applications in situations where there is no limit on the number of concessions to be issued for that location. It is estimated that approximately 90% of concessions will continue to be allocated in response to applications. The allocation issues to be discussed in this process do not apply in those circumstances.

4. Why we need to talk to you

Each time a certain place or situation has a limit on the supply of concession opportunities, a number of issues have to be considered. Some examples include:

- Who should get these opportunities? Should the chance to apply be openly available or restricted to only a certain group of people?
- If an opportunity is to be opened up for others to apply, what criteria will guide those decisions?
- In what circumstances would an opportunity not be open?
- In some circumstances the available supply of concessions is mostly or completely taken up by existing operators – how would DOC recognise the track record and expertise of these operators if the allocation of these concession rights was opened up for others to have a chance to apply?
- What length of term should be given to a concessionaire once the limited opportunity is allocated? Should length of term vary depending on circumstance and/or activity and the need to balance effects and the need for a concessionaire to get a fair return on investment?
- What sort of transition time is required to fairly manage a change from an "open" situation (no limits on supply), through to a "limited supply" situation?
- How do we ensure that that the interests of the tourism industry, and the government's key objectives, are both met?

5. What are you being invited to?

Tourism Industry Association (TIA) and DOC will be jointly visiting a series of regional centres in the South Island to meet with TIA Members and other concessionaires to:

- present the background to this issue and the government's objectives
- hear from operators what their key objectives and interests are
- hear from operators what mechanisms and approaches they see are best to achieve both the government and operators' objectives and interests
- answer any queries you may have.

Proposed workshop locations and dates are as follows:

Location	Date	Time	Venue	Address
Motueka	Thursday 13 th July	7 – 9 pm	Motueka Memorial Hall	Pah St, Motueka
Christchurch	Tuesday 18 th July	7 – 9 pm	Pavilions Hotel	42 Papanui Rd, ChCh
Wellington*	Thursday 24 th August	TBA	Tourism Industry Conference	
Wanaka	Wednesday 30 th August	1 – 3 pm	Wanaka Town Hall	Ardmore St, Wanaka
Queenstown	Wednesday 30 th August	7 – 9 pm	Queenstown Memorial Hall	Memorial St, Queenstow n
Te Anau	Thursday 31st August	7 – 9 pm	Te Anau Hotel	Lake Front Drive, Te Anau
Franz Josef Glacier	Monday 11th September	7 – 9pm	Scenic Circle Hotel	SH6, Franz Josef Glacier

* Wellington meeting will be held as a 'break-out' session at the Tourism Industry Conference.

6. Next Steps

It is important to note that DOC has no statutory requirement to consult in this manner. However, the Ministers of Tourism and Conservation have agreed that industry consultation will bring the best outcome for both tourism businesses and conservation objectives.

The process is intended to establish agreed principles and practices that will be applied to future allocation processes.

Member feedback to TIA will form the basis of their submission on the allocation process, which is expected by the end of October 2006. Non-TIA concessionaires can also make submissions to TIA and directly to DOC. The Ministry of Tourism will

be involved in developing the agreed principles and practices. Concessionaires will be invited to make written comments to DOC and TIA after the workshops.

7. Who can I contact?

Geoff Ensor Sector Manager TIA Ph: 04 496 4889 Email: geoff.ensor@tiaz.org.nz	Harry Maher Department of Conservation PO Box 13-049, Christchurch Email: hmaher@doc.govt.nz
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SUBMISSION RESPONSE SHEET

The Tourism Industry Association (TIA) and the

**Department of Conservation (DOC) invite you to submit on the issue of
concession allocation by DOC when supply is limited.**

As well as attending evening meetings, we welcome a written submission received in any form, but preferably email. In your submission, please answer some or all of the questions below:

Each time a certain place or situation has a limit on the supply of concession opportunities, a number of issues have to be considered. Some examples include:

- 1. Who should get these opportunities? Should the chance to apply be openly available or restricted to only a certain group of people?*
- 2. If an opportunity is to be opened up for others to apply, what criteria will guide those decisions?*
- 3. In what circumstances would an opportunity not be open?*

4. *In some circumstances the available supply of concessions is mostly or completely taken up by existing operators – how would DOC recognise the track record and expertise of these operators if the allocation of these concession rights was opened up for others to have a chance to apply?*
5. *What length of term should be given to a concessionaire once the limited opportunity is allocated? Should length of term vary depending on circumstance and/or activity and the need to balance effects and the need for a concessionaire to get a fair return on investment?*
6. *What sort of transition time is required to fairly manage a change from an “open” situation (no limits on supply), through to a “limited supply” situation?*

All submissions (in any format) must contain the following contact details:

Name / Telephone / Organisation (if applicable) / email / Postal address

They should be emailed or posted to Geoff Ensor (TIA) and Harry Maher (DOC) by 30 September 2006

Geoff Ensor – TIA

PO Box 1697

Wellington

Phone 04 496 4889

geoff.ensor@tianza.org.nz

Harry Maher - DOC

PO Box 13-049

Christchurch

Phone 03 371 3741

hmaher@doc.govt.nz

Appendix three

A case study to show how TIA's approach on this concession issue is entirely consistent, and is supported by, existing Government policy concerning the use of public resources.

Commercial use of Public land: Aquaculture - a case study:

Resource Management Act precedents

1. As part of the 2004 and 2005 reforms of the RMA, the rights of existing consent holders were strengthened. In the 2004 aquaculture law reform ("Aquaculture Reform") the RMA was amended to give existing marine farmers preferential rights to apply for replacement consents. Similarly, in 2005 the RMA was amended ("2005 RMA Reform") to give similar preferential rights to holders of resource consents relating to other "*public*" resources. These are explained further below.

Aquaculture law reforms

2. As part of the Aquaculture Reform there were new provisions inserted into the RMA to give preferential application rights to existing consent holders for marine farms.
3. In general terms, the amendments resulted in:
 - A preferential right for consent holders to apply for a new consent to replace existing consents once they expire; and
 - Any other applications for consent for the same area being placed on hold until the existing consent holder's application has been determined.
4. The Aquaculture Reform also introduced the concept that existing consent holders would be subject to scrutiny in terms of their compliance with relevant regulatory controls, and their ability to conduct a quality operation. Under section 165ZJ of the RMA, the consent authority is to consider the usual criteria under the RMA, and in addition it must also consider:
 - Compliance with the relevant regional coastal plan;
 - Compliance with the conditions of a resource consent; and
 - Use of "*current good industry practice*" for any current aquaculture activity.
5. Therefore, the effect of the Aquaculture Reform is that the consent holders are given a preferential right to apply for a new consent to replace existing consents once they expire, but that they are subject to scrutiny in terms of compliance with regulatory controls and use of current good industry practice.

The 2005 RMA Reforms

6. As part of the 2005 RMA Reforms, the preference provided to existing consent holders in the aquaculture context was extended to other holders of RMA

- consents for “*public resources*”. We note that these new provisions do not actually take effect in the RMA until August 2008, but they are still relevant for the purposes of this analysis.
7. In summary, the amendments will result in:
 - A preferential right for consent holders to apply for a new consent to replace existing consents once they expire; and
 - Any other applications for consent for the same resource being placed on hold until the existing consent holder’s application has been determined.
 8. In considering this new application by the existing consent holder, the consent authority is to consider the usual criteria under the RMA, and in addition it must also consider:
 - The efficiency of the consent holder’s use of the resource; and
 - The use of “*industry good practice*” by the consent holder; and
 - The extent to which the consent holder has been subject to enforcement action under the RMA.
 9. Therefore, this is similar to the Aquaculture Reform in that consent holders are given a preference to apply for a new consent to replace existing consents once they expire, but the consent holder would be subject to scrutiny in terms of the manner in which the consent has been exercised in the past.
 10. The “*public resources*” that are covered by the 2005 RMA Reform include activities in the coastal marine area (section 12 RMA), the use of the beds of lakes and rivers (section 13 RMA), activities in relation to water (section 14 RMA) and the discharge of contaminants (section 15 RMA). As discussed, these are uses of public resources which have some similarity to the use of public conservation land or resources by concessionaires.
 11. The other relevant provision that was inserted by the 2005 RMA Reform was section 104(2A) which is worded as follows:

“When considering an application affected by section 124, the consent authority must have regard to the value of the investment of the existing consent holder.”
 12. This is a recognition by the Government of the value of investment by existing consent holders.
 13. We believe it is significant that the Government has seen fit to give preference to existing consent holders under the RMA and we are convinced that a similar approach could apply in relation to concessionaires under the conservation legislation. The RMA reforms addressed private rights over public resources, and we think there is a strong analogy with the rights of concessionaires over conservation land and resources. Further, the Government has recognised the importance of investment by existing operators under the RMA
 14. We appreciate the Government is not bound in any legal or policy sense to apply the same approach to concessions.

15. The Government's approach to protecting the rights of existing consent holders through the Aquaculture Reform is reflected in the Parliamentary debates during that reform process. In the First Reading of the Aquaculture Reform Bill, on 26 August 2004, the Hon. Benson-Pope made the following comment:

"The industry has told us that the current 'first come, first served' approach for allocating aquaculture space is not the best option when a resource consent expires. Now when a marine farm resource consent expires, provided it is still within an aquaculture management area and the proposed marine farming operation will be substantially the same, the incumbent's application will be considered first, if he or she meets specified criteria. Those criteria include complying with the regional coastal plan, showing a good track record in meeting consent conditions, and whether the marine farm demonstrates current industry good practice. That mechanism appropriately recognises a reasonable expectation of commercial certainty for operators, but for the avoidance of any possible doubt I state clearly that the procedure in no way confers occupation rights in perpetuity over public space."

16. In the Second Reading of the Aquaculture Reform Bill, the Minister made the following comment:

"When a marine farm resource consent expires, if the farm is still within an aquaculture management area and the operation remains similar, the incumbent's application will be considered first. Where the existing farmer is using the space properly, we want to provide that he or she continues to do so.

Certainty brings benefits both to the industry and to the community. However, we do not believe that rights in perpetuity are appropriate for what is, after all, public space."

17. Clearly the Government was seeking to provide some commercial certainty for existing rights holders, while ensuring that it was not granting rights in perpetuity. We believe there are many similarities between the Aquaculture example and concession allocation on public conservation land.