

**MARLBOROUGH SOUNDS  
RESOURCE MANAGEMENT PLAN**

**Plan Change 16**

**WAIRAU AWATERE  
RESOURCE MANAGEMENT PLAN**

**Plan Change 53**

# **Officers Report**

**Allocation of Authorisations**

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Hearing Commencing: 3 November 2009

<b>1. Introduction .....</b>	<b>3</b>
<b>3. Issues Raised .....</b>	<b>6</b>
<b>Issue A) General Support.....</b>	<b>6</b>
<b>Issue B) Expansion of Marine Farming in Marlborough.....</b>	<b>6</b>
<b>Issue C) The Proposed Allocation Method .....</b>	<b>7</b>
Discussion.....	14
<b>Issue D) The S165I Report. ....</b>	<b>14</b>
Discussion.....	15
<b>Issue E) Requests for the provision review to take place first. ....</b>	<b>15</b>
Discussion.....	17
<b>Issue F) Specific Policies and Objectives Sought.....</b>	<b>18</b>
Discussion.....	19
<b>Issue G) Contrary to the Plan and the NZCPS .....</b>	<b>19</b>
Discussion.....	20
<b>Issue G) Cancellation or Expiry of Coastal Permits (W.39.A.2.1.2.4 &amp; M35A.2.1.2.4 )</b>	<b>20</b>
Discussion.....	21
<b>Issue H) Inclusion of Existing Marine Farms into the Plans .....</b>	<b>21</b>
Discussion.....	21
<b>Issue I) Aquaculture Management- W9.1.2 &amp; M9.1.2 .....</b>	<b>22</b>
Discussion: .....	22
<b>Issue J) Use of Authorisations .....</b>	<b>23</b>
Discussions .....	23
<b>4. Recommended Decisions .....</b>	<b>25</b>

# 1. Introduction

## Background

On the 1 January 2005 the Resource Management Act (No.2) 2004 was enacted and the Amendment Act introduced sweeping changes to the way in which aquaculture was managed in New Zealand. The main aspects of the reform were that<sup>1</sup>:

- It created a single process for aquaculture planning and consents through the Resource Management Act 1991(RMA)
- Council's were to manage all environmental effects of aquaculture, including effects on fisheries and other marine resources;
- Marine farms can only occur in areas known as Aquaculture Management Areas (AMAs).

The new legislation provides for new AMA's to be created in the regional coastal plan through three different methods:

- Council initiated – where Council undertakes a plan change to create new AMA's.
- Invited private plan change- where the Council invites the public to apply for a plan change within certain areas; and
- Private plan change- where the public can apply for a plan change to create new AMA's at any time.

All applications for new AMA's are required to include with the application an assessment of effects and an assessment against the policies and objectives in the regional coastal plan. The application is then assessed by the Ministry of Fisheries and any area of the application found to have an undue adverse effect on customary and recreational fisheries is removed from the application.

The remaining area of the application is then publically notified and submissions are called for. The submissions are then summarised and a further submissions are called for. A hearing is then held and a consideration is given to all the submissions and the effects of the proposal. The Council then is required to give its decision and that decision is appealable to the Environment Court. Only once the appeal period is over, or a decision is released by the Environment Court can the proposed area become a AMA. In summary, the process for creating AMA's is a public process.

Under the new legislation, once new AMA's are created for aquaculture then the right to apply for a resource consent to farm, or the *authorisation*, must be allocated to a person.

A portion of the *authorisations* are allocated to iwi as part of the treaty settlement provisions, with the remaining *authorisations* allocated through a number of methods. Under the default provisions in the RMA, when new areas are created for aquaculture, through the private plan change process or by Council, the remaining areas are required to be put up for public tender. If new areas are created through an invited private plan change process, which is accepted by the Council then 80% of the area subject to the plan change is allocated to the person who went to the expense of creating it.<sup>2</sup>

The RMA also enables the above default methods of allocating authorisations to be changed through a plan change. Before an alternative method is adopted by the Council the Council needs to determine that the alternative method is necessary and the most appropriate<sup>3</sup>.

Once the *authorisations* have been allocated then the holder of the authorisation needs to apply for resource consent. The resource consent application will in most cases be granted because the area has already be determined to be suitable for aquaculture through the plan

<sup>1</sup> Aquaculture Reform 2004: An overview, March 2005, Ministry for the Environment, Ministry of Fisheries & Department of Conservations.

<sup>2</sup> section 165ZA of the RMA

<sup>3</sup> Section 165I of the RMA

change process. If the resource consent application is granted then it will be subject to terms and conditions which will specify such things as how long the applicant can farm in the area, the size and location of the structures and species to be farmed etc.

It should be noted that the government is currently reviewing the legislation governing aquaculture and in the future the system of managing aquaculture in New Zealand may be changed.

### **Plan Changes 16 & 53**

The Council considered the new legislation in 2005 and due to the lack of demand for additional AMA's at the time, made the decision to defer making any changes to the resource management plans (which include the regional coastal plan) until the resource policy statement was reviewed.

New Zealand King Salmon Limited (NZKS) are now seeking additional AMA's to farm salmon in Marlborough and because the Council doesn't intend to re-address the issue of more AMA's until the reviews are complete, the only option currently available to NZKS is to create more AMA's is through a private plan change.

Under the legislation the lack of certainty in gaining the rights to farm an area through the private plan change process following a public tender is a massive disincentive for private investment, even for considering new AMA's.

The lack of certainty that arises under the current default provisions has led to NZKS lodging a private plan change in relation to the Marlborough Sounds Resource Management Plan, seeking a change in the method of allocating *authorisations* from public tender, to allocating the *authorisations* to the person who created the new AMA when the private plan change process is used. The need to allocate *authorisations* is new under the legislation and the Wairau/Awatere and Marlborough Sounds Resource Management Plans need to be amended to set out how *authorisations* are to be allocated. Consequently, the Council made the decision to promote an almost identical plan change (Plan Change 53) for the Wairau/Awatere Resource Management Plan to achieve consistency across the region.

On the 12 of March 2009 the Marlborough District Council publicly notified Plan Changes 16 and 53 which (in summary) consist of the following:

#### Plan Change 16 (Marlborough Sounds Resource Management Plan)

- Update to the 9.1 Introduction
- A new section( 9.1.2) which discusses aquaculture management under the new legislation
- A new section (9.4A), objectives, policies and methods of implementation for the allocation of *authorisations* in AMA's

#### Volume Two

- A new zone chapter (35A) for aquaculture management areas which introduces new rules regarding the allocation of *authorisations* in operative AMA's which arise from a private plan change. These rules will not have effect until Plan Change 16 becomes operative.

#### Plan Change 53 (Wairau/Awatere Resource Management Plan)

#### Volume One

- A new section( 9.1.2) which discusses aquaculture management under the new legislation
- A new section, objectives, policies and methods of implementation for the allocation of *authorisations* in AMA's (9.26-9.28)

## Volume Two

- A new zone chapter (39A) for aquaculture management areas, which introduces new rules regarding the allocation of authorisations in operative AMA's which arise from a private plan change. These rules will not have effect until Plan Change 53 becomes operative.

Submissions closed on the 15 April 2009, and 36 submissions were received for Plan Changes 16 and 25 submissions were received for Plan Change 53 from a range of submitters. Further submissions were called for on the 15 July 2009 and following the closing of submissions on 21 August 2009 the Council received two further submissions. These submissions have now been summarised and a hearing of the submissions and further submissions has been set down for the week commencing 3 November 2009.

### **Plan Changes 19 &52**

The new legislation, as mentioned above, requires special areas be created for aquaculture (AMA's), with aquaculture prohibited outside of those areas. The new legislation also requires that aquaculture be the principle activity in that area, with activities that are incompatible excluded. New objectives, policies, rules and zoning provisions are needed to give effect to the new legislation and the Council is currently drafting new provisions to govern the management and location of aquaculture in a second set of plan changes, Plan Changes 19 & 52. A discussion document has been drafted and will be released for public consultation in November. The discussion document and the subsequent feed back form the community and industry will be used to draft the plan changes. It is anticipated that Plan Changes 19 & 52 will be publically notified next year.

### **This Report**

This officers report has been prepared for the hearings committee by a Council strategic planner. The report summarises and discusses the issues raised in the submissions and recommends decisions for the relief sought in the submissions. This report also is intended to form part of the analysis which must be undertaken by Council prior to adopting an alternative method of allocation under section 165I of the RMA

### **Structure of Report**

The report is broken into the following three sections:

1. Introduction
2. Issues Raised
3. Recommended Decisions

### 3. Issues Raised

#### *Issue A) General Support*

Three submitters supported the plan changes as notified. The submissions are as follows.

**Marine Farming Association & Marlborough Aquaculture Limited** support the proposed plan changes.

**Robin Cox** also supports Plan Change 16 with the reasons given that the likelihood of a private plan change is only viable if the applicant has a right to seek a coastal permit to use the AMA for economic benefit. The change is strongly supported as it provides the possibility of economic benefits, both to the applicant and Marlborough, providing employment at minimal environment impact which is checked through the RMA process. No changes to the proposed provisions are sought by these submissions.

**Further Submission: The NZ King Salmon Co Ltd** supports the above submissions, for the reasons given in the submissions.

**Discussion:** These submissions should be accepted to the extent that the plan changes are adopted, with modifications. Recommend the Council accept or accept in part the relief sought, for the reasons discussed below.

#### *Issue B) Expansion of Marine Farming in Marlborough.*

A number of submitters raised concerns that the plan changes would lead to the expansion of marine farming in Marlborough and opposed the plan changes on that basis. The following matters were raised.

**East Bay Conservation Society & Guardians of the Sounds** believe that the plan changes will facilitate another gold rush of applications and allow unfettered growth of aquaculture.

**Deep Trust** are opposed to the creation of any new marine farming areas and subsequently are opposed to any plan change that makes their creation easier.

**Dolphin Watch Ecotours** object to any changes in the Plan that makes it easier for aquaculture industries to implement farms in the Queen Charlotte Sound or in any other aquaculture exclusion areas that currently provide both sanctuary and critical foraging habitat to a variety of protected seals and dolphins.

**Campbell Black** opposes Plan Change 16 on the basis that it may lead to additional marine farms in the Sounds.

**Fyvie Management Limited** opposes PC 16 due to the increased visual pollution it will create.

**Further Submission: New Zealand King Salmon Ltd** opposes the above submissions for the following reasons:

- a) the submitters have overlooked the general rule which is designed to delay the implementation of the Plan Change until new rules have been put in place.
- b) the Plan Change does nothing more than allocate new space, it does not create new space and accordingly has no environmental effects.
- c) the Plan Change does not give any greater rights to apply for a plan change than

currently exists, the plan change makes an application feasible from a practical purpose. NZKS believe it is an unattractive submission to suggest that a rule should be imposed to regulate an activity which has the impact of making it uneconomic.

d) the submission overlooks the fact that a Plan change application is significantly more complicated (and costly) than a resource consent application. These barriers will prevent the 'gold rush' situation from occurring.

**Discussion:** The plan changes in themselves do not create new marine farms, or address the issue of where aquaculture should not locate, which will be subject to subsequent plan changes (Plan Changes 19 & 52). The plan changes simply deal with how space that has already been created should be allocated when it arises from a private plan change. Before new space can be created it needs to be assessed against the policies and objectives in the resource management plans and be tested for undue adverse effects on fishing. There is a full public process involved with appeal rights. It is considered that any new space created following this extensive process will be environmentally, economically and socially sustainable in that location.

While it is acknowledged that the plan changes would make it more feasible to apply for more AMA's through a private plan change, new AMA's should only arise in locations that are appropriate. If the submitters seek restrictions on aquaculture then they need to participate in Plan Changes 19 & 52 (when notified) which will introduce new policies and objectives to guide the locations of new marine farms. The issues of how much (if any) aquaculture should locate in Marlborough, and where, are beyond the scope of these plan changes.

It is recommended that the submissions opposing the plan changes on the grounds that Plan Changes 16 & 53 will enable the expansion of the marine farming industry be rejected but that the submitters be specifically encouraged to submit on Plan Changes 19 & 52 when notified. Plan Changes 19 & 52 have been drafted and will be released for public comment in November, with the plan changes proposed to be notified in the early new year.

## ***Issue C) The Proposed Allocation Method***

A large number of submissions opposed the alternative allocation method proposed in the plan changes. Many promoted the retention of public tendering and others requested that Council promulgate new AMA's, followed by allocation through public tendering. Some of the reasons given, opposing the proposed alternative method, were that the proposed method would favour those organisations with the greatest financial resources to privatise public space and preference should be given to smaller industry and community members. The following matters were raised.

**East Bay Conservation Society & Guardians of the Sounds** believe it is fundamentally wrong to get rid of the tendering process as it will allow industry to choose their own AMA areas and have surety. They believe Council should not have the right to give away the seabed to a company with the biggest check book with out first having a tender process which gives transparency and accountability.

**Frances Hall** similarly believes the provisions are deeply unfair, discriminating against the local community and small businesses in favour of the largest multinational companies with the deepest pockets. She believes public tenders are the default for a reason and they ensure a fair and transparent outcome and give everyone a fair go. She believes they should therefore be retained.

**Glenn Hall** also states that changing the rules to favour the biggest players is not fair and these changes will keep out smaller, local and even national businesses.

**Lynn Newman-Hall** considers that access to any new AMA area should always be fully contestable, with the submission most beneficial to the community chosen, regardless of who initially proposed the change. The submitter suggests that to give preference to a party that funds an application simply gives preference to those with the most financial backing. The submitter considers this will have the effect of reducing competition, and is unlikely to lead to achievement of the best possible outcome for the community. The submitter believes that if companies have to compete to provide the best outcomes for the local community then there will be better results overall. The submitter also believes that the method will encourage monopoly operations to invest in multiple applications for as much prime water as possible. The submitter also believes the process has the potential to create a drag on both Council and community time and resources. The submitter also believes the method proposed effectively cuts out smaller, often local businesses and it is important that all local businesses be given opportunity to apply for an allocation within any new AMA created regardless of the process by which it was created. The submitter finally opposes the suggestion that money can buy extra advantage when it comes to their allocation. She believes the plan changes potentially favours self selection based on money. The submitter states the measures should be things like number of new jobs created, care for the environment, profits re-invested in the area, local ownership etc not simply having the money to fund a private plan change.

**Marlborough Environment Centre Inc** believe due to the high costs involved with creating AMA's the proposed Plan Changes do not deal with the fair use of public resources. The intended allocation method disadvantages many in the community from having access to the resource that King Salmon wishes to take advantage of. A more appropriate method is a Council initiated Plan Change to create a required AMA's and to tender in such a way that would allow wider community involvement in aquaculture. The submitter requests the Council modify the changes to allow for a significant percentage of an AMA application area to be tendered by Council to allow broader community involvement.

**P Meach** states the PC 16 documents consists of arguments prepared for NZKS and as such are not objective. The submitter asks the following questions- "fair" to whom certainly not fair to the ratepayer. What are the estimated costs involved in the establishment of a new AMA? Why has the Council decided not to be the initiator of the establishment of new AMA's. Why are NZKS seemingly unwilling to undertake the normal commercial risk of any new venture. The submitter states the waters of the Marlborough Sounds are a public assets, and any and all decisions made concerning them should be undertaken publicly. The submitter believes justice must be seen to be done.

**Queen Charlotte Wilderness Park Community** also raise concerns that that for the reasons given, within a very short time, most of the Sounds is likely to be owned by a single, wealthy, foreign controlled monopolistic entity and believes the community will have effectively for ever lost the right to exploit and use the resource for its own benefit.

**Friends of Nelson Haven and Tasman Bay Inc** oppose all parts of the plan which relate to the alternative allocation method.

**Royal Forest and Bird Protection Society NZ Inc** mentions that the preferential treatment in tender process in RMA applications appears to be significant development away from open and equitable treatment by government.

**Jonathon Hall** opposes because the policy is unfair to other businesses, and especially smaller companies, that allocation will be allotted automatically without a public tender process. The submitter states that it is public space, so all businesses should have the right to bid to sustainably develop aquaculture in the area. The submitter believes there is also an issue of equity between businesses and locals. Local residents would be denied the right to develop their own area because all aquaculture rights may have been invested in one business. The submitter believes that having a public tender process is a crucial enactment of the principle that coastal marine areas are public space, a principle which risks being



overturned by this plan change to the unfair disadvantage of many. The submitter states public tender is locally, nationally and internationally recognised as a very valuable means of ensuring the best outcomes for all. It is a public tender process which will ensure that authorisations are allocated in 'a manner that is effective, efficient and fair' and which will protect the principle of public space.

**Ministry of Fisheries** notes the private plan change process for establishing AMA's lacks some of the benefits of the invited private plan change process. For example, the "invitation" process enables councils to capture the needs of the aquaculture industry in one hit which may lead to efficiencies for the Council and better management of cumulative effects. Also, the identification of "excluded areas" by councils gives the industry more certainty about where in the CMA a proposal for an AMA is more likely to succeed. The Ministry also notes that the use of private plan change process could potentially result in the same difficulties that have been identified in the invited plan change process with completing plan requests. No changes are sought.

**Royal Forest and Bird Protection Society NZ Inc** also notes that preferential treatment in tender processes in RMA applications appears to be significant development away from open and equitable treatment by government. There may be alternative ways of ensuring that an applicant for a Standard Private Plan Change or Council - Invited Private Plan Change may not unreasonably bear the cost of making the application. No specific changes are sought.

**Further Submissions:** New Zealand King Salmon Ltd oppose the above submissions for the following reasons

- i) All people are able to make a plan change request.
- ii) If tendering is the allocation mechanism, the process favours the person with the greatest ability to pay. The Plan Change request seeks to avoid this outcome by allocating to the person who provides the necessary environmental information to Council. Where there are two such people the opportunity goes to the first in time. I
- iii) The costs of the plan change process directly relates to the amount of environmental research and analysis which is required for a successful request.

## **Discussion:**

### **Only Council should create new space...**

A number of submitters suggest that the current default should not be changed to remove the financial impediment to private plan changes and that Council should either initiate new AMA's and publically tender that space or invite applications for private plan changes.

For numerous reasons demand for new space for marine farming in Marlborough, since the introduction of the new legislation has been low. I have only received two enquiries regarding plan changes for AMA's in the last 5 years, one involved a small extension and the other was from New Zealand King Salmon Ltd seeking 6 (unspecified) or less new sites to accommodated growth over the next 20 years. Given the low demand for space in Marlborough and the limited knowledge by Council as to where space may be required it is considered an efficient or effective use of the coastal resources (or ratepayers money) for Council to create new AMA's. It is considered that Council is best placed to guide the location and management of the industry through policy and rules in the plan and expansion of the industry (if any) should be left to the industry through private plan change applications assessed against those policies.

It is also considered not efficient or effective for Council to expend large sums of ratepayers money identifying where applications should be called for through an invited private plan change (IPPC) process, when there is virtually no demand from the industry. The Council is currently under pressure to upgrade and develop critical infrastructure and community facilities around the region and at this point in time it is unlikely that expenditure of money on a IPPC process, which solely benefits private industry, will be supported. In addition, the provisions in

the RMA concerning the invited private plan change are flawed, particularly regarding overlapping applications. The Government acknowledges the problems with the legislation and is currently progressing a legislative amendment to address the problems. Those Councils in New Zealand which have started to use the IPPC process have put the process on hold until the amendments are enacted.<sup>4</sup> For the above reasons it is unlikely that the Council will use the IPPC process.

Putting the above identified problems to one side, in my opinion there would be little benefit to Marlborough in using the IPPC process. The use of exclusion areas I believe could be given better effect through sound objectives and policies in the plans, and in addition exclusion of areas through objectives and policies would be more enduring and give greater certainty to the community as to where Council thought aquaculture should take place. Unlike the use of exclusion areas under the IPPC process which only exist for the duration of the invitation. I would also debate whether receiving numerous plan change applications at once would be more efficient and easier for the community and Council to respond to, than applications every now and again. If the industry thought their only opportunity to expand was through an occasional IPPC process then there may well be more applications for AMA's lodged than immediately needed. However, the same can be said for the private plan change process with NZKS indicating they will apply for more space than immediate required because of the complexity of the process to create more AMA's. The issue of cumulative effects I believe could equally be addressed through policies applied to a private plan change as it could to multiple applications through the IPPC process.

I believe the IPPC provisions would be useful in new large blue water developments and they have been used for this purpose by other Council's e.g. Northland, but in Marlborough's case where proposed development opportunity is limited I believe the IPPC process is not the best method.

At this point in time Council has decided not to pursue either a Council initiated Plan change or invited private plan changes and would prefer to wait until the completion of the regional policy statement review before re-addressing the issue. It should be noted that there is nothing in the plan change preventing Council from pursuing those options in the future should the circumstances change. I recommend that the submissions seeking the creation of AMA's solely by Council or through an invited private plan change be rejected for the reasons given above.

### **Retain public tendering...**

A number of submissions oppose the allocation of space to the person who proposed the plan change and sought the retention of the default allocation method of public tender. The reasons given were varied but generally because of concerns about the allocation of public space to large, well financed companies which was seen to be at the expense of smaller companies and the local community. Some believed that the tender process was fairer and more transparent.

The issue of allocating use of a public resource is a difficult one in which until recently neither Councils, nor the RMA, contained the tools to allocate beyond first in first served. In the past all coastal uses in Marlborough e.g. moorings were allocated on a first in first serve basis whereby subject to an assessment of effects, the first person to apply to use a space, upon granting of the applications was allocated that space. In the past this method has proven a reasonably efficient way of allocating space, particularly where demand has been low. Additional tools were introduced in the RMA some years ago to enable tendering of coastal space however the Council to date has not seen the need to change the method of allocation and the coastal use continues to be allocated (with the exception of aquaculture) on a first in first served basis in Marlborough.

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<sup>4</sup> The Aquaculture Legislations Amendment Bill (no 2), contains a number of amendments to rectify problems identified with the invited private plan change provisions.

The changes introduced by the 2004 provisions prohibited aquaculture occurring outside of specially created zones. Accordingly, a new system of *authorisations* and two default allocation methods were introduced to enable the Council to allocate space under the new system. The two methods were public tender when new space arose through either a private or council led plan change, and direct allocation to the applicant where the new space arose through an invited private plan change. The default methods of allocation were included in the new legislation so that methods would be in place, without Council being required to undertake a plan change and to encourage AMA's to be created either through council lead plan changes or through the invited plan change process. The 2004 legislation acknowledged that the defaults may not be appropriate and included provisions by which alternative methods could be adopted by the Council, following a public process and subject to the method being the most efficient and effective allocation mechanism.

There is no suggestion in the submissions that space arising from Council or invited private plan changes should be allocated in any way other than as specified in the plan changes<sup>5</sup>, there are also a number of submissions which endorse Council's position that space arising from a Council initiated AMA's should be publically tendered. The issue appears solely to be with the allocation of space arising from private plan changes which forms the most part of the proposed changes.

The issue identified with the existing method of allocation is that the time, resources and costs in evaluating new AMA's and providing them in the Plan through the plan change process are considerable, and these costs are borne by the applicant. The Council acknowledges that people or organisations are not likely to make requests for new areas, unless they have some certainty that they will receive authorisations should the plan change succeed. This is collaborated by the fact that no new AMA's have been created via a private plan change anywhere in New Zealand. The Council considers that for sustainable management of the industry in Marlborough to occur the method of allocating authorisations needs to be changed.

The legislation<sup>6</sup> requires the Council to consider the following before adopting an alternative method of allocation:

- The reasons for and against adopting the proposed method.
- The principal alternative means available
- The adoption of the proposed method is necessary in the circumstances of the region and the method proposed is the most appropriate for allocations in the circumstances of the region, having regard to its efficiency and effectiveness compared with other methods.

### **The reasons for and against...**

The Council and NZKS are proposing that the method be changed from public tender, to allocation of authorisations to the person who proposes the AMA. A number of rules are also introduced to identify who the proposer is when there are competing applications and what happens in the case of the proposer does not wishing to take up the offer of authorisations. In the draft section 165I report prepared by NZKS, a number of alternative means of allocating authorisations are discussed and Council agrees with the assessment by the economist Mike Copeland<sup>7</sup>, and the following reason for adopting the proposed method:

*The "proposed allocation method is necessary to provide sufficient incentive for private sector interests to take part in the private Plan Change process. It is efficient and effective because it will lead to appropriate RMA consideration of areas for the expansion of marine farming within*

<sup>5</sup> 9.4A paragraph 1 – Plan Change 16 and 9.26 paragraph 1 – Plan Change 53

<sup>6</sup> Section 165I of the Resource Management Act 1991

<sup>7</sup> Economic Assessment of Alternative Methods of Allocating Aquaculture Management Areas – prepared for New Zealand King Salmon Ltd, Mike Copeland, Brown, Copeland & Co Ltd, 19 June 2008 (appended to the report entitled *Allocating Aquaculture management Areas – a section 165 I report*)

*the Marlborough Sounds and the potential to realise the associated economic benefits for the region.*

*Other allocation methods (including tendering, balloting and Council discretionary approaches) provide insufficient incentive for the private sector to invest in the Private Plan Change process and therefore will not result in potential expansion of marine farming areas and the associated regional economic benefits.”*

A few submitters support the proposed method (see Issue A) with the majority opposing the method because they believe it discriminates against the community in favour of big industry. While I have sympathy for the desire to retain the coastal marine area for local industry use, the reality is that no matter what allocation method are used, once space is allocated and consent granted there are no restrictions on the transfer of the consents. Any such benefits accrued to the community from the personal ownership and development of new farms would only last as long as the farms were held in local ownership. I also consider that that a straight a public tender process is more likely favour larger companies who have the greatest amount of capital to invest than the method proposed. I believe that the proposed allocation method is more likely to encourage existing local marine farmers to apply for minor extensions to their farms, which is not likely to occur should the space be tendered with no certainty that the existing marine farmer will be able to farm the space, or should they lose the tender, who their new neighbour may be. In addition, the reality is that unless the method of allocation is changed it is very unlikely that any space will be created for the public to tender for.

### **Principal alternative means...**

The main alternative available is the current default tendering provisions. A number of submitters seek the retention of public tendering for the allocation of space arising from private plan changes because it is seen to be a fair and transparent way of allocating space. I query the fairness, when the person investing considerable sums of money to create the space is not ensured any returns on that investment. In addition the proposed changes do not preclude a member of the public applying at any time for a plan change to create new AMA's.

In the assessment by Mike Copeland in the NZKS draft s1651 report the following alternative were also assessed:

- **Balloting-** Mr Copeland believes that balloting suffers from the same defects as tendering. He believes there would be no incentive for private sector interests to invest in the private plan change process if it is only by chance that there will be an opportunity to recoup that investment together with a satisfactory rate of return. I tend to agree with him and through the discussions held in drafting the legislation the method of balloting was discussed and discarded as an option with public tendering being favoured largely because it provided a return on the use of the space. The other issue with balloting is that it could encourage speculative behaviour with people applying for and being allocated authorisations who don't particularly have an interest or capacity to farm the space. If consent was not applied for within the specified time then the authorisation would need to be re-balloted.
- **Maximum Council Discretion –** Mr Copeland suggests that Council could allocate authorisations based on a tender price & a set of criteria. However he believes this approach would suffer from the introduction of subjectivity requiring the Council to pick a winner from competing applications rather than assessing whether a single specific application is appropriate in terms of the requirements of the RMA. He believes there is also considerable risk in the plan change propionate not securing authorisations through this process. I do not fully understand the method proposed, however I suspect that the Council would have difficulty picking a winner under the current legislation. This is the main problem with the IPPC process currently.
- **Occupiers of Existing Water Space –** Mr Copeland suggests that authorisations be offered to the legal occupier of the immediate adjoining water space with spatial limits

to the extent of this priority. Mr Copeland sees this as a variant of the proposed alternative method which very likely will reward the plan change proposer. I believe this method has merit, but would introduce a level of subjectivity that the proposed method of allocation does not have. This method would reward existing marine farmers wishing to undertake minor extensions to their farms, but would discourage marine farms being established in new areas irrespective of the merits of the proposal.

Marlborough Environment Centre suggest as an alternative that a significant proportion of the authorisations could be tendered to allow boarder community involvement. This proposal also has merit in that both the proposer of the plan change who bears the cost and the community get access to space for marine farming. However, I suspect that the outcome would be that larger than required spaces would be applied for to make the application economic and to meet the marine farmers needs. This may also limit the location to those areas which could absorb large farms, and may also lead to specialist space being created of which there is limited community demand e.g. for sponges growing. This method would also face the same problems raised for public tendering, whereby the community may not have the resources to successfully bid in the tender.

Royal Forest and Bird Protection Society NZ Inc. also suggest that there may be a way in which the applicant for a private plan change does not unreasonably bear the cost of making the application. However, no specific details are provided.

On the whole I believe the proposed method outweighs the advantages of the principle alternative methods. The proposed method is in accordance with the method currently used in the plan to allocate coastal space and is also consistent with the method for invited private plan changes.

#### **Is the method necessary... efficient and effective compared with other methods ?**

The only option currently available to marine farmers in Marlborough wishing to gain more space is to apply for a private plan change. Under the current default method marine farmers are unlikely to apply for new AMA's because of the uncertainty of gaining authorisations at the end of the process. The effect of the current method of allocation is to prevent the community of Marlborough from providing for their economic development through marine farming. In assessing the principle alternative methods and the matters raised by the submitters I continue to believe that the proposed method is the most efficient and effective way of allocating space in AMA's created by way of private plan change. I believe that the proposed method is necessary for the region because it enables the marine farming industry to grow and change in a sustainable manner, following a public process and in accordance with the provisions of the plans and the RMA.

It is recommended that to the extent that public tendering or other methods are sought for new space created through private plan changes then those submissions be rejected or rejected in part for the above reasons. It is also recommended that to the extent that the submitters seek public tendering to be retained for space created through Council initiated plan changes, that the relief be accepted for the reasons discussed above.

#### **The following submitters specifically commented on the method.**

**David Grigg** (PC 16) supports that once an AMA has been selected by Council; the individual/organization that has done the research should be given first rights of refusal. However the support is subject to the following codicils

- a) Any individual/organisation that is planning research in an allocated AMA must be put in a closed tender that they will be doing so. If more than one group states their intentions to

do research in an AMA. The Council can wait a specific time for both groups to complete their research and submit their application. This will not give the larger organization who has more capital and resources an unfair advantage to get their research done and application applied for before the smaller group can get their results in. This would create a level playing field for smaller and less funded groups.

b) There must be consideration and non-interferences to current fish and bird activities in the area.

c) There must be extensive consultation by the council with those affected by the AMA.

d) The proposed AMA must not prohibit human activities that wish to continue proceeding in that area.

### **Discussion**

I am not quite sure what the submitter is suggesting, but infer the support for a invited private plan change process. If this is incorrect, then the submitter can further explain his submission at the hearing. I recommend the Council reject the matters raised in the codicils b,c,& d which are not addressed in this plan change and the submitter be encouraged to submit on Plan Changes 19 & 53 which does address these matters when notified.

**Robyn Vidak & Carney Soderberg** believe that competitive tendering has long been and continues to be the best procurement method to use to obtain fair, optimal and appropriate results for the public/private business and procurements transactions and the submitters endorse its use. Based on a lengthy experience in providing products and services to government at all levels, the submitters believe that removing competitive tendering creates many undesirable effects. The submitters agree that the risks of seeking a plan change without assurances of reward is unattractive and companies will seek to avoid it. The submitters also agree that the costs to ratepayers of creating a new AMA should not be sheeted to them alone. The submitter then goes on to propose a new approach for the development of aquaculture, which most notably requires a greater role of the Government in funding the development of new space.

### **Discussion**

The Council does not have the powers under the RMA to implement the relief sought in the submission and a legislative change would be required. The Government is currently reviewing the way in which aquaculture is managed in New Zealand as part of the phase two reforms of the RMA. I recommend the relief sought be rejected and the submitters be encouraged to participate in the legislative reform currently being undertaken by the government.

### ***Issue D) The S165I Report.***

Three submitters challenged the draft section 165I report prepared by NZKS. The following matters were raised.

**Friends of Nelson Haven Tasman Bay Inc** considered that the method does not meet the requirements of s. 165I. In particular, the Council has not considered the alternative to the method, which is to first undertake its own planning assessment of the appropriateness for AMA's. The submitters believe the proposed method is not necessary in the circumstances of the region at this stage, nor is it the most appropriate for allocation in the circumstances. The s. 165I report prepared by NZKS prepared for the Council fails to consider the implications of allowing private plan change requests on an ad hoc basis, before Council has undertaken the wider integrated planning process to consider new AMA's s. The report only considered the

economic reasons for and against adopting the proposed changes. It fails to consider the effects on the environments or the wider community. The effect of the existing provisions is to effectively limit private plan changes for AMA's. The default provisions thus avoids the race for space situation which occurred under the old regime, before the introduction of the reforms. Any alternative method should only be considered after the Council has first undergone a proper planning exercise in relation to aquaculture. It is only this way that the Council can ensure effects on the community, environment and economy are balanced and managed in an integrated way before request for AMA's are considered.

**Minister of Conservation** states the Plan was prepared prior to the 2004 aquaculture legislative reforms and does not contain an adequate policy framework for considering plan change requests for new AMAs. The Plan Changes would not meet the requirements of section 165I test until this policy framework is provided.

**Marlborough Environment Centre Inc** oppose the proposed Plan Changes as there are currently alternative allocation methods and King Salmon's Plan Change application has not properly evaluated alternatives as required. There are also alternatives for King Salmon in terms of available space as an option. Their most recent application in Waitata Reach is such an example.

**Further Submissions:** New Zealand King Salmon Ltd opposed some of the above submissions

## **Discussion**

Section 165I of the RMA was introduced along with the suite of new provisions under the aquaculture law reform. The section requires the Council, when changing the default method of allocation, to adopt the most efficient and effective allocation mechanism. The provision exempts Council from undertaking a section 32 analysis in relation to rules relating to the method of allocation of space and requires the Council to have regard to the matters in Section 165I before adopting and rules.

There is no case law or precedents on how s165I works in practice, with this Council being the first to use it. Through the submissions there is a range of views expressed as to what the evaluation entails. However, I believe that the s165I relates solely to the allocation of authorisations once they have been created and the broader issue of the effects of aquaculture on the environment most properly should be dealt with through the objectives & policies in the resource management plans and at the time of any plan change applications and subsequent resource consent applications, not through considerations under s165I. I have assessed the s165I matters above and the Council needs to consider those and the NZKS report, prior to adopting any of the proposed rules.

## ***Issue E) Requests for the provision review to take place first.***

The majority of the submitters raised concerns regarding the notification of the plan change ahead of the proposed aquaculture provision review. The following matters were raised.

**Frances Hall** believes changing the allocation method before Council has consulted on the new aquaculture management and zoning provisions runs an enormous risk of inviting a rash of applications from companies before a well thought through aquaculture framework is in place. The submitter believes aquaculture management will be outside the Council's control and there will be enormous regret that there was not a more holistic plan as to where and how

we want aquaculture to develop.

**Glen Hall** similarly believes that AMA and exclusion areas should be delineated first of all by a Council led process. Then peoples voices can be heard democratically in helping to delineate the areas, as would seem a much fairer way of doing it. The submitter foresees a rush of applications once these rules have been changed. Apart from detracting from the pristine beauty, the submitter believes these farms might be far more polluting to the marine environment because the applications will come before the review of aquaculture provisions is finished.

**East Bay Conservation Society & Guardians of the Sounds** also believe that the rules in the current plan are not robust enough to regulate or do compliance properly. Also the establishment of AMA areas should have been a process instigated by Council through a public consultation round so that the public have a chance to say if, where or not at all, with this process Industry chooses and the public have to use a very expensive process using lawyers to object.

**East Bay Conservation Society** also believe that AMA's should not be created without proper consultation or consideration of marine ecological values.

**Lynn Newman-Hall** considers it not wise to effectively encourage private plan change submissions before future aquaculture zones are defined and agreed by the community. The submitter believes the companies may seek to pre-empt possible prohibited areas by applying under earlier planning provisions.

**Marlborough Environment Centre Inc.** states there have been gaps in the plans' objectives, policies, rules and zoning before, with significant and "unintended" aquaculture applications causing very large costs to the community, Council, and the industry. The submitter believes that in terms of total community costs ad hoc and incomplete planning had very serious consequences. They believe the timing of allocation changes should be made carefully and not ahead of the community's input into the wider issues of Marlborough's coastal resources use and protection. They believe the proposed Plan Change by NZ King Salmon could easily be a Trojan horse for another gold rush of applications anywhere in the Sounds. They also suggest that while it is suggested publicly by the industry that this is unlikely, the timeline of consultation and further plan changes is out of sync with these proposed Plan Changes. The submitters also seek a full consultative round that allows a holistic planning approach to aquaculture and the use of public space in the Sounds is required before the need for new allocation methods of any potential AMA's is needed. They state the planning process for the new Regional Policy Statement and Marlborough Resource Management Plans is underway and that is the correct mechanism to address the use and allocation of areas of public space. Alternatively, they suggest that Plan Changes 19 & 52 intended for notification later in the year and dealing with the broader aquaculture issues including zoning should absorb these allocation proposals into that process, or deal with allocation after the wider issues are dealt with.

**Port Gore Group** state the plan change will encourage further applications out of step with the logical process of improvement in the objectives and policies in the existing plan, and ahead of the designation of AMA's. Where a coastal permit has been refused, any plan change needs to ensure that such an AMA will be removed from the plan. They believe that the proposed plan change fails to address this issue. They consider that should Council be predisposed towards further development of aquaculture then Council should initiate a more thorough plan change of its own and use the tendering process. However, as the review of the RPS and Resource Management Plans are underway, it is believed that these are the correct mechanism to provide an appropriately robust and in depth outcome for the use and allocation of these areas of public space.

**Royal Forest and Bird Protection Society NZ Inc** are concerned that the rules are not available and cannot be sure that they will be effectively support Objectives and Policies in the



proposed Plan Change.

**Pelorus Wildlife Sanctuaries Limited (PC16)** Oppose the plan change on the basis that the plan change is premature. They consider that no alternative method should be decided upon until the Council has undergone a proper planning exercise (detailed in the submission) to determine its policy and to insert appropriate planning provisions into its plan in relation to AMA's in the Sounds. Until then they believe the default method should remain.

**Port Underwood Association Inc.** state that PC16 should not be considered until the details of PC 19 & 20 are also available. Without the details of the plan changes the public have no ability to assess if the current process for a resource consent to farm is more appropriate than the approach proposed in PC16. Concerned that there is a potential for proliferation of new marine farm areas before the intent of the revised RPS is known. Such a situation has the potential for ad hoc development which is likely to undermine the intent of the revised RPS. The situation is unfair on the communities of the Marlborough Sounds who will be burdened with responding to applications for what is the privatisation of public space at the same time as being involved in the review of the RPS which includes the designation of aquaculture exclusions areas.

**Dolphin Watch Ecotours** request a full consultative approach that factors in a variety of issues and how the increasing aquaculture industry will likely negatively impact the wildlife, tourism operators, sounds bach and home owners and recreational users alike before making changes to the current plan.

**Queen Charlotte Wilderness Park Community** request that the PC 16 be denied and that Council led the process of creating AMA's which includes input from all sectors of the community that have a stake in the future and considers the Sounds as a whole.

**Friends of Nelson Haven and Tasman Bay Inc** also believe the proposed method is premature because it opens the Sounds up to AMA requests before Council has undertaken a planning assessment of the future of aquaculture. They believe that any alternative method should only be considered after the Council has first undergone a proper planning exercise.

**Jonathon Hall** states that the rules should be enacted before the allocation method is changed. He believes leaving this change till later leaves open the possibility of unforeseen and undesired consequences as well as a rush of AMA zone applications taking place before new rules are put in place.

**Minister of Conservation** states the Plan was prepared prior to the 2004 aquaculture legislative reforms and does not contain an adequate policy framework for considering plan change requests for new AMAs. The policy framework is required to provide appropriate guidance for subsequent private plan change requests to create new AMAs. It is important that the Council add a new policy to the effect that it is not the Council's intention to approve the contents of Plan Change 16/53 until further Council Plan change (Plan Change 19/52) to amend the policy framework for aquaculture in accordance with the new aquaculture legislation has been made operative.

**Further Submissions:** New Zealand King Salmon Ltd oppose the above submissions and supports the Minister of Conservation submissions

## Discussion

A large number of submitters have directly or indirectly requested that Plan Changes 16 & 53 be halted until further planning has been undertaken. Under the RMA<sup>8</sup> once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request.

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<sup>8</sup> Clause 10(3) of the First Schedule of the Resource Management Act 1991

The Council could put the plan changes to one side for a short while; however the Council within a relatively short time would be required to continue processing the plan changes. Several submitters also suggest that the Plan Changes 16 & 53 should be incorporated into Plan Change 19 & 52 to holistically address aquaculture. Council could withdraw Plan Change 53 and incorporate it into Plan Change 52 because it is a Council initiated plan change, however, the Council has no powers to make the same changes to the NZKS plan change, unless NZKS chooses to withdraw its plan change request. It would also be an inefficient use of ratepayers money to re-notify the same changes, and there are some advantages in addressing the issues of allocation separately from the issue of the location and management of aquaculture. For the above reasons it is recommended to decline the submitters requests to withdraw, halt or incorporated the proposed plan changes in to Plan Changes 19 & 52.

A similarly large number of submitters have directly or indirectly requested that Plan Changes 16 & 53 not have effect until Plan Changes 19 & 52 have legal effect. Both plan changes contain a rule<sup>9</sup> which prevents the plan changes from having legal effect until the plan changes becomes operative. This rule was included for the express purpose of preventing applications for new space until the new provisions are notified. It was anticipated that it would be a significant period of time before all legal requirements of the RMA had been completed (including sign off by the Minister of Conservation) and the rules had effect, certainly enough time for the new provisions to be notified. It was considered that the rule as worded would be sufficient to prevent any applications ahead of the new provisions being notified.

I still consider that the rule wording as notified is sufficient. However, greater certainty for the community and transparency would be gained by clearly stating that the plan changes will have no effect until the new aquaculture policies and framework has been notified/made operative.

The Minister for Conservation seeks the following amendment to the general rule "*General Rule ### shall have no effect until Plan Change 16 becomes operative and Plan Change # has statutory effect.*" I believe there are difficulties in referring to plan changes in a plan rule when those plan changes have not been notified. NZKS also raise this in their further submission (in support) suggesting that the wording may be improved by specifying in the new rule what Plan Change 19 is. They suggest that it should be on the basis that "*Plan Change 19 is a administrative name given to a Plan Change which encompasses objectives, policies and rules for new aquaculture space*".

To allay community concerns I recommend that the Council consider changing the wording of the General Rules to (as appropriate) "*General Rule 35A.2/ 39A.2 shall have no effect until Plan Change 16/53 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect.*"

I recommend the Council accept, accept in part or reject the relief sought requesting a delay in the introduction of the plan changes, to the extent their relief is given effect to in this recommendation.

## **Issue F) Specific Policies and Objectives Sought**

A number of submitters sought specific changes to the policies and objectives in plan change regarding the location of aquaculture. These are as follows:

**Annette Strol & Fyvie Management Limited** seeks the existing bays in Marlborough Sounds that are currently aquaculture free remain so under the Plan Change. The submitter requests that only bays with existing AMA's to be affected by this proposed Plan Change.

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<sup>9</sup> 35A.2 & 39A.2 General Rules "General Rule 35A.2 [ & 39A.2] shall not have effect until Plan Change 16 becomes operative."

**Norman & Linda Wilkins (PC16)** seek:

- Legislation that bays of particular natural beauty will be protected and marine farming not allowed there.
- That legislation will ensure that bays that have large numbers of dwellings and consequent development in them be also exempt from marine farming.
- When an area does not come into either of these two categories, that property owners living nearby be consulted and their view taken into account when the Council makes a decision.

**Rene P (PC16)** - seeks that no new AMA's be created in any "coastal marine zone" area around D'Urville Island that has already been closed to the establishment of any new mussel farms or until completion of plan change 19, or is made operational.

**Chaucer Bay Family Trust** seek that the Council excludes the Bay of Many Coves from the establishment of any AMA under these proposed Plan Changes.

**Further Submissions:** New Zealand King Salmon Ltd oppose some of the above submissions.

## **Discussion**

As mentioned previously this plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan changes simply deals with how AMA's that has been created should be allocated when it arises from a private plan change. Any submissions seeking to identify where aquaculture should and should not locate is beyond the scope of these plan changes and such submissions need to be made to Plan Changes 19 and 52 when notified.

Several submissions requested that the proposed changes should not apply to the specific locations, which would have the effect of excluding those areas from applications for private plan changes. A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. As mentioned previously there are rules proposed for Plan Changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change possibly could be amended to exclude areas from the application of the proposed method it is considered more appropriate and transparent for this issue be addressed through Plan Changes 19 and 52. I recommend where submitters seek specific policies and rules regarding the location of aquaculture that those submissions be rejected, and the submitters be encouraged to submit on Plan Changes 19 and 52 when notified.

## ***Issue G) Contrary to the Plan and the NZCPS***

**Friends of Nelson Haven Tasman Bay Inc** considered that the proposed methods will run counter to the Plan, New Zealand Coastal Policy Statement and the purpose and principles of the Resource Management Act.

**Lynn Newman-Hall** Similarly consider the proposal is contrary to the intention of the new laws governing the creation of AMA's through private plan changes. The submitter believes the laws quite clearly provide for contestability in the event a private party initiates a private plan change proposal. Consider that access to any new AMA area created should always be fully

contestable, with the submission most beneficial to the community chosen, regardless of who initially proposed the change.

**Further Submissions:** New Zealand King Salmon Ltd opposed the above submissions

## Discussion

No specific details have been provided by the **Friends of Nelson Haven Inc** on this issue. I would be interested to know why they consider the proposed method is contrary to the Plan and the New Zealand Coastal Policy Statement as both of these documents predate the legislative changes. The RMA, specifically provides for alternative methods to be used and this method is used for the allocation of authorisations arising from the IPPC process. This method is also the predominant method in the RMA of allocating coastal space within New Zealand. The New Zealand Coastal Policy Statement (NZCPS) does contain policies regarding the effect of activities on the coastal marine area, however, I can see nothing which specifically addresses the allocation of public space, which is not unexpected given the legislative changes post date the NZCPS. With regard to the plans they currently allocate the right to occupy coastal space on a first in first serve basis which is the same method of allocation proposed by the plan change. For these reasons I believe it is unlikely the proposed method is inconsistent with the RMA, NZCPS or the plans.

With regard to the claims by **Lynn Newman-Hall** and **Friends of Nelson Haven Inc** that the proposed changes are contrary to the Act, I disagree. The RMA includes a number of defaults regarding how authorisations should be allocated. The default's set in place a system, without Council needing to undertake a plan change, to address the issue of allocation should it arise. However, the RMA also quite clearly provides<sup>10</sup> Council with the ability to use methods other than the defaults should it be necessary. The method chosen is consistent with the method used in the RMA to allocate authorisations that arise through private plan changes when invited. I recommend declining the relief sought regarding this issue for the reasons stated above and in Issue C.

## **Issue G) Cancellation or Expiry of Coastal Permits (W.39.A.2.1.2.4 & M35A.2.1.2.4 )**

**Kenneth Roush** suggests the wording should be changed so that space is not required to be re-offered. There may be conditions or new knowledge that has arisen since the granting of the original permit that makes it inappropriate to re issue a permit for the space.

**Further Submissions:** New Zealand King Salmon Ltd opposes the relief sought for the following reasons:

- a) The purpose of this rule is to ensure there is some mechanism to allocate space if the person who is initially allocated that space decides not to proceed with the marine farm.
- b) If new information comes to light such as the submitter suggests, the correct way of removing an AMA is to change the Plan.
- c) It is anticipated that this rule will rarely be used.
- d) It will be even more rare for the site to both become vacant and new information comes to light which suggests that the space should not be offered.

<sup>10</sup> Section 165H & 165I of the Resource Management Act 1991.

## Discussion

The new legislation puts in place a system whereby no new AMA's will be created unless aquaculture is sustainable in that location. However, it is acknowledged that over time issues of community use and natural character may change to the point that aquaculture becomes inappropriate for that location. The appropriate response, in those instances would be to change the zoning of the area. The intention is to include policies in Plan Changes 19 & 52 promoting the removal of such zones when found to be in-appropriate, in accordance with the provisions in the plan. The question is would it be useful to have the ability to not allocate space ahead of a plan change? I recommend consideration be given to amend the provisions, however, it is probably unlikely that such an occasion (as suggested by NZKS) will arise and the more permanent solutions, like plan changes, are available to Council.

## **Issue H) Inclusion of Existing Marine Farms into the Plans**

The plan changes mention in a number of places that the existing farms will be included in the plan as AMA's. A number of submitters oppose this and request they not be included or be included via a plan change.

**Pelorus Wildlife Sanctuaries Limited (PC16)** believe that the proposed Note 35A.5 that existing deemed Aquaculture Management Areas will be shown on future releases of the maps (and may be done so without undertaking a plan change) may be misleading and contrary to Schedule 1 and 1A to the Act. They believe if deemed Aquaculture Management Areas are to be included in planning maps, they must undergo a Schedule 1 and 1A process. Pelorus Wildlife Sanctuaries Limited (PC16) believes at the very least there should be a notation stating: "Deemed aquaculture management area under 2004 Aquaculture Reform Legislation until 31 December 2024.

**Bilbrough Family Trust** similarly oppose the inclusion of the existing marine farms in the plans as AMA's and seek that they be subject to a plan change.

**Queen Charlotte Wilderness Park Community** raised concerns that the plan change will effectively mean that AMA's will be approved in perpetuity which they believe is clearly not the intention of the RMA which approves only for a term. Queen Charlotte Wilderness Park Community also raises the issue that the Environment Court has expressly ordered that the question of whether the area in which some marine farms exists is suitable for their continued existence and must be subject to further public consideration and they believe that by including this method the Council is attempting to deny the authority of the Environment Court.

**Anthony John Croad** and **Johnathon Hall** also oppose the inclusions of the existing farms as AMA's.

**Further Submissions:** New Zealand King Salmon Ltd oppose the above submissions.

## Discussion

As part of the legislative changes the Government made the decision to deem all lawfully established marine farms under the previous legislation, as AMA's. The Act is quite clear in that the existing farms are now in AMA's<sup>11</sup>, and supporting legislation states the AMA's are subject to the provisions in the regional coastal plan<sup>12</sup>. Amendments<sup>13</sup> currently before the Government (if enacted) will further clarify that the deemed AMA's are in the regional coastal

<sup>11</sup> Section 2 of the Resource Management Act 1991 – Interpretations, *Aquaculture Management Area*

<sup>12</sup> Section 45 of the Aquacultural Reform (Repeals and Transitional Provisions) Act 2004

<sup>13</sup> Section 13 of Aquaculture Legislations Amendment Bill (no 2) –as reported from the Primary Production Committee.

plan. The legislation <sup>14</sup>(and the amendments<sup>15</sup> currently before the government) further state that a plan change is required to remove the AMA's from the plan. In this case, the references to the existing farms in the plan changes were included for information purposes, and to reflect the legislation.

While the intention of the legislation is clearly that existing farms are AMA's and are now part of and subject to the regional coastal plan there are no specific provisions in the RMA allowing the Council to reflect this in its Plan. In the absence of such a provision, I believe the Council's ability to make changes to an operative plan outside of the plan change process, is limited to the correction of minor errors<sup>16</sup> which is a situation I believe does not apply in this case. The absence of such a provision in the legislation I believe is an anomaly.

I recommend the relief sought by **Pelorus Wildlife Sanctuaries Limited** be accepted and the note removed from Plan Change 16. The issue needs to be re-addressed through Plan Changes 19&52. With regard to the **Billbrough Family Trust**, the changes requested go beyond the scope of the plan change and Council's powers under the legislation I recommend the relief sought be rejected.

## **Issue I) Aquaculture Management- W9.1.2 & M9.1.2**

**Te Ohu Kaimoana Trustee Limited & Totaranui Limited** support the Plan Changes on the basis that it establishes an economically efficient way of allocating authorisations in AMA's created as a result of private plan changes and provides for the development of aquaculture. The support is subject to a minor wording which the submitters believe accurately reflects the intent of the allocation to iwi. The following wording change is requested to Section 9.1.2 Aquaculture Management, second last paragraph (both plan changes):

*"Once an AMA is created, 20-40% of authorisations (or the right to apply for a resource consent for marine farming) are allocated by the Council to a trustee to resolve historic Treaty Claims, and the remaining authorisations become publically available the Trustee of the Maori Commercial Aquaculture Settlement Trust under the Maori Commercial Aquaculture Claims Settlement Act 2004 for distribution to iwi."*

**Further Submissions:** The NZ King Salmon Co Ltd supports the above submissions

### **Discussion:**

The Maori Commercial Aquaculture Claims Settlement Act provides a full and final settlement of Maori commercial aquaculture interests since 21 September 1992. In accordance with this Act, the Council is required to provide a portion of the authorisations to the Trustee of the Maori Commercial Aquaculture Settlement Trust. Only claims for commercial aquaculture activities prior to this date are to be addressed through the historical Treaty Claims process. The wording suggested by the submitters better reflects the current Act and I recommend that the wording as proposed should be adopted.

It should be noted that through Aquaculture Legislation Amendment Bill (No. 2) changes are proposed which will require applicants for new AMA's to reach agreement with iwi first and only if this process fails will Council be required to identify space. In both cases at the end of the process the Council will be required to allocate the authorisations. It may be appropriate for Council to review the wording of this section through proposed Plan Changes 19 & 52.

<sup>14</sup> Section 45(5) of the Aquacultural Reform (Repeals and Transitional Provisions) Act 2004

<sup>15</sup> Section 13 (5) of Aquaculture Legislation Amendment Bill (no 2) –as reported from the Primary Production Committee.

<sup>16</sup> Cl 20A of the First Schedule to the Resource Management Act 1991.

## ***Issue J) Use of Authorisations***

The NZ King Salmon Co Ltd suggests the Council may wish to consider whether or not to allocate space without any express reference to "authorisations". New Zealand King Salmon Ltd believe such an approach would be open to the Council by virtue of s.165H. The criteria for the allocation of space would be that there would not need to be public notice of the offer of authorisations. In the circumstances where authorisations were being granted to a clearly identifiable party that would appear to be unnecessary. The submission is made on the basis that what is proposed may well result in a better outcome in terms of administrative efficiency. It does not detract from the material which King Salmon has already lodged. The suggestion is intended as a practicable suggestion as to process. NZKS suggest a number of wording changes to give effect to the suggestion.

**Further Submissions:** Pelorus Wildlife Sanctuaries Limited opposes the relief sought and raises the following concerns.

The relief sought would have the effect of avoiding the need to obtain an authorisation for an AMA under the RMA before applying for a coastal permit. If granted, the changes sought would substantially reduce the requirements on applicants seeking to utilise new parts of the CMA and would further limit Council's control over applications. Pelorus Wildlife Sanctuaries Limited state that Council does not have the power to allocate a right to apply for a marine farming coastal permit and only has powers to allocate a right to apply for an authorisations. They believe that there are a number of important things that need to be addressed through the public offer of authorisations. They state that the provisions give greater control to Council in relation to the allocation of authorisations for AMA's and provide greater certainty for applicants and members of the public, and the Council, about the nature of the authorisations. Importunately, they may also place limits on the nature of the activities within an AMA before any coastal permit is applied for. Pelorus Wildlife Sanctuaries Limited also state that section 165E clearly provides that an offer of authorisation for available space must be made by public notice regardless of whether it is by public tender or by another method. They believe that Section 165H cannot be used to avoid the requirement that the offer of an authorisations be made by way of public notice. They also believe that a rule under Section 165H can only relate to a method for allocating an authorisation for availed space in AMA's not a right to apply for a coastal permit.

## **Discussions**

*Authorisations* are a tool introduced by the new legislation to enable the allocation of the right to apply for a resource consent to occupy new space for marine farming, to a specific person. The RMA requires that 20% of authorisations are transferred to the Trustee under the Maori Commercial Aquaculture Claims Settlement Act 2004, and the remainder of the space (80%) be allocated through whatever method is prescribed in the plan or legislation.

While the RMA defines<sup>17</sup> *authorisations* as "the right to apply for a coastal permit to occupy space in a coastal marine area", Section 12A of the RMA places no restriction on a person occupying the CMA for aquaculture as long as they hold consent and are in a AMA. Section 165H of the RMA allows Council to include a method for the allocation of space within the CMA through a rule in the regional coastal plan, and Section 165K(1) of the RMA also specifically mentions the allocation of the space by an alternative to an offer of authorisations. In my opinion the RMA may well enable Councils to allocate the right to occupy space through

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<sup>17</sup> Section 165A Interpretation – authorisations, of the Resource Management Act 1991

means other than authorisations. It could also possibly be argued that under Section 165K (3) & (4) of the RMA that the requirement for an authorisation prior to applying for a resource consent also has to be provided for in the regional coastal plan. e.g. the use of authorisations is not a default in all circumstances. I believe that it is clear in the RMA that while in some circumstances the Council is required to use *authorisations* e.g. allocation to the Trustee, the Council could choose not to use authorisations, if so provided for in the Plan.

Were the Council does choose to use authorisations as its method of allocation, then the legislation prescribes the process<sup>18</sup> which must be used. Should the Council make the decisions to accept the alternative method of allocation proposed in these plan changes then I tend to agree that the process would be more administratively efficient if authorisations did not need to be offered when the allocation was pre determined. It would be a nonsense to publically notify the offer of authorisations when they could only be offered to one organisation, it would also be a waste of the applicants time to fulfil the information requirements of the legislation<sup>19</sup> when the information is already known. The legislation provides that in the case of an invited private plan change where the authorisations are also automatically allocated to the applicant, the Council is merely required to publically notify the allocation.<sup>20</sup> I believe that approach is more appropriate in this case than the approach currently required when authorisations are offered.

The changes proposed by NZKS are a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I think the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

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<sup>18</sup> Section 165P, 165Q, 165S & 165T of the Resource Management Act 1991

<sup>19</sup> Section 165Q(1) of the Resource Management Act 1991

<sup>20</sup> Section 165ZF(3)(b) of the Resource Management Act 1991



## 4. Recommended Decisions

### *Recommended Decisions - Marlborough Sounds Resource Management Plan - Plan Change 16 Allocation of Authorisations*

**Annette Stroh**

#### PC16 Whole plan change, Submission # 8

*Relief sought:*

The existing bays in the Marlborough Sounds that are currently aquaculture free remain so under the Plan Change. Only bays with existing AMA's to be affected by this proposed Plan Change.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change could be amended to include exclusion areas as suggested by the submitter it is considered more appropriate that this issue be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

**Anthony John Coard**

#### 3.4A.2.Z Zoning, Submission # 25

*Relief sought:*

Remove paragraph 2

*Recommended Decision:*

Reject

As part of the legislative changes the Government made the decision to deem all lawfully established marine farms under the previous legislation, as AMA's. The Act is quite clear in that the existing farms are now in AMA's, and supporting legislation states the AMA's are subject to the provisions in the regional coastal plan. Amendments currently before the Government (when enacted) will further clarify that the deemed AMA's are in the regional coastal plan. The legislation (and the amendments currently before the government) further state that a plan change is required to remove the AMA's from the plan. The references to the existing farms in the plan changes were included for information purposes, and reflects the legislation. It is therefore recommended that the relief sought be rejected.

## **M9.4A.2.M Monitoring, Submission # 26**

***Relief sought:*** Monitoring of sites and inclusions of non AMA farm sites be the same process i.e. each of these non AMA farms existing go through a proper consent process.

***Recommended Decision:*** Reject  
The plan changes simply deals with how space that has been created should be allocated when it arises from a private plan change. Submissions seeking to amend the rules regarding the management of marine farming are beyond the scope of this plan change and can not be accepted. It is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **Bilbrough Family Trust**

### **M9.1 Introduction**

***Relief sought:*** Change wording to include reference to the Marlborough Sounds, it's scenic waterways and sheltered beaches, and all the topographical features of this very large area.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:*** Reject  
It is uncertain which part of the proposed plan change this submission point relates to as the submission was based on the text in Plan Change 53. It is recommended that the relief sought be rejected as it does not seem to add anything to the plan change.

### **M9.1.2 para6. Aquaculture Management -Paragraph 6.**

***Relief sought:*** Change wording "Existing lawfully established marine farms are to be subjected to the same rigorous testing for all new AMA's, which means they DO NEED a plan change."

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:*** Reject  
As part of the legislative changes the Government made the decision to deem all lawfully established marine farms under the previous legislation, as AMA's. The Act is quite clear in that the existing farms are now in AMA's , and supporting legislation states the AMA's are subject to the provisions in the regional coastal plan . Amendments currently before the Government (when enacted) will further clarify that the deemed AMA's are in the regional coastal plan. The legislation (and the amendments currently before the government) further state that a plan change is required to remove the AMA's from the plan. The references to the existing farms in the plan changes were included for information purposes, and reflects the legislation. It is therefore recommended that the relief sought be

rejected.

### **M9.4A.2.Z Zoning**

***Relief sought:***

1. Replace second paragraph with "Existing lawfully established marine farms will be included in the plan, to the same criteria for any AMA zone.
2. Remove the word "new" and change the wording to "All marine farms..."

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

As part of the legislative changes the Government made the decision to deem all lawfully established marine farms under the previous legislation, as AMA's. The Act is quite clear in that the existing farms are now in AMA's, and supporting legislation states the AMA's are subject to the provisions in the regional coastal plan. Amendments currently before the Government (when enacted) will further clarify that the deemed AMA's are in the regional coastal plan. The legislation (and the amendments currently before the government) further state that a plan change is required to remove the AMA's from the plan. The references to the existing farms in the plan changes were included for information purposes, and reflects the legislation. It is therefore recommended that the relief sought be rejected.

### **PC16 Whole plan change**

***Relief sought:***

There should only be one set of rules regarding marine farming.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

The plan changes simply deals with how space that has been created should be allocated when it arises from a private plan change. Submissions seeking to amend the rules regarding the management of marine farming are beyond the scope of this plan change and can not be accepted. It is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **Campbell Black**

### **PC16 Whole plan change, Submission # 3**

***Relief sought:***

Reject the change at the earliest possible time.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes.

It is recommended that the relief opposing the plan changes on the grounds that it will enable the expansion of the marine farming industry be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **Chaucer Bay Family Trust**

### **M9.1.2 para6. Aquaculture Management -Paragraph 6, Submission # 28**

**Relief sought:**

The Council exclude the Bay of Many Coves from the establishment of any AMA under these proposed Plan Changes.

**Further Submission(s)**

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change could be amended to include exclusion areas as suggested by the submitter it is considered more appropriate that this issue be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **David Grigg**

### **PC16 Whole plan change, Submission # 24**

**Relief sought:**

Support with the following codicils.

a) Any individual/organisation that is planning research in an allocated AMA must be put in a closed tender that they will be doing so. If more than one group states their intentions to do research in an AMA. The council can wait a specific time for both groups to complete their research and submit their application. This will not give the larger organization who have more capital and resources an unfair advantage to get their research done and application applied for before the smaller group can get their results in. This would create a level playing field for smaller and less funded groups.

b) There must be consideration and non-interferences to current fish and bird activities in the area.

c) There must be extensive consultations by the council with those affected by the AMA.

d) The proposed AMA must not prohibit human activities that wish to continued

proceeding in that area.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose in Part

**Recommended Decision:** Reject

It is not clear what the submitter is suggesting, but I infer support for a invited private plan change process, if not then hopefully the matter will be further explained in the hearing. I recommend the Council reject the matters raised in the codicils b,c,& d which can not be addressed in this plan change, and the submitter be encouraged to submit on Plan Changes 19 & 53.

## Deep Trust

### PC16 Whole plan change, Submission # 22

**Relief sought:** Oppose Plan Change 16, no specific decision requested.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes.

It is recommended that the relief opposing the plan changes on the grounds that it will enable the expansion of the marine farming industry be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## Olphin Watch Ecotours

### PC16 Whole plan change, Submission # 66

**Relief sought:** A full consultative approach that factors in a variety of issues and how the increasing aquaculture industry will likely negatively impact the wildlife, tourism operators, sounds bach and home owners and recreational users alike before making changes to the current plan.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private

plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes.

The relief sought is beyond the scope of this plan change and it is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **East Bay Conservation Society (Ben Wybourne)**

### **PC16 Whole plan change**

*Relief sought:*

AMA's should not be created without proper consultation or consideration of marine ecological values.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

The plan changes simply deals with how space that has been created should be allocated when it arises from a private plan change. Submissions seeking to amend the policies regarding the development of marine farming are beyond the scope of this plan change and can not be accepted. It is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **East Bay Conservation Society (Mark Denize)**

### **PC16 Whole plan change, Submission # 52**

*Relief sought:*

1. Opposed
2. If Council goes through with this then they need to somehow create a more level playing field, any applicant applying for a private plan change should be required to consult with all stakeholders and all sounds property owners to ensure that every one is informed about the process.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

1. Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected.
2. All applications for AMA's are required to be publically notified and to this extent the relief sought can be accepted without changes.

## Frances Hall

### PC16 Whole plan change Submission # 48

*Relief sought:* Stop Plan Change 16 and instead initiate a wider consultation and debate about where, how and how much we will develop aquaculture in the Sounds. Council should be leading a process to decide where we want marine farms.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request. In addition, following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought seeking to stop the plan change be rejected.

It should be noted that the issues the submitter is seeking debate on will be dealt with in a subsequent plan change and it is recommended that the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## Friends of Nelson Haven and Tasman Bay Inc

### PC16 Whole plan change, Submission # 13

*Relief sought:* That all references to the alternative allocation method in the plan change are deleted.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. There is a rule within the plan change preventing applications for new AMA's until the new plan change is notified

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances.  
As a consequence it is recommended that the relief sought be rejected.

**M9.4A Issue Submission # 14**

***Relief sought:***

That all references to the alternative allocation method in the plan change are deleted in particular the wording "The time, resources and costs---Provide certainty to the Plan Change applicant."

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**M9.4A.2.A Authorisations, Submission # 15**

***Relief sought:***

That all references to the alternative allocation method in the plan change are deleted in particular paras 2 & 3 which begin " An alternative method is specified---will be by way of public tender"

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**M35A.2.1 Alternative Allocation, Submission # 16**

***Relief sought:***

That all references to the alternative allocation method in the plan change are deleted in particular all of General Rule 35A.2.1

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.



## Fyvie Management

### PC16 Whole plan change

*Relief sought:*

The existing bays in the Marlborough Sounds that are currently aquaculture free remain so under the Plan Change. Only bays with existing AMA's to be affected by this proposed Plan Change.

*Further Submission(s)*

The New Zealand King Salmon Co. Ltd

*Recommended Decision:*

Reject

A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change could be amended to include exclusion areas as suggested by the submitter it is considered more appropriate that this issue be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## Glenn Hall

### PC16 Whole plan change, Submission # 49

*Relief sought:*

1. Council to decide on the aquaculture provisions and zoned areas first.
2. The plan change should be abandoned and the status quo of allocation should be maintained.

*Further Submission(s)*

The New Zealand King Salmon Co. Ltd

*Recommended Decision:*

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. There is a rule within the plan change preventing applications for new AMA's until the new plan change is notified

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## Guardians of the Sounds

### PC16 Whole plan change, Submission # 51

*Relief sought:*

1. Opposed
2. If Council goes through with this then they need to somehow create a more level playing field, any applicant applying for a private plan change should be required to consult with all stakeholders and all sounds property owners to ensure that every one is informed about the process.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

1. Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected.
2. All applications for AMA's are required to be publically notified and to this extent the relief sought can be accepted without changes.

## Jonathon Hall

### M9.4A.1.1.2 Policy 1.2, Submission # 34

*Relief sought:*

1. Maintain the allocation of authorisations through public tender.
2. Delete Policy 1.2 and replace it with the following: "Allocation of authorisations by way of public tender for coastal space in AMA's created through standard private plan changes"

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

### M9.4A.2.Z Zoning, Submission # 35

*Relief sought:*

Existing marine farms are not deemed to be AMA's until consultation with the community about marine farming in the Sounds has occurred.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

As part of the legislative changes the Government made the decision to deem all lawfully established marine farms under the previous legislation, as AMA's. The Act is quite clear in that the existing farms are now in AMA's , and supporting legislation states the AMA's are subject to the provisions in the regional coastal plan . Amendments currently before the Government (when enacted) will further clarify that the deemed AMA's are in the regional coastal plan. The legislation (and the amendments currently before the government) further state that a plan change is required to remove the AMA's from the plan. The references to the existing farms in the plan changes were included for information purposes, and reflects the legislation. It is therefore recommended that the relief sought be rejected.

**M9.4A.2.R Rules, Submission # 36**

**Relief sought:** Council should publish the draft rules and open them up to consultation before seeking to change the authorisation allocation method.

**Further Submission(s)**

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

**M9.4A.2.A Authorisations, Submission # 37**

**Relief sought:** 1.Retain this method of allocation and reproduce it in the standard private plan change process.

2. Seek the default public tender process to be maintained.

**Further Submission(s)**

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**M9.4A.2.M Monitoring, Submission # 39**

**Relief sought:** Council should publish draft monitoring methods and open them up to consultation before seeking to change the authorisation allocation method.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

**M35A.1 Preamble, Submission # 40**

*Relief sought:*

Council bring forward plan change 19 first.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

**M35A.2 General Rules Submission # 41**

*Relief sought:*

Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

Recommend that the Council reject the relief sought. The proposed alternative method of allocation is considered both necessary and the most appropriate method of allocation in the circumstances of the region. The proposed method is considered to be a more efficient and effective method of allocation than the method of public tender promoted in this submission

### **M35A.2.1.1 Circumstances under which the Method will Apply, Submission # 42**

**Relief sought:** Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject  
Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **M35A.2.1.2 Alternative Allocation Method, Submission # 43**

**Relief sought:** Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject  
Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **M35A.2.1.2.1 One Private Plan Change Request, Submission # 44**

**Relief sought:** Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject  
Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **M35A.2.1.2.2 More than One Private, Submission # 45**

**Relief sought:** Delete these rules and instead apply the same rules governing authorisation

allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **M35.A.3 Activities in AMAs, Submission # 46**

**Relief sought:**

Council should not seek to change the authorisation allocation method until the contents of PC19 have been finalised, consulted upon and brought into force.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **M35A.4 Information Requirements, Submission # 47**

**Relief sought:**

Council should not seek to change the authorisation allocation method until the contents of PC19 have been finalised, consulted upon and brought into force.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate

that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## Kenneth Roush

### M35A.2.1.2.4 Cancellation or Expiry of Coastal Permits, Submission # 27

*Relief sought:*

The wording of this section should be changed so that it does not require the permit to be re-offered.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

The premise is that no new AMA's will be created unless that space is appropriate for that purpose, there needs to be sufficient information at the time to assess the ecological effects etc of the new space. However, it is acknowledged that over time issues of community use and natural character may change to the point that aquaculture becomes inappropriate for that location. The appropriate response, in those instances would be to change the zoning of the area. The intention is to include policies in plan changes 19 & 52 promoting the removal of such zones when found to be in-appropriate, in accordance with the provisions in the plan. The question is would it be useful to have the ability to not allocate space ahead of a plan change? I recommend consideration be given to amend the provisions, however, it is probably unlikely that such an occasion (as suggested by New Zealand King Salmon Ltd) will arise and more permanent solutions are available to Council.

## Lynn Newman-Hall

### 16 Whole plan change Submission # 60

*Relief sought:*

None specified - plan change opposed.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

The Act includes a number of defaults regarding how authorisations should be allocated. The default's set in place a system, without Council needing to undertake a plan change, to address the issue of allocation should it arise. However, the Act also quite clearly provides Council with the ability to use method other than the defaults should they so wish, and the method is used where space arises through invited private plan changes. I recommend declining the relief sought regarding this issue for the reasons stated above.

## Marine Farming Association

### PC16 Whole plan change, Submission # 4

*Relief sought:* Support.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Support

*Recommended Decision:* Accept

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances of the region. As a consequence it is recommended that the relief sought supporting the plan change be accepted to the extent that the Plan Change as notified will be modified by the decisions.

## Marlborough Aquaculture Limited

### PC16 Whole plan change, Submission # 53

*Relief sought:* Support

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Support

*Recommended Decision:* Accept

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances of the region. As a consequence it is recommended that the relief sought supporting the plan change be accepted to the extent that the Plan Change as notified will be modified by the decisions.

## Marlborough Environment Centre Inc

### PC16 Whole plan change, Submission # 10

*Relief sought:*

1. That the proposed Plan Change is declined.
2. In the event that Council does not decline the Plan Changes, Council must modify the changes to allow for a significant percentage of an AMA application area to be tendered by Council to allow broader community involvement.
3. Ensure that the provisions sought by 16 cannot be implemented in any way ahead of the full aquaculture planning provisions intended through the RPS and RMA Plan reviews.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**



Oppose

**Recommended Decision:** Accept in Part

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected.

2. Insufficient information has been provided to assess the proposed amendment. While there may be some scope to introduce tendering for part of a proposed AMA's it is likely that in smaller applications this would lead to fragmented uneconomic sites being publically tendered or applications for sites larger than they need to be to fulfil the tendering requirement. In addition, there is not certainty that public tendering will benefit the community.

3. To allay community concerns I recommend that the Council consider changing the wording of the General Rules to (as appropriate) "General Rule 35A.2/ 39A.2 shall have no effect until Plan Change 16/53 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect."

## Minister of Conservation

### M35A.2 General Rules, Submission # 18

**Relief sought:**

Amend Rule 35A.2 General Rule as follows "General Rule 35A.2.1 shall not have effect until Plan Change 16 becomes operative and Plan Change 19 has statutory effect."

**Recommended Decision:**

Accept in Part

The plan changes contain a rule which prevents the plan change from having legal effect until the plan changes becomes operative. This rule was included for the express purpose of preventing applications for new space until the new provisions are notified. It was anticipated that it would be a significant period of time before all legal requirements of the RMA had been completed (including sign off by the Minister of Conservation) and the rules had effect, certainly enough time for the new provisions to be notified. It was considered that the rule as worded would be sufficient to prevent any applications ahead of the new provisions being notified.

I still consider that the rule wording as notified is sufficient, however greater certainty for the community and transparency would be gained by clearly stating that the plan changes will have no effect until the new aquaculture policies and framework has been notified/made operative.

The following changes to the general rule wording are recommended:

"General Rule 35A.2 shall have no effect until Plan Change 16 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect."

### M9.4A.1 Objectives and Policies, Submission # 19

**Relief sought:**

Add a new policy to 9.4A.1 Objectives and Policies to the effect that it is not the

Council's intention to approve the contents of Plan Change 16 until further Council Plan change (Plan Change 19) to amend the policy framework for aquaculture in accordance with the new aquaculture legislation has been made operative.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Support in Part

**Recommended Decision:** Reject

The following changes to the general rule wording are proposed:

"General Rule 35A.2 shall have no effect until Plan Change 16 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect."

It is considered that the changes proposed to the general rules will be sufficient and additional policies will not be required.

**M35A.1 Preamble, Submission # 20**

*Relief sought:*

Amend the text of 35A.1 Preamble by adding a statement that Council does not intend to amend the default allocation regime for private plan changes until the policy framework of the Sounds Regional Coastal Plan is amended to provide appropriate guidance for assessing subsequent private plan changes request to create new AMA's.

**Recommended Decision:** Reject

-

The plan changes contain a rule which prevents the plan change from having legal effect until the plan changes becomes operative. It is not considered necessary to include text in this section for the rule to have effect, and the proposed text would become obsolete within a short time.

**PC16 Whole plan change, Submission # 21**

*Relief sought:*

Such further or alternative relief necessary to give effect to the matters raised in this submission.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Support in Part

**Recommended Decision:** Accept

Further or alternative relief necessary to give effect to the matters raised in this submission may arise, and to that extent the relief could be accepted..

## Ministry of Fisheries

### PC16 Whole plan change, Submission # 23

*Relief sought:* None specified.

*Recommended Decision:* No Recommendation  
No relief has been specifically sought and to that end no recommendation can be made.

## Norman & Linda Wilkins

### PC16 Whole plan change

*Relief sought:* ) Legislate that bays of particular natural beauty will be protected and marine farming not be allowed there.  
2) That legislation will ensure that bays that have a large number of dwellings and consequent development in them be also exempt from marine farming.  
3) When an area does not come into either of these two categories, that property owners living nearby be consulted and their views taken into account when the Council makes a decision.

#### *Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject  
The plan changes simply deals with how space that has been created should be allocated when it arises from a private plan change. Submissions seeking to amend the rules regarding the management of marine farming are beyond the scope of this plan change and can not be accepted. However, a Plan Change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for Plan Changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through Plan Changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## P Meach

### PC16 Whole plan change, Submission # 69

*Relief sought:* None specified.

#### *Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** No Recommendation  
That the information be received and that no decision be made.

## **Pelorus Wildlife Sanctuaries Limited**

### **M9.4A Issue, Submission # 55**

**Relief sought:** Delete all of the text beginning on the second paragraph of this section as follows: "---The time, resources---Provide certainty to the Plan Change applicant."

**Further Submission(s)**

**The New Zealand King Salmon Co. Ltd**

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **M9.4A.2.A Authorisations, Submission # 56**

**Relief sought:** Delete all of paragraphs 2 & 3 which provide as follows: An alternative method---by way of public tender".

**Further Submission(s)**

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **M35A.2.1 Alterantive Allocation, Submission # 57**

**Relief sought:** Delete all of Rule 35A.2.1 (including sub parts 35A.2.1.1, 35A.2.1.2, 35A.2.1.2.1, 35A.2.1.2.2, 35A.2.1.2.3, 35A.2.1.2.4

**Further Submission(s)**

**The New Zealand King Salmon Co. Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

**M35A.5 Maps, Submission # 58**

***Relief sought:***

- 1.Delete the note to Rule 35A.5; or
- 2.If deemed AMA areas are to be included in planning maps, they must undergo a Schedule 1 and 1A process. At the very least there should be a notation stating: "Deemed aquaculture management area under 2004 Aquaculture Reform Legislation until 31 December 2024."

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Accept in Part

While the intention of the legislation is to include the existing farms in the plans there are however no specific provisions enabling Council to do so. In the absence of such a provision, I believe the Council's ability to make changes to an operative plan outside of the plan change process, is limited to the correction of minor errors which is a situation I believe does not apply in this case. The absence of such a provision in the legislation I believe is an anomaly, because the legislation makes it quite clear that the AMA's are part of the regional coastal plan. It appears that the existing farms are now part of and subject to the regional coastal plan, but the plans can't be simply updated to include them.

I recommend the first relief sought by Pelorus Wildlife Sanctuaries Limited be accepted and the note removed from Plan Change 16. I also recommend that the second alternative relief sought be declined. The issue needs to be re-addressed through Plan Changes 19&52.

**PC16 Whole plan change, Submission # 59**

***Relief sought:***

An alternative allocation method should not be decided upon until the Council has undertaken a proper planning exercise.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## Port Gore Group

### PC16 Whole plan change, Submission # 33

*Relief sought:* Decline Plan change 16.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to decline the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## Port Underwood Association Inc.

### PC16 Whole plan change, Submission # 68

*Relief sought:* 1) Delay any consideration of New Zealand King Salmon's plan change 16 until:

- a) All New Zealand King Salmon's Plan Changes are available for review by the public.
  - b) The RPS process has progressed to the stage where the community has clarity on the location and extent of aquaculture exclusion areas.
  - c) The review by the Government of aquaculture development legislation is able to be reviewed by the public.
2. If due to legal constraints, Council is unable to delay the decision on regards PC16 then the Port Underwood Association would ask that the Marlborough District Council declines the application for Plan Change 16 in light of the

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:* Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to delay the consideration of the plan change. A plan change (19 & 52) has been drafted which will address some of the concerns raised by the submitter. This draft will

be released for public consultation in the next few weeks. In the interim there are rules proposed for Plan Changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. The new provisions will incorporate any legislative changes arising at that time. It is considered appropriate that the concerns raised by the submitter be addressed through Plan Changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **Queen Charlotte Wilderness Park Community**

### **PC16 Whole plan change**

***Relief sought:***

Deny plan change 16 and Council to led the process of creating AMA's which includes input form all sectors of the community that have a stake in the future and considers the Marlborough Sounds and its uses as a whole.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of were aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **M9.4A.2 Methods of Implementation**

***Relief sought:***

Deny plan change 16 and Council to led the process of creating AMA's which includes input form all sectors of the community that have a stake in the future and considers the Marlborough Sounds and its uses as a whole.

***Further Submission(s)***

**The New Zealand King Salmon Co. Ltd**

Oppose

***Recommended Decision:***

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private

plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **M9.4A.2.Z Zoning**

*Relief sought:*

Deny plan change 16 and Council to led the process of creating AMA's which includes input form all sectors of the community that have a stake in the future and considers the Marlborough Sounds and its uses as a whole.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **Rene P**

### **M9.4A.2.R Rules Submission # 50**

*Relief sought:*

Insert the following interim rule

"No new AMA's be created in any 'Coastal marine Zone" area around D'Urville Island that has already been closed to the establishment of any new mussel farms or until the completion of plan 19 or is made operational.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject



The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change could be amended to include exclusion areas as suggested by the submitter it is considered more appropriate that this issue be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **Robin Cox**

### **M9.4A Issue, Submission # 65**

*Relief sought:*

Support

*Recommended Decision:*

Accept

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances of the region. As a consequence it is recommended that the relief sought supporting the plan change be accepted to the extent that the Plan Change as notified will be modified by the decisions.

## **Robyn Vidak & Carney Soderberg**

### **PC16 Whole plan change, Submission # 17**

*Relief sought:*

Decline to pursue the proposed plan change in favour of a process similar to the one detailed in the submission.

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Oppose

*Recommended Decision:*

Reject

The Council does not have the powers under the RMA to implement the relief sought in the submission and a legislative change would be required. The Government is currently reviewing the way in which aquaculture is managed in New Zealand as part of the phase two reforms of the RMA. I recommend the relief sought be rejected and the submitter be encourage to participate in the legislative reform currently being undertaken by the government.

## Royal Forest and Bird Protection Society NZ, Inc.

### PC16 Whole plan change, Submission # 67

*Relief sought:*

Oppose

*Further Submission(s)*

The New Zealand King Salmon Co. Ltd

Oppose

*Recommended Decision:*

Reject

Plan change (19 & 52) has been drafted and will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified which should address some of the concerns raised by the submitter.

The submitter also suggests that there may be alternative ways of allocating space arising from a private plan change however, no particular details are provided. Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## Te Ohu Kaimoana Trustee Limited

### M9.1.2 Aquaculture Management, Submission # 63

*Relief sought:*

Amend the paragraph as follows;

"---Council to the Trustee of the Maori Commercial Aquaculture Settlement Trust under the Maori Commercial Aquaculture Claims Settlement Act 2004 for distribution to iwi."

*Further Submission(s)*

The New Zealand King Salmon Co. Ltd )

Support

*Recommended Decision:*

Accept

The Maori Commercial Aquaculture Claims Settlement Act provides a full and final settlement of Maori commercial aquaculture interests since 21 September 1992. In accordance with this Act, the Council is required to provide a portion of the authorisations to the Trustee of the Maori Commercial Aquaculture Settlement Trust. Only claims for commercial aquaculture activities prior to this date are to be addressed through the historical Treaty Claims process. The wording suggested by the submitters better reflects the current Act and should be adopted.

It should be noted that through Aquaculture Legislation Amendment Bill (No. 2) changes are proposed which will require applicants for new AMA's to reach agreement with iwi first and only if this process fails will Council be required to identify space. In both cases at the end of the process the Council will be required to allocate the authorisations. It may be appropriate for Council to

review the wording of this section through proposed Plan Changes 19 & 52.

## **The New Zealand King Salmon Co. Ltd**

### **M9.4A Issue, Submission # 70**

***Relief sought:***

- 1) Replace the word "authorisations" in the grey scale box with "the right to apply for a coastal permit"
- 2) Replace the word "authorisations" in the 9 th line of the second paragraph with "the right to apply for a coastal permit for marine farming".
- 3) Replace the word "authorisations" on the last line of the 2nd paragraph with "the right for a coastal permit for a marine farming".
- 4) Replace the word "authorisation" on the 3rd line of the paragraph 3 with "the right to apply for coastal permits for marine farming".
- 5) Delete the word "authorisation" on the 4th line of the 3rd paragraph.
- 6) Add the following new paragraph after the third paragraph. " In addition, the public tendering process assumes multiple applications for authorisation allocations. Public notification, calling for authorisation applicants, is a default process in the Act. In circumstances where there can only be one applicant (the Private Plan Change applicant), this process of public notification for authorisations is considered unnecessarily time-consuming and costly. The Plan, therefore, adopts an alternative method which provides the right to apply for coastal permits for marine farming directly to the operative Private Plan Change applicant. This method is considered to be more efficient and avoids unnecessary delays in the process."

***Further Submission(s)***

**Pelorus Wildlife Sanctuaries Limited ( Richard Smith)**

Oppose

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **M9.4A.1.1 Objective, Submission # 71**

***Relief sought:***

Delete the word "authorisations" and replace with "the right to apply for coastal permits"

***Further Submission(s)***

**Pelorus Wildlife Sanctuaries Limited**

Oppose

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**M9.4A.1.1.2 Policy 1.2, Submission # 72**

***Relief sought:***

Reword the Policy as follows " Processes for obtaining the right to apply for coastal permits in AMA's that are effective...""

***Further Submission(s)***

**Pelorus Wildlife Sanctuaries Limited**

Oppose

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**M9.4A1.1.3 Policy 1.3, Submission # 73**

***Relief sought:***

Replace the word "authorisation" with the words "new coastal space"

***Further Submission(s)***

**Pelorus Wildlife Sanctuaries Limited**

Oppose

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **M9.4A.2.A Authorisations, Submission # 74**

*Relief sought:*

- 1) Replace the "Authorisations" heading with the following wording "Rights to apply for coastal permits for marine farming"
- 2) Amend the second paragraph as follows: "An alternative method is specified in the Plan for obtaining the right to apply for available space within AMA zones which have been included in the Plan as a result of a request for a standard Plan Change. In these circumstances, the right to apply for available space within AMA Zones will be offered to the first person whose Private Plan Change was completed and successfully resulted in an operative AMA Zone for that area of coastal marine area.
- 3) Replace the word "authorisations" in the 3rd paragraph with "right to apply".

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **M35A.1 Preamble, Submission # 75**

*Relief sought:*

Amend the 4th paragraph as follows : "Volume One, Section 9.1.2, Aquaculture Management, describes the methods by which the right to apply for resource consents for marine farming will be obtained".

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **M35A.2.1 Alternative Allocation, Submission # 76**

*Relief sought:*

- 1) Replace the word "Authorisations" in the heading with "the Right to Apply".
- 2) Amend the first sentence of the first paragraph as follows: "These General Rules specify the method that will be used to obtain the right to apply for coastal permits for marine farming in operative AMA Zones arising from the standard Private Plan Change requests under Schedules 1, Part 2, and 1A of the Act."

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **M35A.2.1.1 Circumstances under which the Method will Apply, Submission # 77**

*Relief sought:*

Amend the first sentence as follows: "Rule 35.2.1.2 shall be used to obtain the right to apply for coastal permits for marine farming in operative AMA Zones, where the AMA Zone, or the part of the AMA Zone, arose from a Private Plan Change under Schedules 1, Part 2, and 1A of the Act."

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **M35A.2.1.2 Alternative Allocation Method, Submission # 78**

*Relief sought:*

Amend as follows: "under the circumstances specified in Rule 35A.2.1.1, the right to apply for coastal permits for marine farming will only be obtained by way of the following methods:"

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

**Recommended Decision:** No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**M35A.2.1.2.1 One Private Plan Change Request, Submission # 79**

*Relief sought:*

Amend the first sentence as follows" The right to apply for coastal permits for marine farming for an area in an AMA Zone arising from a single Private Plan Change shall be obtained by the person who requested the Private Plan Change."

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

**Recommended Decision:** No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**M35A.2.1.2.2 More than One Private, Submission # 81**

*Relief sought:*

Amend the first sentence as follows: "where more than one Private Plan Change request was made to Council for the same area of an AMA Zone, the right to apply for coastal permits for marine farming for the overlapping area shall be obtained by the person whose Private Plan Change request was first to either:"

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited)**

Oppose

**Recommended Decision:** No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from

the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **M35A.2.1.2.3 Offers not Taken Up, Submission # 82**

*Relief sought:*

- 1) Amend the heading as follows" The Right to Apply for Coastal Permit for Marine Farming not taken up"
- 2) Amend the first paragraph as follows;" Where the right to apply for a coastal permit for marine farming has been obtained by a person under Rules 35A.2.1.2.1 or 35A.2.1.2.2, and: i) The right to apply for a coastal permit for marine farming by that person lapses; or ii) A coastal permit for marine farming is granted to the person that has obtained the right to apply but it lapses; authorisations within that area shall be offered by way of public tendering.

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **M35A.2.1 Alterantive Allocation, Submission # 83**

*Relief sought:*

Add the following new provisions:

35A.2.1.3 Reservations Relating to Commercial Fishing.

When an AMA Zone becomes operative and is subject to a reservation relating to commercial fishing, Sections 165G and 165J of the Act shall apply with all necessary modifications as if the right to apply for a coastal permit for marine farming was an authorisation.

35A.2.1.4 Right to apply for Coastal Permit does not Confer Right to Coastal Permit.

The obtaining of a right to apply for a coastal permit for marine farming does not confer any right to the grant of a coastal permit in respect of the space that the right to apply relates to.

35A.2.1.5 Right to Apply for Coastal Permit Transferable

The right to apply for a coastal permit for marine farming or any part of it may be transferred by its holder to any other person, but the transfer does not take effect



until written notice of it has been received by the Council. Rule 35A.2.1 applies to the person to whom the right to apply is transferred.

*Further Submission(s)*

**Pelorus Wildlife Sanctuaries Limited**

Oppose

**Recommended Decision:**

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**Totaranui Limited**

**M9.1.2 Aquaculture Management, Submission # 64**

*Relief sought:*

Amend the paragraph as follows;

"---Council to the Trustee of the Maori Commercial Aquaculture Settlement Trust under the Maori Commercial Aquaculture Claims Settlement Act 2004 for distribution to iwi."

*Further Submission(s)*

**The New Zealand King Salmon Co. Ltd**

Support

**Recommended Decision:**

Accept

The Maori Commercial Aquaculture Claims Settlement Act provides a full and final settlement of Maori commercial aquaculture interests since 21 September 1992. In accordance with this Act, the Council is required to provide a portion of the authorisations to the Trustee of the Maori Commercial Aquaculture Settlement Trust. Only claims for commercial aquaculture activities prior to this date are to be addressed through the historical Treaty Claims process. The wording suggested by the submitters better reflects the current Act and should be adopted.

It should be noted that through Aquaculture Legislation Amendment Bill (No. 2) changes are proposed which will require applicants for new AMA's to reach agreement with iwi first and only if this process fails will Council be required to identify space. In both cases at the end of the process the Council will be required to allocate the authorisations. It may be appropriate for Council to review the wording of this section through proposed Plan Changes 19 & 52

# ***Recommended Decisions - Wairau\Awatere Resource Management Plan - Plan Change 53 Allocation of Authorisations***

**Alan Richard Wells**

## **W9.28.Z Zoning, Submission # 12**

***Relief sought:***

The inclusion of criteria that no AMA's be established in areas where previous applications for marine farms have been declined by the Council.

***Recommended Decision:*** Accept in Part

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the plan change be accepted (with modifications) and the relief sought be accepted to the extent that it supports the plan change.

A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change could be amended to include exclusion areas as suggested by the submitter it is considered more appropriate that this issue be addressed through plan changes 19 and 52. I recommend to the extent that the submission seeks changes the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **Chaucer Bay Family Trust**

### **W9.1.2 Aquaculture Management, Submission # 14**

***Relief sought:***

Oppose

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:*** Reject

A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. While the plan change could be amended to include exclusion areas as suggested by the submitter it is considered more appropriate that this issue be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be

encouraged to submit on Plan Changes 19 and 52 when notified.

## Deep Trust

### PC 53 Whole Plan Change, Submission # 10

*Relief sought:* Oppose Plan Change 53, no specific decision requested.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:* Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes.

It is recommended that the relief opposing the plan changes on the grounds that it will enable the expansion of the marine farming industry be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## Dolphin Watch Ecotours

### PC 53 Whole Plan Change, Submission # 47

*Relief sought:*

Seek a full consultative approach that factors in a variety of issues and how the increasing aquaculture industry will likely negatively impact the wildlife, tourism operators, sounds bach and home owners and recreational users alike before making changes to the current plan.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:* Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes.

The relief sought is beyond the scope of this plan change and it is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## East Bay Conservation Society ( Ben Wybourne)

### PC 53 Whole Plan Change

*Relief sought:*

AMA's should not be created without proper consultation or consideration of marine ecological values.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

The plan changes simply deals with how space that has been created should be allocated when it arises from a private plan change. Submissions seeking to amend the policies regarding the development of marine farming are beyond the scope of this plan change and can not be accepted. It is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## East Bay Conservation Society

### PC 53 Whole Plan Change, Submission # 36

*Relief sought:*

1. Opposed.
2. If Council goes through with this then they need to somehow create a more level playing field, any applicant applying for a private plan change should be required to consult with all stakeholders and all sounds property owners to ensure that every one is informed about the process.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

1. Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected.
2. All applications for AMA's are required to be publically notified and to this extent the relief sought can be accepted without changes.

## Frances Hall

### PC 53 Whole Plan Change, Submission # 34

*Relief sought:*

Stop plan change 53 and initiate a wider consultation and debate about where, how and how much we will develop aquaculture. Council should be leading a process to decided where we want marine farms.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request. In addition, following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought seeking to stop the plan change be rejected.

It should be noted that the issues the submitter is seeking debate on will be dealt with in a subsequent plan change and it is recommended that the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **Friends of Nelson Haven Tasman Bay Inc**

### **PC 53 Whole Plan Change, Submission # 4**

**Relief sought:**

That all references to the alternative allocation method in the plan change are deleted.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. There is a rule within the plan change preventing applications for new AMA's until the new plan change is notified

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances.  
As a consequence it is recommended that the relief sought be rejected.

### **W9.26 Issue, Submission # 63**

**Relief sought:**

In particular seek deletion of the following text " The time, resources and --- provide certainty to the Plan Change applicant."

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**W9.28.A Authorisations, Submission # 64**

**Relief sought:**

In particular seek deletion of paras 2 & 3 which begin and end with "An alternative method---allocation will be by way of public tender."

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**W.39.A.2.1 Alternative Allocation, Submission # 65**

**Relief sought:**

In particular seek the deletion of all of this rule.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**Glenn Hall**

**PC 53 Whole Plan Change, Submission # 33**

**Relief sought:**

1. Council to decide on the aquaculture provisions and zoned areas first.
- 2.The plan change should be abandoned and the status quo of allocation should be maintained.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent

plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. There is a rule within the plan change preventing applications for new AMA's until the new plan change is notified

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances.

As a consequence it is recommended that the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 & 52 when notified.

## **Guardians of the Sounds**

### **PC 53 Whole Plan Change, Submission # 35**

*Relief sought:*

1. Opposed
2. If Council goes through with this then they need to somehow create a more level playing field, any applicant applying for a private plan change should be required to consult with all stakeholders and all sounds property owners to ensure that every one is informed about the process.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

1. Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected.
2. All applications for AMA's are required to be publically notified and to this extent the relief sought can be accepted without changes.

## **Jonathon Hall**

### **W9.27.1.2 Policy 1.2, Submission # 19**

*Relief sought:*

1. Maintain the allocation of authorisations through public tender.
2. Delete Policy 1.2 and replace it with the following: "Allocation of authorisations by way of public tender for coastal space in AMA's created through standard private plan changes"

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

#### **W9.28.Z Zoning, Submission # 20**

***Relief sought:***

Existing marine farms are not deemed to be AMA's until consultation with the community about marine farming has occurred.

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:***

Reject

As part of the legislative changes the Government made the decision to deem all lawfully established marine farms under the previous legislation, as AMA's. The Act is quite clear in that the existing farms are now in AMA's , and supporting legislation states the AMA's are subject to the provisions in the regional coastal plan . Amendments currently before the Government (when enacted) will further clarify that the deemed AMA's are in the regional coastal plan. The legislation (and the amendments currently before the government) further state that a plan change is required to remove the AMA's from the plan. The references to the existing farms in the plan changes were included for information purposes, and reflects the legislation. It is therefore recommended that the relief sought be rejected.

#### **W9.28.R Rules, Submission # 21**

***Relief sought:***

Council should publish the draft rules and open them up to consultation before seeking to change the authorisation allocation method.

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:***

Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.



**W9.28.A Authorisations, Submission # 22**

*Relief sought:*

1. Retain this method of allocation and reproduce it in the standard private plan change process.
2. Seek the default public tender process to be maintained.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief seeking to amend the supporting text in the plan change be rejected.

**W9.28.M Monitoring, Submission # 24**

*Relief sought:*

Council should publish draft monitoring methods and open them up to consultation before seeking to change the authorisation allocation method.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

**W.39.A.1 Preamble, Submission # 25**

*Relief sought:*

Council bring forward plan change 52 first.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the

plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **W.39.A.2 General Rules, Submission # 26**

***Relief sought:***

Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:*** Reject

Recommend that the Council reject the relief sought. The proposed alternative method of allocation is considered both necessary and the most appropriate method of allocation in the circumstances of the region. The proposed method is considered to be a more efficient and effective method of allocation than the method of public tender promoted in this submission

### **W.39.A.2.1.1 Circumstances Under Which The Method Will Apply, Submission # 27**

***Relief sought:***

Delete these rules and instead apply the same rules governing authorisation allocation in AMA Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:*** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

### **W.39.A.2.1.2 Alternative Allocation Method, Submission # 28**

***Relief sought:***

Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

**W39.A.2.1.2.1 One Private Plan Change Request, Submission # 29**

*Relief sought:*

Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

**W39.A.2.1.2.2 More than One Private Plan Change Request, Submission # 30**

*Relief sought:*

Delete these rules and instead apply the same rules governing authorisation allocation in AMA Zones arising from a Council-initiated Plan Change. i.e. That allocation of authorisations in AMA zones created through a standard private plan change process be by way of public tender.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances . As a consequence it is recommended that the relief sought to delete text supporting the proposed method be rejected.

**W.39.A.3 Activities in AMAS, Submission # 31**

*Relief sought:*

Council should not seek to change the authorisation allocation method until the contents of PC19 have been finalised, consulted upon and brought into force.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

#### **W.39.A.4 Information Requirements, Submission # 32**

**Relief sought:**

Council should not seek to change the authorisation allocation method until the contents of PC52 have been finalised, consulted upon and brought into force.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to defer the plan change. In addition, a plan change (19 & 52) has been drafted addressing the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **Kenneth Roush**

#### **W.39.A.2.1.2.4 Cancellation or Expiry of Coastal Permits, Submission # 13**

**Relief sought:**

The wording of this section should be changed so that it does not require the permit to be re-offered.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:**

The premise is that no new AMA's will be created unless that space is appropriate for that purpose, there needs to be sufficient information at the time to assess the ecological effects etc of the new space. However, it is acknowledged that over time issues of community use and natural character may change to the point that aquaculture becomes inappropriate for that

location. The appropriate response, in those instances would be to change the zoning of the area. The intention is to include policies in plan changes 19 & 52 promoting the removal of such zones when found to be in-appropriate, in accordance with the provisions in the plan. The question is would it be useful to have the ability to not allocate space ahead of a plan change? I recommend consideration be given to amend the provisions, however, it is probably unlikely that such an occasion (as suggested by New Zealand King Salmon Ltd) will arise and more permanent solutions are available to Council.

## **Lynn Newman-Hall**

### **PC 53 Whole Plan Change, Submission # 44**

***Relief sought:***

None specified - plan change opposed.

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:***

Reject

The Act includes a number of defaults regarding how authorisations should be allocated. The default's set in place a system, without Council needing to undertake a plan change, to address the issue of allocation should it arise. However, the Act also quite clearly provides Council with the ability to use method other than the defaults should they so wish, and the method is used where space arises through invited private plan changes. I recommend declining the relief sought regarding this issue for the reasons stated above.

## **Marine Farming Association**

### **PC 53 Whole Plan Change, Submission # 2**

***Relief sought:***

Supports plan change

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Support

***Recommended Decision:***

Accept

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances of the region. As a consequence it is recommended that the relief sought supporting the plan change be accepted to the extent that the Plan Change as notified will be modified by the decisions.

## **Marlborough Aquaculture Limited**

### **PC 53 Whole Plan Change, Submission # 37**

*Relief sought:*

Support

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Support

*Recommended Decision:*

Accept

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances of the region. As a consequence it is recommended that the relief sought supporting the plan change be accepted to the extent that the Plan Change as notified will be modified by the decisions.

## **Marlborough Environment Centre Inc**

### **PC 53 Whole Plan Change, Submission # 3**

*Relief sought:*

1. That the proposed Plan Change is declined.

2. In the event that Council does not decline the Plan Changes, Council must modify the changes to allow for a significant percentage of an AMA application area to be tendered by Council to allow broader community involvement, and ensure that the provisions sought by PC 53 cannot be implemented in any way ahead of the full aquaculture planning provisions intended through the RPS and RMA Plan reviews.

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Accept in Part

Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected.

2. Insufficient information has been provided to assess the proposed amendment. While there may be some scope to introduce tendering for part of a proposed AMA's it is likely that in smaller applications this would lead to fragmented uneconomic sites being publically tendered or applications for sites larger than they need to be to fulfil the tendering requirement. In addition, there is not certainty that public tendering will benefit the community.

3. To allay community concerns I recommend that the Council consider changing the wording of the General Rules to (as appropriate) "General Rule 35A.2/ 39A.2 shall have no effect until Plan Change 16/53 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect.

## Minister of Conservation

### W.39.A.2 General Rules, Submission # 6

*Relief sought:*

Amend as follows "General Rule 39A.2.1 shall not have effect until Plan Change 53 becomes operative and Plan Change 52 has statutory effect."

*Recommended Decision:*

Accept in Part

The plan changes contain a rule which prevents the plan change from having legal effect until the plan changes becomes operative. This rule was included for the express purpose of preventing applications for new space until the new provisions are notified. It was anticipated that it would be a significant period of time before all legal requirements of the RMA had been completed (including sign off by the Minister of Conservation) and the rules had effect, certainly enough time for the new provisions to be notified. It was considered that the rule as worded would be sufficient to prevent any applications ahead of the new provisions being notified.

I still consider that the rule wording as notified is sufficient, however greater certainty for the community and transparency would be gained by clearly stating that the plan changes will have no effect until the new aquaculture policies and framework has been notified/made operative.

The following changes to the general rule wording are recommended:

"General Rule 35A.2 shall have no effect until Plan Change 16 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect."

### W9.27 Objectives and Policies, Submission # 7

*Relief sought:*

Add a new policy to the effect that it is not the Council's intention to approve the contents of Plan Change until a further Council Plan change (Plan Change 52) to amend the policy framework for aquaculture in accordance with the new aquaculture legislation has been made operative.

*Recommended Decision:*

Reject

The following changes to the general rule wording are proposed:

"General Rule 35A.2 shall have no effect until Plan Change 16 becomes operative and a subsequent Plan Change, promulgated by the Council, which introduces objectives, policies and rules for aquaculture has statutory effect."

It is considered that the changes proposed to the general rules will be sufficient and additional policies will not be required.

### W.39.A.1 Preamble, Submission # 8

*Relief sought:*

Amend the text by adding a statement that Council does not intend to amend the default allocation regime for private plan changes until the policy framework of the Wairau Awatere regional coastal plan is amended in accordance with the

provisions of the 2005 Aquaculture legislation reforms.

**Recommended Decision:** Reject

The plan changes contain a rule which prevents the plan change from having legal effect until the plan changes becomes operative. It is not considered necessary to include text in this section for the rule to have effect, and the proposed text would become obsolete within a short time.

### **PC 53 Whole Plan Change, Submission # 9**

**Relief sought:**

Such further or alternative relief necessary to give effect to the matters raised in this submission.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Support in Part

**Recommended Decision:** Accept

Further or alternative relief necessary to give effect to the matters raised in this submission may arise, and to that extent the relief could be accepted.

## **Ministry of Fisheries**

### **PC 53 Whole Plan Change, Submission # 11**

**Relief sought:**

None specified

**Recommended Decision:** No Recommendation

No relief has been specifically sought and to that end no recommendation can be made.

## **Port Gore Group**

### **PC 53 Whole Plan Change, Submission # 18**

**Relief sought:**

Decline Plan Change 53.

**Further Submission(s)**

**The NZ King Salmon Co Ltd**

Oppose

**Recommended Decision:** Reject

Under the RMA once a plan change is notified the Council must no later than 2 years from notification make its decision on the plan change. Subsequently there is limited opportunity for Council to accept the submitter's request to decline the plan change. In addition, a plan change (19 & 52) has been drafted addressing



the issues raised by the submitter. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. It is considered more appropriate that the issues raised by the submitter be addressed through plan changes 19 and 52. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## **Queen Charlotte Wilderness Park Community**

### **PC 53 Whole Plan Change, Submission # 15**

***Relief sought:***

Deny plan change 53 and Council to get back to the business of accepting applications for aquaculture within an AMA that has had its existence approved after a Council led process that includes input from all sectors of the community that have a stake in the future and considers the area and its uses as a whole.

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Oppose

***Recommended Decision:***

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **W9.28 Methods of Implementation, Submission # 16**

***Relief sought:***

Deny plan change 53 and Council to get back to the business of accepting applications for aquaculture within an AMA that has had its existence approved after a Council led process that includes input from all sectors of the community that have a stake in the future and considers the area and its uses as a whole.

***Recommended Decision:***

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of where

aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **W9.28.Z Zoning, Submission # 17**

***Relief sought:***

Deny plan change 53 and Council to get back to the business of accepting applications for aquaculture within an AMA that has had its existence approved after a Council led process that includes input from all sectors of the community that have a stake in the future and considers the area and its uses as a whole.

***Recommended Decision:***

Reject

The plan change in its self does not create new marine farms, or address the issue of where aquaculture should locate, which will be subject to a subsequent plan change (Plan Changes 19 & 52). The plan change simply deals with how space that has been created should be allocated when it arises from a private plan change. While it is acknowledged that the plan changes would make it more feasible to apply for more space through a private plan change, the issues, where and how much will be dealt with through the subsequent plan changes. A plan change (19 & 52) has been drafted addressing the issue of where aquaculture should and should not locate. This draft will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified. I recommend the relief sought be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

### **Robyn Vidak & Carney Soderberg**

#### **PC 53 Whole Plan Change, Submission # 5**

***Relief sought:***

Decline to pursue the proposed plan change in favour of a process similar to the one detailed in the submission.

***Further Submission(s)***

**The NZ King Salmon Co Ltd)**

Oppose

***Recommended Decision:***

Reject

The Council does not have the powers under the RMA to implement the relief sought in the submission and a legislative change would be required. The Government is currently reviewing the way in which aquaculture is managed in New Zealand as part of the phase two reforms of the RMA. I recommend the relief sought be rejected and the submitter be encourage to participate in the legislative reform currently being undertaken by the government.

## Royal Forest and Bird Protection Society NZ Inc.

### PC 53 Whole Plan Change, Submission # 48

*Relief sought:*

Oppose

*Further Submission(s)*

**The NZ King Salmon Co Ltd**

Oppose

*Recommended Decision:*

Reject

Plan change (19 & 52) has been drafted and will be released for public consultation in the next few weeks. In the interim there are rules proposed for plan changes 16 & 53 preventing the allocation method from being available before the new provisions have been notified which should address some of the concerns raised by the submitter.

The submitter also suggests that there may be alternative ways of allocating space arising from a private plan change however, no particular details are provided. Following an evaluation of alternative methods and issues raised in the submissions it is considered that the proposed method is both necessary and appropriate in the circumstances. As a consequence it is recommended that the Plan Change be accepted (with modifications) and the relief sought opposing the plan change be rejected and the submitter be encouraged to submit on Plan Changes 19 and 52 when notified.

## Te Ohu Kaimoana Trustee Limited

### W9.1.2 Aquaculture Management

*Relief sought:*

Amend the paragraph as follows;

"---Council to the Trustee of the Maori Commercial Aquaculture Settlement Trust under the Maori Commercial Aquaculture Claims Settlement Act 2004 for distribution to iwi."

*Further Submission(s)*

**The NZ King Salmon Co Ltd)**

Support

*Recommended Decision:*

Accept

The Maori Commercial Aquaculture Claims Settlement Act provides a full and final settlement of Maori commercial aquaculture interests since 21 September 1992. In accordance with this Act, the Council is required to provide a portion of the authorisations to the Trustee of the Maori Commercial Aquaculture Settlement Trust. Only claims for commercial aquaculture activities prior to this date are to be addressed through the historical Treaty Claims process. The wording suggested by the submitters better reflects the current Act and should be adopted.

It should be noted that through Aquaculture Legislation Amendment Bill (No. 2) changes are proposed which will require applicants for new AMA's to reach agreement with iwi first and only if this process fails will Council be required to identify space. In both cases at the end of the process the Council will be required to allocate the authorisations. It may be appropriate for Council to

review the wording of this section through proposed Plan Changes 19 & 52.

## **The NZ King Salmon Co Ltd**

### **W9.26 Issue, Submission # 50**

*Relief sought:*

- 1) Replace the word "authorisations" in the grey scale box with "the right to apply for a coastal permit"
- 2) Replace the word "authorisations" in the 9 th line of the second paragraph with "the right to apply for a coastal permit for marine farming".
- 3) Replace the word "authorisation" on the 3rd line of the paragraph 3 with "the right to apply for coastal permits for marine farming".
- 5) Delete the word "authorisation" on the 4th line of the 3rd paragraph.
- 6) Add the following new paragraph after the third paragraph. " In addition, the public tendering process assumes multiple applications for authorisation allocations. Public notification, calling for authorisation applicants, is the default process in the Act. In circumstances where there can only be one applicant (the Private Plan Change applicant), this process of public notification for authorisations is considered unnecessarily time-consuming and costly. The Plan therefore, adopts an alternative method which provides the right to apply for coastal permits for marine farming directly to the operative Private Plan Change applicant. This method is considered to be more efficient and avoids unnecessary delays in the process."

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### **W9.27.1 Objective, Submission # 51**

*Relief sought:*

Delete the word "authorisations" and replace with "the right to apply for coastal permits"

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### W9.27.1.2 Policy 1.2, Submission # 52

*Relief sought:*

Reword the Policy as follows " Processes for obtaining the right to apply for coastal permits in AMA's that are effective---"

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### W9.27.1.3 Policy 1.3, Submission # 53

*Relief sought:*

Replace the word "authorisation" with the words "new coastal space"

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

### W9.28.A Authorisations, Submission # 54

*Relief sought:*

- 1) Replace the "Authorisations" heading with the following wording "Rights to apply for coastal permits for marine farming"
- 2) Amend the second paragraph as follows: "An alternative method is specified in the Plan for obtaining the right to apply for available space within AMA zones which have been included in the Plan as a result of a request for a standard private Plan Change. In these circumstances, the right to apply for available space within AMA Zones will be offered to the first person whose Private Plan Change was completed and successfully resulted in an operative AMA Zone for that area of coastal marine area.
- 3) Replace the word "authorisations" in the 3rd paragraph with "right to apply".

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the

proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**W.39.A.1 Preamble, Submission # 55**

*Relief sought:*

Amend the 4th paragraph as follows : "Volume One, Section 9.1.2, Aquaculture Management, describes the methods by which the right to apply for resource consents for marine farming will be obtained".

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**W.39.A.2.1 Alternative Allocation, Submission # 56**

*Relief sought:*

- 1) Replace the word "Authorisations" in the heading with "the Right to Apply".
- 2) Amend the first sentence of the first paragraph as follows: "These General Rules specify the method that will be used to obtain the right to apply for coastal permits for marine farming in operative AMA Zones arising from the standard Private Plan Change requests under Schedules 1, Part 2, and 1A of the Act."

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

**W.39.A.2.1.1 Circumstances Under Which The Method Will Apply, Submission # 57**

*Relief sought:*

Amend the first sentence as follows: "Rule 39A.2.1.2 shall be used to obtain the right to apply for coastal permits for marine farming in operative AMA Zones, where the AMA Zone, or the part of the AMA Zone, arose from a Private Plan Change under Schedules 1, Part 2, and 1A of the Act."

*Recommended Decision:*

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change

in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **W.39.A.2.1.2 Alternative Allocation Method, Submission # 58**

***Relief sought:***

Amend as follows: "under the circumstances specified in Rule 39A.2.1.1, the right to apply for coastal permits for marine farming will only be obtained by way of the following methods:"

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **W39.A.2.1.2.1 One Private Plan Change Request, Submission # 59**

***Relief sought:***

Amend the first sentence as follows" The right to apply for coastal permits for marine farming for an area in an AMA Zone arising from a single Private Plan Change shall be obtained by the person who requested the Private Plan Change."

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **W39.A.2.1.2.3 Offers Not Taken Up, Submission # 60**

***Relief sought:***

- 1) Amend the heading as follows" The Right to Apply for Coastal Permit for Marine Farming not taken up"
- 2) Amend the first paragraph as follows;" Where the right to apply for a coastal permit for marine farming has been obtained by a person under Rules 39A.2.1.2.1 or 39A.2.1.2.2, and: i) The right to apply for a coastal permit for marine farming by that person lapses; or ii) A coastal permit for marine farming is granted to the person that has obtained the right to apply but it lapses; authorisations within that area shall be offered by way of public tendering.

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **W.39.A.2.1 Alternative Allocation, Submission # 61**

***Relief sought:***

Add the following new provisions:

39A.2.1.3 Reservations Relating to Commercial Fishing.

When an AMA Zone becomes operative and is subject to a reservation relating to commercial fishing, Sections 165G and 165J of the Act shall apply with all necessary modifications as if the right to apply for a coastal permit for marine farming was an authorisation.

39A.2.1.4 Right to apply for Coastal Permit does not Confer Right to Coastal Permit.

The obtaining of a right to apply for a coastal permit for marine farming does not confer any right to the grant of a coastal permit in respect of the space that the right to apply relates to.

39A.2.1.5 Right to Apply for Coastal Permit Transferable

The right to apply for a coastal permit for marine farming or any part of it may be transferred by its holder to any other person, but the transfer does not take effect until written notice of it has been received by the Council. Rule 39A.2.1 applies to the person to whom the right to apply is transferred.

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

#### **W39.A.2.1.2.2 More than One Private Plan Change Request, Submission # 62**

***Relief sought:***

Amend the first sentence as follows: "where more than one Private Plan Change request was made to Council for the same area of an AMA Zone, the right to apply for coastal permits for marine farming for the overlapping area shall be obtained by the person whose Private Plan Change request was first to either:"

***Recommended Decision:***

No Recommendation

The change from the use of authorisations to a method of direct allocations as proposed by the submitter is a notable departure from the method proposed in the plan change, to the extent that authorisations are no longer allocated. However in saying that while authorisations may no longer be offered there is virtually no change



in effect and it would be a more efficient method under s165I. I believe the Council needs more evidence on the legality of the proposed changes under the RMA and the issue of scope needs to be addressed before making a decision on this relief.

## **Totaranui Limited**

### **W9.1.2 Aquaculture Management, Submission # 46**

***Relief sought:***

Amend the paragraph as follows;  
"---Council to the Trustee of the Maori Commercial Aquaculture Settlement Trust under the Maori Commercial Aquaculture Claims Settlement Act 2004 for distribution to iwi."

***Further Submission(s)***

**The NZ King Salmon Co Ltd**

Support

***Recommended Decision:***

Accept

The Maori Commercial Aquaculture Claims Settlement Act provides a full and final settlement of Maori commercial aquaculture interests since 21 September 1992. In accordance with this Act, the Council is required to provide a portion of the authorisations to the Trustee of the Maori Commercial Aquaculture Settlement Trust. Only claims for commercial aquaculture activities prior to this date are to be addressed through the historical Treaty Claims process. The wording suggested by the submitters better reflects the current Act and should be adopted.

It should be noted that through Aquaculture Legislation Amendment Bill (No. 2) changes are proposed which will require applicants for new AMA's to reach agreement with iwi first and only if this process fails will Council be required to identify space. In both cases at the end of the process the Council will be required to allocate the authorisations. It may be appropriate for Council to review the wording of this section through proposed Plan Changes 19 & 52.