

**RESOURCE MANAGEMENT  
ACT 1991**

**Decision on an Application for  
a Private Plan Change**

**APPLICANT: New Zealand King Salmon  
Company Limited**

**Ref: M135-15-16 -  
Plan Change 16**

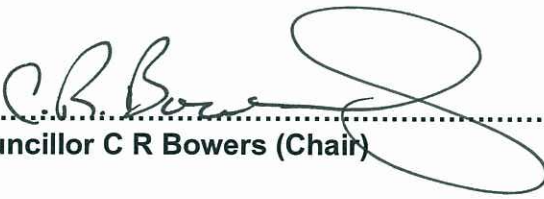
**This document contains the decision of the Marlborough District Council on the private plan change application by New Zealand King Salmon Co. Limited, regarding the allocation of authorisations. The application seeks changes to the Marlborough Sounds Resource Management Plan. Included as part of this decision is the amended Schedule of Changes and assessment under Section 165I.**


**DECISION DATE:**

25 February 2010



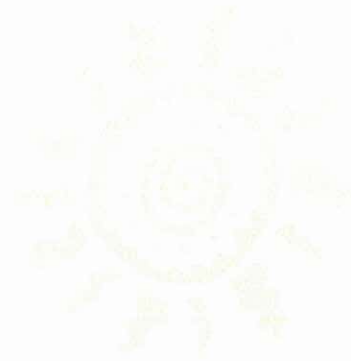
Decision made under delegation (Minute C.09/10.10) from the Marlborough District Council  
by Sub-Committee members:

  
.....  
Councillor C R Bowers (Chair)

  
.....  
Councillor P J S Jerram

  
.....  
Councillor E I Davidson

Dated this 25<sup>th</sup> day of February 2010



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# Marlborough District Council

Decisions in relation to

Private Plan Change 16 to the MARLBOROUGH SOUNDS  
RESOURCE MANAGEMENT PLAN

## Allocation of Authorisations



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## 1. Introduction

1. This document contains the Council's decision and reasons under cl 29(4) of the first scheduled of the Resource Management Act 1991 (RMA), on the private plan change application by New Zealand King Salmon Limited (Plan Change 16), and the amended Schedule of Changes.
2. The individual decisions made by the Council on submissions under cl 10(1) of the first scheduled of the RMA are continued in a separate document, which is available on request.
3. This document is broken into the following five sections:
  - Introduction
  - The application
  - Decisions and Reasons (including the s165/ s32 assessment)
  - Amended Schedule of Changes for Plan Change 16

## Background

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4. On the 1 January 2005 the Resource Management Amendment Act (No.2) 2004 introduced major 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)
  - Councils 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).
5. The new legislation provides for new AMAs to be created in the regional coastal plan through three different methods:
  - Council initiated – where Council undertakes a plan change to create new AMAs.
  - 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 AMAs at any time.

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

6. The new legislation also introduced a new method of allocating the right to apply for a coastal permit to undertake marine farming, within the AMAs. Where new AMAs are created through Council initiated or through a private plan change process then the right to apply for a coastal permit or *authorisation*, is required to be publically tendered. Where new AMAs are created through the Invited Private Plan Change process then the right to apply for a coastal permit is required to be allocated to the person who applied for the plan change to create the space. While the method of allocating authorisations is specified in the RMA, the Act does enable alternative methods to be used following a plan change.
7. The Council considered the new legislation in 2005 and came to a position that Council would not create new AMAs for aquaculture, but would respond to requests from the industry. Council anticipated undertaking the substantive review of aquaculture provisions in Marlborough Sounds and Wairau/Awatere Resource Management Plans, following completion of the Regional Policy Statement Review.

### **New Zealand King Salmon Company Limited – Private Plan Change Request (Plan Change 16)**

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8. New Zealand King Salmon Company Limited (NZKS) believe they require additional space to meet the increasing demand for their product. NZKS has partially met the immediate demand by converting existing mussel farms in the Marlborough Sounds to salmon farms. However for the long term economic growth of their business they believe they need to secure additional, appropriate, sites to accommodate future growth. Subsequently, NZKS intends to lodge a private plan change request to create new AMAs for fin fish farming in the Marlborough Sounds. However, under the default provisions of the Act, new space created by means of a private plan change is required to be allocated through a public tender process. The default provisions in the Act as currently written, provide no certainty that the proposer of the plan change at the end of the process will be able to secure the right to apply for resource consent to undertake marine farming. The Act allows for alternative methods of allocation of authorisations to be used, but the alternative method needs to be included in the Plan by means of a plan change. Subsequently
9. On 16 October 2008, Council received a private plan change request from Gascoigne Wicks on behalf of NZKS seeking to amend the method of allocation of authorisations for marine farming in Marlborough Sounds. NZKS proposed to replace the default method with a method which allocates the authorisations to the person who requested the plan change. The proposed plan change included a new chapter and section, new allocation rules, associated rules regarding lapsed authorisations and overlapping applications.
10. The changes proposed are technical by nature almost exclusively dealing with the question of how authorisations (or the right to apply for a coastal permit) should be allocated once new space was created through a private plan change process. The proposed plan change does not create new space and as such has no effect on the environment. Any matters arising regarding the impact of a proposed AMA on the environment will have been dealt with through the First Schedule (of the RMA) process, prior to authorisations being available for allocation,
11. No further information was sought from the applicant under Clause 23 of the First Schedule of the RMA.

### **Marlborough District Council Initiated Plan Change (Plan Change 53)**

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12. During consideration of the request for a plan change by NZKS (for the Marlborough Sounds), the Council made the decision to adopt the wording proposed by NZKS and

apply that wording (suitably modified) to the Wairau Awatere Resource Management Plan (Plan Change 53). The Council saw that it would be beneficial to integrate the provisions across the district as well as enabling efficiencies in costs and staff time by running the two plan changes together.

13. At the same time the Council decided to commence the review of the aquaculture provisions in the Marlborough Sounds and Wairau Awatere Resource Management Plan to give effect to the new legislation arising from the aquaculture law reform.

## 2. The Application

14. On the 16 October 2008 the Marlborough District Council received an application for a private plan change consisting (in summary) of the following:

### Private 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 AMAs
  - Volume Two
  - A new zone chapter (35A) for aquaculture management areas which introduces new rules regarding the allocation of authorisations in operative AMAs which arise from a private plan change.
  - The rules are prevented from having an effect until Plan Change 16 becomes operative.
15. The application also included a draft s165I report which was prepared on their behalf by Gascoigne Wicks (lawyers) and Mike Copeland (economist). The purpose of the report was to assist the Council in relation to matters which needed to be considered pursuant to s165I of the Resource Management Act 1991. The report also provided guidance on how section165I is likely to work in practice, as the provisions had not previously been used.
16. On the 10 November 2008 the Environmental Policy Committee made the following decisions.
- *That pursuant to clause 25(2)(b) of the First Schedule to the Resource Management Act 1991 Council accept the request by New Zealand King Salmon Company Limited to introduce a new method of allocating authorisations in the Marlborough Sounds Resource Management Plan.*
  - *That Council undertake a separate plan change to incorporate the New Zealand King Salmon Company Limited changes into the Wairua/Awatere Resource Management Plan. [Plan Change 53]*
  - *That Council undertake a review of the aquaculture provisions in the Marlborough Sounds and Wairua/Awatere Resource Management Plans to give effect to the new provisions arising from the aquaculture law reform. [Plan Changes 19 & 52]*

The decisions were ratified by Council on the 11 December 2008.

### Notification of proposed Plan Changes 16 (& 53)

17. Proposed Plan Change 16 (and 53) was publically notified on the 12 of March 2009.
18. Submissions closed on the 15 April 2009, and 36 submissions were received for Plan Changes 16 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.



19. Among the submissions received was one from NZKS requesting Council consider removing references to the "allocation of authorisations" in their application. They believed that in the circumstance where the party who will received the allocations is clearly known then it is unnecessary to go through the prescribed public notification process required for authorisations.

## **The Hearing**

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20. The Hearings Panel consisted of Clrs Bowers (chair), Davidson and Jerram, acting under delegated authority C.09/10.10 to hear and make decisions on the plan change.
21. Clrs Bowers and Davidson are both accredited under the Governments *Making Good Decisions* programme.
22. Joint hearing was held for Plan Changes 16 and 53 and was conducted over two days on the 3rd and 4<sup>th</sup> November 2009. The hearing was open to the public and persons who had previously made submissions following public notification were, together with the Applicant, able to make further oral presentations to the committee. Including the Applicant, those persons who made submissions during the course of the hearing were:

### **On behalf of the Applicant**

Mr. Brian Fletcher, Applicants Counsel, Gascoigne Wicks  
Mr. Stewart Hawthorn  
Mr. Mark Gillard  
Mrs. Sarah Dawson  
Mr. Mike Copeland

### **Submitters**

Mr. Eric Jorgensen, for the Port Underwood Association Incorporated  
Mr. Stephen Wynne-Jones, for the Minister of Conservation  
Mrs Jean Hadley, for the East Bay Conservation Society  
Mr. Peter Beech, for Guardians of the Sounds  
Mr Coard.  
Mr Graeme Coates, for the New Zealand Marine Farming Association.  
Mr Stephan Browning, for the Environment Centre and Friends of Nelson Haven

## **Legal Framework in which Application is Required to be Considered**

23. The Council's statutory obligations in considering a plan change are set out in Section 66 of the Act and the First Schedule to the Act. Those obligations are:
- *To act in accordance with:*
    - Section 30 of the Act.
    - Part 2 of the Act.
    - Any direction given under Section 25A(1) of the Act. **[Not applicable]**.
    - Section 32 of the Act.
    - Any relevant regulations. **[None specifically applicable]**.
  - *To have regard to:*
    - The New Zealand Coastal Policy Statement.

- Marlborough Regional Policy Statement
  - Any proposed regional policy statement. **[Not applicable]**
  - The Crown's interest in land of the Crown in the coastal marine area
  - Any management strategies, if any, prepared under other legislation. **[Not applicable]**.
  - Any regulations relating to ensuring sustainability or the conservation, management or sustainability of fisheries resources (including those relating to non-commercial Maori customary fishing). **[None specifically applicable]**.
  - *The extent to which the regional plan needs to be consistent with the regional policy statements and plans, or proposed regional policy statements and proposed plans, of adjacent regional councils.*
  - *To take into account any relevant planning document recognised by an iwi authority and lodged with the Council to the extent that it's contents has a bearing on resource management issues of the region; **[None specifically applicable]**.*
- To recognise any management plan, if any, for a foreshore and seabed reserve. **[None specifically applicable]**.
  - Not to have regard to trade competition. **[Not applicable]**
  - Section 165I
  - To allow the Applicant to appear before the Hearings Committee.
  - To make a decision which either declines the Plan Change, approves the Plan Change, or approves the Plan Change with modifications.
  - To give reasons for its decision.

#### **SECTION 66(1) – TO ACT IN ACCORDANCE WITH**

24. Section 66(1) requires the Council to act in accordance with certain statutory provisions. The relevant provisions are Section 30, Section 32, Section 165I and Part II of the Act.
25. Section 30 sets out the broad functions of Council in undertaking resource management functions within its region. In considering the Application, the Committee considered, in terms of Section 30:
  - The appropriateness (in conjunction with the Minister of Conservation) to establish a rule in the regional coastal plan to allocate space in the coastal marine area under Part 7A: (30(1)(fb)(ii))
  - Whether the proposed rules meet the criteria of section 30(4)
26. Section 32 is headed *Consideration of Alternatives, Benefits and Costs*. Broadly, Section 32 requires an analysis of the extent to which a proposal is consistent with the purposes of the Act and whether the proposal is the most effective means of achieving the purposes of the Act. In this circumstance, the Section 32 Analysis is only required for those parts of the Application which are not rules. The parts of the Application relating to the rules (in

relation to the method of allocation of space in a coastal marine area) are assessed under the separate, but similar Section 165I.

27. Section 32 requires Council:

- To evaluate whether the proposal is the most appropriate means of achieving the objectives of the plan.
- To evaluate whether the proposal assists the Council in carrying out its functions in order to achieve the purpose of the Act.
- To evaluate whether the proposal is consistent with Part II of the Act.
- To evaluate whether the proposal is consistent with and achieves the objectives and policies of the plan.

28. Section 165I is headed *Duty to adopt most efficient and effective allocation mechanism*. Section 165I requires Council before adopting a rule in relation to the method of allocation of space in a coastal marine area to have regard to-

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

## 3. Decision and Reasons

### Introduction

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29. Clause 29(4) of the First Schedule to the RMA provides a range of options for the Council in considering a private plan change. The Council may :
- Decline; or
  - Approve; or
  - Approve with modifications the plan change
30. The Council is required to make its decision on the proposed plan change in accordance with the above options and give it's reasons. The Council is not restricted to the matters raised in the submissions and has broader powers to modify the private plan change.

### Decision in accordance with Clause 29(4)

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31. The Council has decided to approve the plan change with minor modifications, the modifications are shown in the attached amended schedule of changes (Appendix A).
32. The majority of the modifications arose in response to request for changes by submitters, including the applicant. A few additional minor modifications were also made to give full effect to the changes requested by the submitters.

### Reasons for Decision

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#### Generally

33. Before reaching this decision, the Hearings Panel (acting under delegated authority on behalf of the Council) carefully reviewed the written materials and submissions presented in support and opposition of the Application.
34. Following this consideration of the submissions and presented evidence, the Council was of the view that the proposal to alter the method of allocating authorisations (with minor modifications) provides a more efficient and effective method of allocation should an AMA be approved through the First Schedule of the RMA process. The Council also considers that the proposed changes are consistent with Part II of the Act by enabling the people and the community to provide for there economic wellbeing while ensuring the sustainable management of the natural and physical resources through a separate plan change process.
35. A large number of the submissions received sought changes to the provisions governing the location and management of the aquaculture industry. The Council had regard to the matter of "scope" and noted the Environment Court's narrow determination on what submissions could request. Guided by case law, the Council determined that these broad submissions were outside of the "scope" of the plan change which concerned a relatively

narrow issue. The Council in its decisions on those out of scope submissions invited the submitters to submit on the aquaculture provisions in the Proposed Marlborough Regional Policy Statement & Proposed Marlborough Resource Management Plan, when notified., where the issues raised could be better addressed.

36. A large number of submitters also requested that the plan change be declined or put on hold until the Council had undertaken a review of the aquaculture provisions. The plan change as notified contained a rule which had the effect of preventing the proposed alternative method from having effect until the plan change was operative. The Council, after considering the submissions and hearing the evidence, accepted in part those requests and made the decision to amend the rule to make it clearer the original intent that the proposed changes would not have effect until the aquaculture provisions were reviewed so that they reflect the current legislative framework.
37. From time of acceptance of the proposed plan change through to the hearings the intention by Council was to review the provisions through a separate plan change (19). However, at the same time as the provisions were being reviewed for Plan Change 19, the Council was also reviewing the objectives, policies and methods for aquaculture in the Marlborough Regional Policy Statement (1995). A number of submitters alternatively requested that the Council review the aquaculture provisions as part of this broader review. The review of the Marlborough Regional Policy Statement is now nearing completion (with notification of a Proposed Marlborough Regional Policy Statement later this year) and it is considered that the review of the aquaculture provisions would be more efficiently and effectively addressed through the integrated Regional Policy Statement Review than through Plan Change 19. To this end the Council made the decision to amend rule 35A.2 so that the proposed rules will not have effect until the Proposed Marlborough Regional Policy Statement (2010) was notified.
38. The particular reasons for its decision are set out below.

### Particularly

39. **Section 30(fb)(ii) of the Act – Every regional council shall have the following functions for the purpose of giving effect to this Act in its region: if appropriate, and in conjunction with the Minister of Conservation,- (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:**
40. The Council considers that the rules proposed by the Application to establish an alternative method of allocation of authorisations are appropriate. The Council's reasoning for reaching this decision is detailed in para 44, below.
41. The Minister of Conservation, while preferring the use of the Council initiated or the invited private plan change process to create new space, supports the allocation method proposed in the Application, on the condition that the proposed allocation method is not available until the broader policies and objectives for aquaculture are reviewed in the Plans. The Council accepted the reasoning behind the request but considered the wording proposed by the Minister, which referred to a plan change that had not been notified (Plan Change19), could cause the rule to be null and void. The Council made the decision to change the wording as follows:

#### 35A.2 General Rules

~~General Rule 35A2.1 shall not have effect until Plan Change 16 becomes operative.~~

General Rule 35A.2 shall have not effect until Plan Change 16 becomes operative and the reviewed objectives, policies and methods for aquaculture in the Proposed Marlborough Regional Policy Statement have been notified.

The Council believes the requirements of Section 30(fb)(ii) have been meet.

42. **Section 30(4) of the Act – A rule to allocate a natural resource established by a regional council in a plan under subsection (1)...(fb) may allocate the resource in any way, subject to the following:...** The Council considers there is nothing in the proposed rules which is inconsistent with this section.
43. **Part II of the Act - Section 5 -The purpose of the Act is to promote the sustainable management of natural and physical resources.** Section 5 seeks to manage the use and development of resources to enable the people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety.
44. The assessment of whether aquaculture is an appropriate use and development within the coastal marine area is undertaken through the First Schedule process which involves a thorough and public participatory process. However, once aquaculture has been found to be a sustainable use of the area, the Council considered that the actual mechanism of allocating the rights to use the space for marine farming is an administrative matter, with no environmental effects. The Council found that the Application would enable people and their communities to provide for their economic well being through the sustainable use and development of the coastal marine area.
45. The method of allocation is considered to have no impact on of the matters of national importance provided for in **Section 6**.
46. In terms of the other matters in **Section 7**, the Council has given regard to the matters raised and it is considered that the application generally supports the efficient use and development of natural and physical resources (s.7(b)). The other matters listed were not considered relevant to the Application.
47. In terms of **Section 8** the Treaty of Waitangi, the proposed changes are not contrary to the principles, and ultimately may enable iwi to provide for their wellbeing either through commercial development or through the development of settlement assets.
48. **New Zealand Coastal Policy Statement 1994 (NZCPS)** – does not contain any provisions regarding the allocation of space between users of that space, with the same environmental impact. The legislative change giving rise to *authorisations* arose 10 years after the Coastal Policy Statement was gazetted, and while the NZCPS is currently under review no changes to date have been made to the NZCPS to reflect the new legislation.
49. **Section 66(2)...when...changing any regional plan, the regional council shall have regard to (b) The Crowns interest in the land of the Crown in the coastal marine area** –The Minister of Conservation has been consulted with and has participated in the plan change process. The Minister, as discussed above is generally supportive of the process, with conditions, and the Council has modified the plan change generally in accordance with the Minister’s submission to address the issues raised.
50. **Section 66(2)...when...changing any regional plan, the regional council shall have regard to (d) – The extent to which the regional plan needs to be consistent with the regional policy statement and plans, ...or regional policy statements of adjacent councils.**

51. **Marlborough Regional Policy Statement (Policies 7.2.10 – Allocation of Coastal Space)** – the Marlborough Regional Policy Statement contains policies on the allocation of space between competing uses but does not contain any specific policies or methods on allocation between the same use. **Marlborough Sounds Resource Management Plan** – The Marlborough Sounds Resource Management Plan – contains objectives and policies regarding the allocation of space between different uses but not between the same use. The proposed changes are consistent with the current method of allocating space between different uses which is “first in first served”. **Adjacent Regional Council Plans** – The adjacent regional councils have not implemented an alternative method of allocation, and subsequently, the proposed method is inconsistent with the default method applying to the adjoining regions. This inconsistency is not considered to effect the integrated management of the natural and physical resources at the top of the south and subsequently has not been considered further.

52. **Section 165I & Section 32 of the Act** –

53. Section 165I requires Council before adopting a rule in relation to the method of allocation of space in a coastal marine area to have regard to-

- The reasons for and against adopting the proposed method; and
- The principle alternative means available; and
- Be satisfied that the adoption of the proposed method is necessary in the circumstances of the region; having regard to it's efficiency and effectiveness compared with other methods.

Section 32 requires Council:

- To evaluate whether the proposal is the most appropriate means of achieving the objectives of the plan.
- To evaluate whether the proposal assists the Council in carrying out its functions in order to achieve the purpose of the Act.
- To evaluate whether the proposal is consistent with Part II of the Act.
- To evaluate whether the proposal is consistent with and achieves the objectives and policies of the plan.

54. The Application has been assessed under both sections with the rules being assessed under Section 165I and the remaining supporting objectives, policies, and other methods under Section 32. The Council considers that it is artificial to provide reasons separately under each section and subsequently both sections have been addressed at the same time. For the avoidance of doubt the following assessment is the assessment under section 165I prior, to adoption of a rule.

55. **Reasons for (benefits)** The current default provisions are a significant disincentive to the creation and development of aquaculture in Marlborough because there is no certainty that at the end of the lengthy and relatively expensive process that the proposer will be allocated space. Unless the method of allocation is changed it is very unlikely that any new AMAs will be created for the public to tender for. The Council subsequently believes that the proposed alternative method of allocation is necessary to enable the people and community of Marlborough to provide for their economic wellbeing under the Act. Mr Mike Copeland as part of the Application and through evidence at the hearing has provided

details on the anticipated economic benefit to the community arising from the plan change.

56. The Council also considers that under the current default method the industry is generally restricted to using the same methods and species in the same locations which may not lead to the best use of the natural and physical resources of Marlborough.
57. The Council also considers that the proposed alternative allocation method is more likely to enable the integrated management of existing marine farming sites with existing marine farms able to apply for small extensions to their existing sites (following a thorough process of assessment of effects and a plan change), as opposed to having to tender for unrelated sites to fulfil any needs for expansion.
58. The Council finally considers that the proposed alternative allocation method enables the cost of developing new space to be fairly apportioned to the organisations that will benefit the most from it, with the least financial cost to the community.
59. **Reasons against (costs) adopting the proposed policies, rules and method.** - The majority of submitters opposing the method did so because they believe it discriminates against the community in favour of big industry. While Council can understand the desire to retain the coastal marine area for local industry use, the reality is that no matter what allocation methods 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. Council also consider that the current default method of a straight public tender process was more likely to favour larger companies who had the greatest capital to invest. Over all, the Council considered neither method had the ability to effectively restrict aquaculture development to small, local industry. The Council notes that there is nothing preventing small, local industry from applying for a private plan change under the proposed method.
60. Another reason against the proposed method raised by the submitters was that it would have the effect of enabling further aquaculture to develop in Marlborough. The Council considered that the issue of whether or not there should be further aquaculture was a matter that needed to be addressed clearly through the provisions in the Plan, and to retain a method purely because the effect would be no further aquaculture was not fair, equitable or transparent. The Council considered that if it was determined that no more aquaculture was appropriate in Marlborough, then the most appropriate means to achieve this was through specific objectives and policies in the Marlborough regional Policy Statement.

The Application contained a rule which prevented the proposed method of allocation from taking effect until the provisions were operative, and the Council through this decision has modified that rule to make it clearer that the method could not be used until new objectives, policies and methods determining appropriate locations for aquaculture have been notified.

61. Finally, many submitters requested the Council not adopt the method which would enable private industry to apply ad hoc for new space and that any expansion of the industry should be undertaken by the Council following a planning exercise. Both the Minister of Fisheries and the Minister of Conservation supported a Council initiated or the invited private plan change process. For numerous reasons, the demand for new AMAs in Marlborough has been low. Given the low demand for AMAs and the limited knowledge by Council as to where AMAs may be required it is not considered an efficient or effective use of the coastal resource (or ratepayers money) for Council to create new AMAs which could end up being unwanted or in the wrong place. Council considers that Council is best placed to guide the location and management of the industry through objectives, policy



and rules in the plan, but the expansion of the industry (if any) should be left to the industry through private plan changes. Council supports proactively planning for new AMAs but believe that it is unwarranted in Marlborough where demand for more AMAs is low. The Council notes that there is nothing in the plan change preventing it from using the Council initiated or invited private plan change provisions should demand warrant it.

62. The Council considered the most important reason for not adopting the alternative method is that (under the current method) the Council would have time to complete the review of the Marlborough Regional Policy Statement and resource management plans before new applications for AMAs were received. In saying that the Council is satisfied that the modifications undertaken to the plan change would effectively maintain the status quo until a point in time at which the broader issue of where aquaculture should take place has been holistically addressed.
63. **The Principle alternative means available** The main alternative available is the current default tendering provisions. A number of submitters sought the retention of public tendering for the allocation of space arising from private plan changes because it is was seen to be a fair and transparent way of allocating space. However, Council came to the contrary view. As a principle, the Council considers that when a person invests considerable sums of money to create the AMA through a plan change it was only fair that they have the opportunity to get a return on that investment, should the AMA application be approved. The Council also noted that the proposed changes do not preclude the public from applying at any time for a plan change to create new AMAs.
64. In the NZKS draft s165I assessment by Mike Copeland and through his evidence the following alternative were also discussed:
- **Balloting-** Mr Copeland believed that balloting suffered from the same defects as tendering. He believed 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. 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 believed 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 believed there is also considerable risk in the plan change applicant not securing authorisations through this process.
  - **Occupiers of Existing Water Space –** Mr Copeland suggests that authorisations could be offered to the legal occupier of the immediate adjoining water space with spatial limits to the extent of this priority. Mr Copeland saw this as a variant of the proposed alternative method which very likely will reward the plan change proposer. Council believed 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.
65. No other expert economic evidence was presented at the hearing. The Council accepted Mr Copeland's evidence.

66. Marlborough Environment Centre suggests as an alternative that a significant proportion of the authorisations could be tendered to allow broader community involvement. This proposal also was considered by the Council to have 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, it was decided that the effect would be applications for larger than necessary AMAs with the marine farmer having to apply for both the desired space and the additional tendering area. This would have a limiting effect in that marine farming expansion could only occur in those areas able to absorb both AMAs and may lead to specialist space being created, in which there is little community demand e.g. sponge growing. This method would also face the same problems faced by public tendering, whereby the community may not have the resources to successfully bid in the tender.
67. 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 were provided through the submission.
68. On the whole, Council believe the proposed method outweighed the advantages of the principle alternative methods. The Council also supports the proposed method as it is consistent with the default method in the RMA for invited private plan changes, and with the current method used in the Plans for the allocation of all other coastal space, e.g. moorings & jetties. The current method in the plan “*first in first serve*” is the long term & historic method of allocating public resources in New Zealand and has been found to be an efficient and effective method of allocating public resources, where the demand is low.

69. **The appropriateness of the objective in achieving the purpose of this Act.** The proposed plan change contains the following objective:

*“An effective, efficient and fair process for the allocation of authorisations for marine farming in Aquaculture Management Areas.”*

The Council considers that the allocation of authorisations is an administrative matter, with any environmental concerns addressed through the plan change process prior to authorisations needing to be allocated. As a consequence it is hard to apply the purpose of the Act to the proposed objective, however it was generally considered that having a effective, efficient and fair process in allocating natural resources is within the tenet of the Act.

70. **Be satisfied that the adoption of the proposed method is necessary in the circumstances of the region.** Following the enactment of the new legislation, Council made the decision that it would not create any AMAs or invite private plan changes. 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 of allocation marine farmers are unlikely to apply for new AMAs because of the uncertainty of gaining the rights to apply for a coastal permit at the end of the process.
71. The Council believes that the proposed method is necessary for the region because, unless the method is changed, then it is very unlikely that the people and community will be able to sustainably develop (where suitable and sustainable locations are found) the coastal marine area, through aquaculture, to provide for their social, economic, and cultural wellbeing.
72. **Most appropriate for the allocation in circumstances of the region; having regard to it’s efficiency and effectiveness compared with other methods & objectives.** The Council considers in the circumstances of the region, when Council has made the decision (at this point in time) to neither initiate a private plan change to create new space

or undertake an invited private plan change process, and there is low demand for new space, that the proposed alternative method and objective is appropriate. The Council considers that the current process whereby a proposer of a private plan change expends considerable cost and energy in obtaining new space to have that space potentially allocated to another person is inefficient. This inefficiency is reflected in the fact that no new AMAs have been applied for, under the current provisions any where in New Zealand despite there being demand. The Council agree with the economic evidence presented by Mr Copeland regarding the reasons for and against the alternative methods and believe for the reasons raised in that evidence that those methods would also be less efficient and effective compared to the proposed alternative method.

73. The Council also considers that the “first in first served” method of allocation arising from the proposed alternative is an effective method of allocation where demand is low, and note that this method has historically been used for the allocation of coastal resources ( the current default method for the allocation within the CMA) and is also promoted through the RMA (e.g. Invited private plan change process).

### **Removal of the use of Authorisations**

74. NZKS through their submission propose amendments to the proposed method whereby allocation of the right to apply for resource consent to farm an area, is directly allocated to the proposer of the plan change, by-passing the need to allocate authorisations.
75. The Council has considered the request by NZKS and concludes that the changes sought are provided for under section 165H of the RMA, which states that a proposed regional coastal plan may provide for a rule in relation to a method of allocating space vested in the Crown or a regional council in a coastal marine area. It is the Council's view that s165H does authorise a rule in the plan which removes the need for an authorisation before applying for a coastal permit, and in the circumstance where there is a rule, then a coastal permit can be simply applied for under section 12A of the RMA as long as the area is in a AMA.
76. It is also Council's view that were they to accept the request then the changes would form part of the proposed alternative method of allocation and is therefore subject to the s165I assessment regarding effectiveness and efficiency. In considering the proposed changes as part of the proposed plan change the Council came to the conclusion that the changes would be more administratively efficient both in time and in costs, at no detriment to the process. The Council noted that a similar process was promoted in the RMA for the invited private plan change process where authorisations are also automatically allocated to the applicant.
77. The Council after considering the proposed alternative method of allocation and the proposed modifications to that method by NZKS in the terms of s165I, that the proposed method of allocation, with modifications, was the most appropriate and was necessary.
78. **The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies or other methods.** The Council considers that there is no uncertainty regarding the method used, with the method proposed “first in first served” being both the historical and current method used to allocate resources within the CMA.
79. The plan change as modified by the Council's decision is attached in Appendix A.

**Appendix A Schedule of Changes.**

File: M135-15-16



**MARLBOROUGH SOUNDS  
RESOURCE MANAGEMENT PLAN**

**Plan Change No. 16**

**Allocation of Authorisations**

Private Plan Change Request from the New Zealand King Salmon  
Company Limited

**Schedule of Changes Only**

**Notified 12 March 2009**

# Schedule of Changes

Where text is proposed to be added to the Marlborough Sounds Resource Management Plan (the Plan) through this plan change, it has been shown as blue underlined. Where text is shown as ~~black struck through~~ in this Plan Change the text is existing text and is to be deleted. Where the changes are shown as either Red underlined or ~~Red struck through~~ these amendments arising from the decisions. All other text is either existing text from the Plan and has been included for context to assist the reader in determining where the changes occur or provides the reader with information and does not form part of the plan change.

The Marlborough Sounds Resource Management Plan is amended in accordance with the following schedule:

## Volume One - Chapter 9 - Coastal Marine

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### 9.1 Introduction

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***Amend the 7<sup>th</sup> paragraph as follows:***

The Act contains provisions enabling the regional councils to implement a system of coastal tendering to safeguard the Crown's interest in the foreshore and seabed, as well as to secure benefits such as meeting a public expectation that coastal allocation will be fair and efficient. ~~An Order-in-Council was gazetted in July 1996, limiting the ability of Council to issue new coastal permits for marine farming applications in the Marlborough Sounds for two years while the Crown evaluated options for an appropriate coastal tendering system. It should be noted that this system will address only those issues relating to the allocation of coastal space between competing users. Environment effects will continue to be addressed through the Act processes of plan and consent administration.~~

***Add the following after the 7<sup>th</sup> paragraph:***

A reform of the legislation covering the management of marine farming - the Aquaculture Reform 2004 - came into effect on 1 January 2005. The aim of the

reform was to create a more integrated aquaculture management regime, with a balance between enabling economic development, looking after the environment, settling the Crown's Treaty obligations to Maori, and responding to community concerns. As a result of this reform, marine farming is now mostly covered by the Resource Management Act, with one process for planning where marine farms should go and for granting consents for them to occupy coastal space. Areas for new marine farming (Aquaculture Management Areas - AMA's) need to be identified in the Plan, and coastal permits for marine farms within AMA's are issued by the Council. The Ministry of Fisheries contributes to the Plan process by testing for any undue adverse effects on commercial, customary or recreational fisheries prior to an AMA being approved in the Plan. Space within AMA's is also to be allocated to iwi to settle Maori claims to commercial marine farming.

## **Add new Section**

### **9.1.2 Aquaculture Management**

The Act states that aquaculture activities (marine farming) can only take place within areas identified in the Plan as Aquaculture Management Areas (AMA's). Marine farming is prohibited outside AMA's. Council has the main role in managing marine farming in the Marlborough Sounds. Providing for marine farming within AMA's enables effects on the community, environment and economy to be managed in an integrated way through the Plan preparation processes, before individual applications for marine farms are considered. The cumulative effects of several marine farms in one area can also be considered.

The Ministry of Fisheries (MFish) continues to play a significant role in the creation of AMA's. Before starting on the public notification processes for including a new AMA in the Plan, Council must request MFish to undertake an assessment as to whether the proposed AMA would have an "undue adverse effect" on commercial, customary or recreational fishing. Areas within the proposed AMA that would unduly affect customary or recreational fishing will be removed from the proposal prior to notification. Any areas that would unduly affect commercial fishing will be identified in the Plan and anyone wanting to establish a marine farm in those parts of the AMA must first reach an agreement with the affected quota holders before they can apply for a resource consent.

Part of the Aquaculture Reform 2004 included the settlement of Treaty of Waitangi commercial aquaculture claims through the Maori Commercial Aquaculture Claims Settlement Act 2004. These provisions are intended to settle all Maori claims to commercial marine farming interests since September 1992. Iwi are provided with

an allocation of area for marine farming equivalent to 20% of marine farming spaces allocated since 1992 and 20% of new marine farming space. This is partly met through the allocation to iwi of some of the new space that comes available through the creation of AMA's. This is intended to ensure iwi have access to coastal marine space to develop their marine farming interests, and to allow the marine farming industry to develop without risks from ongoing Treaty claims.

Existing lawfully established marine farms are deemed to be AMA's, which means they do not need to be included in the Plan through a Plan Change. Marine farming permits and licences granted under previous Marine Farming and Fisheries legislation are generally deemed to be coastal permits.

When resource consents for a marine farm are about to expire, if the site is in an AMA, the existing marine farmer can make an application for a new marine farming consent for the same water space. The application from the existing marine farmer will be decided first, before any other application can be considered for that space.

Creating new AMA's requires a Plan Change. There are three different processes available to undertake this:

- a Council-initiated Plan Change, where Council decides to undertake a plan change to establish an AMA in the coastal marine area,
- a standard Private Plan Change, where any person or organisation can request a change to the Plan to establish an AMA in the coastal marine area. and
- a Council Invited Private Plan Change (I P P C), which involves the Council inviting applications from the public to establish new AMA's. The Council may identify areas of the coastal marine area which will be excluded from applications. These Plan Changes are processed in a similar manner to Private Plan Changes.

All these processes follow the consultation and public notification processes set out in the Act.

Removal or modification of existing AMA's in the Plan, including deemed AMA's, also involves a Plan Change process.

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 publicly available.



Where AMA's have been created through a Council-initiated Plan Change, the remaining authorisations are allocated by public tender. Where an AMA has been created through the I P P C process the remaining authorisations are allocated to the person or organisation that requested the Plan Change. Where an AMA has been created through the standard Private Plan Change process the Act specifies that the authorisations are allocated by public tender unless an alternative method of allocation is used. Once the authorisations have been allocated, the holders of the authorisations then need to apply for resource consents for marine farming.

## Add new Section 9.4A

### 9.4A Issue

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Allocation of ~~authorisations~~ the right to apply for a coastal permit for marine farming in Aquaculture Management Areas (AMA's) in a manner that is effective, efficient and fair to all parties involved.

As explained in Section 9.1.2 of the Plan, there are three different processes for Plan Changes to include new AMA's in the Plan. With a Council-initiated Plan Change, authorisations are allocated by public tender. Where an AMA has been created through the I P P C process, authorisations are allocated to the person or organisation that requested the Plan Change. These methods are considered to be effective, efficient and fair to the parties involved.

Under the standard Private Plan Change process, any person or organisation can request a change to the Plan to establish an AMA in any part of the coastal marine area. These Private Plan Changes are processed in terms of Schedules 1, Part 2 and 1A of the Act. The time, resources and costs involved with evaluating new AMA's and providing for them in the Plan through a Plan Change process are considerable. With a standard Private Plan Change, these costs will be borne by the applicant. The Council recognises that people or organisations are not likely to make requests for new areas, unless they have some certainty that they will receive ~~authorisations~~ the right to apply for a coastal permit for marine farming should the Plan Change succeed. While the Act states as a default that authorisations should be allocated by public tender, the Council acknowledges that public tendering does not give the Plan Change applicant sufficient certainty that they will receive the right to apply for a coastal permit for marine farming ~~authorisations~~ within that new AMA.

In order to enable effective, efficient and fair use of a standard Private Plan Change approach for the consideration of new AMA's, the Council considers that the Plan should specify an alternative method of allocating the right to apply for coastal permits for marine farming ~~authorisations~~. The alternative ~~authorisation~~

allocation method adopted by the plan is considered to be fair and provide certainty to the Plan Change applicant.

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.

### 9.4A.1 Objectives and Policies

<u>Objective 1</u>	<u>An effective, efficient and fair process for the allocation of the right to apply for coastal permits <del>authorisations</del> for marine farming in Aquaculture Management Areas</u>
<u>Policy 1.1</u>	<u>Allocation of authorisations by way of public tendering for coastal space in AMA's created through Council Plan Changes.</u>
<u>Policy 1.2</u>	<u>Processes for obtaining the right to apply for coastal permits <del>allocation of authorisations for coastal space</del> in AMA's that are effective, efficient and fair, and provide sufficient certainty for marine farmers to enable proposals for new AMA's and marine farms to be put forward for evaluation through standard and Council Invited Private Plan Changes.</u>
<u>Policy 1.3</u>	<u>Allocation of <del>authorisations</del> new coastal space to iwi in accordance with the procedures established through the Aquaculture Reform 2004.</u>

### 9.4A.2 Methods of Implementation

<u>Zoning</u>	<p><u>Aquaculture management areas (AMA's) will be included in the Plan as Aquaculture Management Area Zones (AMA Zones).</u></p> <p><u>Existing, lawfully established marine farms are deemed to be AMA's <del>and will be included in the Plan in a special AMA Zone.</del></u></p> <p><u>All new marine farms must be established in an AMA Zone following the granting of the necessary resource consents for coastal permits.</u></p> <p><u>At some later date, Council may decide to propose new AMA Zones in the Plan by way of Council-initiated Plan Change or I P P C processes, as priorities and resources for Council determine.</u></p>
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	<p><u>New AMA Zones may be established in the Plan by way of requests for Private Plan Changes.</u></p> <p><u>AMA Zones will be managed for aquaculture activities (marine farming).</u></p>
<u>Rules</u>	[To be notified in the Proposed Marlborough Resource Management Plan].
<u>Authorisations</u> <u>Rights to apply for coastal permits for marine farming</u>	<p><u>Authorisations for available space within AMA Zones, which have been included in the Plan as a result of a Council-initiated Plan Change, will be allocated by way of public tender.</u></p> <p><u>An alternative method is specified in the Plan for <del>obtaining the right to apply the allocation of authorisations</del> 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, <del>authorisations</del> <u>the right to apply for available space within AMA Zones</u> will be offered to the first person whose Private Plan Change was complete and successfully resulted in an operative AMA Zone for that area of coastal marine area</u></p> <p><u>Where the <del>authorisation</del> <u>right to apply for available space or the resulting coastal permit for marine farming</u> is not taken up or lapses, allocation will be by way of public tender.</u></p>
<u>Monitoring</u>	[To be notified in the Proposed Marlborough Resource Management Plan].

# Volume Two

Insert the following new chapter

## 35A.0 Aquaculture Management Area Zone

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### 35A.1 Preamble

This section of the Plan provides for the implementation of specific and general objectives and policies for aquaculture management areas as detailed in Volume One of the Plan. It also provides for the specific requirements for aquaculture management areas and aquaculture activities as set out in Part 7A of the Act.

Aquaculture management areas are included in this Plan as Aquaculture Management Area Zones. There are three processes available to include new Aquaculture Management Areas Zones in the Plan - a Council-initiated Plan Change; a standard Private Plan Change requested by any person or organization; and a Council Invited Private Plan Change (IPPC) where the Council invites applications to establish new AMA's.

Part 7A of the Act specifies the processes that must be followed by the Council for the establishment of aquaculture activities in the coastal marine area. Responsibilities of others, such as the Chief Executive of the Minister of Fisheries, the Minister of Conservation and the Trustee under Section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004, are also set out in this part of the Act. Chapter 35A of the Plan sets out those matters which must be contained in a Plan in order for resource consent applications for aquaculture to be considered for approval.

Volume One, Section 9.1.2, Aquaculture Management, describes the methods by which ~~authorisations-the right to apply for resource consents~~ for marine farming will be ~~allocated by the Council~~ obtained.

~~A cross-reference to Information Requirements for Private Plan Changes for Aquaculture Management Area Zones to be inserted by a subsequent Council-initiated Plan Change No. 19.~~

## 35A.2 General Rules

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~~General Rule 35A.2.1 shall not have effect until Plan Change 16 becomes operative.~~

~~General Rule 35A.2 shall have not effect until Plan Change 16 becomes operative and the reviewed objectives, policies and methods for aquaculture in the Proposed Marlborough Regional Policy Statement have been notified.~~

### 35A.2.1 Alternative Allocation Method for ~~Authorisations—the Right to Apply~~ for Available Water Space in Aquaculture Management Areas

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~~These General Rules specify the method that Council will be used to offer authorisations apply for coastal permits for marine farming in operative AMA Zones arising from standard Private Plan Change requests under Schedules 1, Part 2, and 1A of the Act. These General Rules do not apply to AMA Zones arising from Council Invited Private Plan Changes ( I P P C).~~

#### 35A.2.1.1 Circumstances under which the Alternative Allocation Method will apply

~~Rule 35A.1.2 shall be used by Council to offer authorisations 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. Where Rule 35A.2.1.2 refers to a Private Plan Change, it is referring to the Private Plan Change which successfully resulted in the creation of the operative AMA Zone.~~

#### 35A.2.1.2 Alternative Allocation Method

~~Under the circumstances specified in Rule 35A.2.1.1, Council the right to apply for coastal permits for marine farming will only offer authorisations be obtained by way of the following methods:~~

##### 35A.2.1.2.1 One Private Plan Change Request

~~The available authorisations right to apply for coastal permits for marine farming for an area in an AMA Zone arising from a single Private Plan Change for an area in an AMA Zone shall be offered to obtained by the person who requested the Private Plan Change.~~

### 35A.2.1.2.2 More than One Private Plan Change Request for the same area

Where more than one Private Plan Change request was made to Council for the same area of an AMA Zone, the ~~available authorizations~~ right to apply for coastal permits for marine farming for the overlapping area shall be ~~offered to~~ obtained by the person whose Private Plan Change request was the first to either:

- i. provide all required information, or
- ii. decline to provide further or additional information requested by the Council in writing ~~and~~ when the Council or the Environment Court determines that the requested information was not required to be provided;

and the Private Plan Change successfully resulted in the creation of an operative AMA zone for that area. Subject to Rule 35A.2.1.3 (which relates to reservations for commercial fishing), this right to apply for coastal permits for marine farming shall be obtained on the date on which the Private Plan Change becomes operative.

### 35A.2.1.2.3 ~~The Right to Apply for Coastal Permits for Marine Farms not taken up Offer of Authorisation and/or Resource Consent for Authorised Space not taken up~~

Where ~~an authorisation~~ the right to apply for a coastal permit for marine farming is ~~offered to~~ has been obtained by a person under Rules 35A.2.1.2.1 or 35A.2.1.2.2, and:

- ~~i. The offer for the authorisation is not taken up by that person; or~~
- ~~ii. An authorisation is granted to~~ The right to apply for a coastal permit for marine farming by that person lapses; or
- iii. A coastal permit for marine farming is granted to ~~that the person for~~ marine farming in the area covered by the ~~authorisation~~ that has the right to apply, but it lapses;

authorisations within that area shall be offered by way of public tendering.

For the purposes of Rule 35A.2.1.2.3 i., “lapse” shall have the meaning specified in Section 165N of the Act, as if the right to apply for a coastal permit for marine farming was an authorisation.

#### 35A.2.1.2.4 Offer of Authorisations following Cancellation or Expiry of Coastal Permits

When:

- i. the term of a coastal permit for marine farming expires and a new coastal permit is not granted to the existing permit holder; or
- ii. a coastal permit is cancelled under Section 126 of the Act;

authorisations within that area shall be if offered shall be by way of public tendering.

#### 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.

**35A.3 Activities – Permitted, Controlled, Limited Discretionary, Discretionary, Non-Complying and Prohibited - in the Aquaculture Management Area Zone**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

**35A.4 Information Requirements for Private Plan Changes for Aquaculture Management Area Zones**

[To be to be notified in the Proposed Marlborough Resource Management Plan]

**35A.5 Planning Maps – Aquaculture Management Area Zones**

[To be to be notified in the Proposed Marlborough Resource Management Plan]

~~Note: the existing deemed Aquaculture Management Areas will be shown on future releases of the maps and may be done so without undertaking a plan change.~~

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