

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Phill Reid, Manager Aucklandwide Planning

FROM Kath Coombes, Senior Policy Planner, Regional Planning




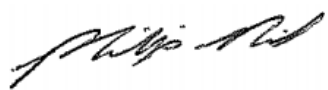
DATE 27 November 2020

SUBJECT **National Environmental Standards for Marine Aquaculture - Modification to Chapter F2 of the Auckland Unitary Plan (AUP) Operative in part (15 November 2016)**



This memorandum requests an update to Auckland Unitary Plan Operative in part

Reason for update: The National Environmental Standards for Marine Aquaculture commence on 1 December 2020. The AUP must be amended to remove duplication or conflict with an NES as soon as practicable after the standard comes into force (RMA s44A).	
Chapter	F2 Coastal – General Coastal Marine Zone
Section	<ul style="list-style-type: none"> • F2.19.9 note before activity table • F2.19.9 activity table • F2.20 Notification • F2.23.1 Matters of discretion (2) and (3) • F2.23.2 Assessment criteria (2), (3), (4), (5), (9), (17), (19), (20), (21)
Changes to text (shown in underline and strikethrough)	Refer to Attachment A .
Changes to diagrams	NA
Changes to spatial data	NA
Attachments	Attachment A: Comparison of the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 and Auckland Unitary Plan, Kath Coombes, Plans and Places, Auckland Council, 27 November 2020

Prepared by: Kath Coombes Senior Policy Planner	Text Entered by: Sophia Coulter Planning Technician
Signature: 	Signature: 
Reviewed by: Kath Coombes Senior Policy Planner	Signed off by: Phill Reid Manager Aucklandwide Planning
Signature: 	Signature: 

Attachment A:

Comparison of the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 and Auckland Unitary Plan, Kath Coombes, Plans and Places, Auckland Council, 27 November 2020

Comparison of the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 and Auckland Unitary Plan

Kath Coombes, Plans and Places, Auckland Council

27 November 2020

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1. Introduction

RMA section 44A requires local authorities to amend plans to remove rules that duplicate or conflict with a provision in a national environmental standard (**NES**). The Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 (**NES-MA**) will come into force on 1 December 2020. This report reviews the Auckland Unitary Plan (**AUP**) to assess where there is duplication or conflict with the NES-MA, and recommends amendments to the AUP provisions.

The NES-MA regulations provide for replacement coastal permits for existing marine farms including in some situations, the ability for an existing marine farm to realign or make changes to consented species. These are restricted discretionary activities where they meet the specified requirements. There is a discretionary activity for “existing marine farms in inappropriate areas for existing aquaculture activities” but this will not apply in Auckland as the AUP currently does not identify any inappropriate areas.

The AUP has rules that provide for replacement coastal permits for existing marine farms and for farm realignment as a restricted discretionary activity. The key provisions are:

- F2.19.9 rule (A116) “re-consenting established aquaculture activities” and
- (A118) “minor realignment of lawfully established aquaculture activities limited to moving 1/3 of the farm area, while 2/3 of the farm area stays within the same space as originally consented”; and
- the associated matters of discretion in F2.23.1(2) and (3); and the assessment criteria in F2.23.2.

Because the NES-MA has different requirements and specifications to the AUP, it is necessary to also review the application of the other aquaculture rules in table F2.19.9 and the chapter J definitions for: “experimental aquaculture activities”, “lawfully established aquaculture activities”, and “new aquaculture”. The prohibited activities for aquaculture in other coastal zones¹ are not considered further because the relevant zones do not include any existing aquaculture and so the NES-MA provisions for replacement consents will not apply.

¹ The prohibited activity rules for aquaculture are: F3 Coastal – Marina Zone, F3.4.2(A6); F4 Coastal – Mooring Zone, F4.4.1(A1); F5 Coastal – Minor Port Zone, F5.4.2(A10); F6 Coastal – Ferry Terminal Zone, F6.4.2(A5); F7 Coastal – Defence Zone, F7.4.3(A7).

2. Addition of a general advice note before the activity table

Following council's practice with NESs, an advice note should be added to the AUP to note when the NES or AUP prevails. It is recommended that this note state that if an activity is regulated by both the NES-MA and the AUP, the NES-MA prevails. Although regulation 12 allows for more stringent rules in a plan to prevail, and regulations 23 and 43 allow for more lenient rules in a plan to prevail, none of the relevant requirements apply in the AUP.

Under RMA section 43B, a rule that is more stringent than a NES prevails over the standard if the standard expressly says that a rule may be more stringent than it. Similarly, a rule that is more lenient than a NES prevails over the standard if the standard expressly says that a rule may be more lenient.

The NES-MA only allows for rules that are more stringent than the NES in relation to regulation 12 for existing marine farms in inappropriate areas for existing aquaculture activities. As noted earlier, regulation 12 does not apply in Auckland as the AUP does not identify any areas as inappropriate for existing aquaculture activities.

NES-MA regulation 23 allows for a more lenient rule for a replacement coastal permit under regulation 14 (replacement coastal permits for existing marine farms not within inappropriate areas for existing aquaculture activities: restricted discretionary activity) or regulation 16 (realignment of existing marine farms: restricted discretionary activity) than a restricted discretionary activity. The AUP does not have a more lenient activity status for replacement coastal permits for existing farms as both the regulations and AUP rule are a restricted discretionary activity, including where there is realignment of one third of the farm. The NES-MA and AUP have different matters of discretion for these activities but leniency has been limited to activity status in regulation 23. There is no scope for the AUP having more lenient matters of discretion so the NES-MA matters of discretion will prevail.

Regulation 43 allows councils to adopt a more lenient rule than the NES-MA for replacement coastal permits that involve a change in species (with and without a change to farm structures) in regulations 26, 29, 32, 35 and 38. This is not limited to activity status. The AUP does not have more lenient provisions than the NES-MA for replacement permits that include a change in species as this is restricted discretionary under the NES-MA but is generally a discretionary or non-complying activity under the AUP. These are more restrictive and so the NES-MA prevails for a change of species application. The only exception is when a change of species application would be within AUP rule (A119) 'experimental aquaculture activities that are a maximum of 1ha and 10 years in duration'. This is a restricted discretionary activity in the General Coastal Marine Zone (but not the overlays) and so is not a more lenient provision. The matters of discretion are different to the NES-MA but are more restrictive so do not prevail. This is discussed further below.

With some other NESs, such as the NES Freshwater, the general advice note in the AUP includes a sentence that in the event of conflict between the plan and regulations, the more restrictive or stringent provision prevails. NES Freshwater regulation 6 states that a district rule, regional rule, or resource consent may be more stringent than the regulations. This approach does not apply to the NES-MA as it only allows for more lenient provisions in terms of the regulations that apply in Auckland. The AUP does not have more lenient rules and so the NES-MA will prevail over the rules.

Amendment:

Above the activity table add:

Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020

The Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 ('NES-MA') came into force on 1 December 2020. If an activity provided for in Table F2.19.9, including any associated matters of discretion, is also regulated by the NES-MA, then the NES-MA applies and prevails over the rules. If the NES-MA regulations do not apply to an activity, then the plan rules apply.

3. Assessment of duplication and conflict

3.1 New aquaculture

Rule F2.19.9 (A115) New aquaculture activities – D in GCMZ, NC in overlays

Definition – New aquaculture – Aquaculture activities not consented and operational at 30 September 2013.

Duplication:

New aquaculture activities are addressed in the NES-MA where an application for a replacement coastal permit includes a change in the consented species. This is not duplication as Part 4 of the NES-MA has several regulations providing different forms of a change in species proposal as a restricted discretionary activity but the AUP rule provides for new aquaculture as a discretionary or non-complying activity.

Conflict:

Applications that currently fall within rule F2.19.9 (A115) will fall under the NES-MA if they are for a replacement consent for existing aquaculture that also seeks to change the consented species. Under the AUP this would be defined as “new aquaculture” and would fit under Rule F2.19.9(A115) as it would be considered as “aquaculture activities not consented and operational at 30 September 2013”. Under the NES-MA, a replacement consent application with a change in species may now meet the requirements to be a restricted discretionary activity under regulations 26, 29, 32 or 35.

Auckland does not currently have any finfish farms so it is not necessary to list regulation 38 “change in consented species on finfish farms: restricted discretionary activity”. This part of the NES-MA applies only to existing marine farms that first obtained a coastal permit before the date on which these regulations come into force (regulation 25), so it will not be applicable if a finfish marine farm is established in future and subsequently seeks a replacement consent.

It would be appropriate to amend rule F2.19.9 (A115) to recognise that new aquaculture activities may be subject to the NES-MA where it is modifying an existing marine farm with a change in consented species. A similar situation applies to rules (A119) and (A120) so it would be appropriate to add a cross reference to a note applying to all of these rules.

Amendment:

Amend the note before the activity table and the rule as follows:

Rules F2.19.9 (A115), (A119) and (A120) do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail over these rules.

(A115) New aquaculture activities #

3.2 Replacement consents

Rule (A116) Re-consenting established aquaculture activities – RD in GCMZ and overlays

Matters of discretion F2.23.1(2) Additional matters for: (a) activities in overlays, (b) activities affecting a place identified in Schedule 14.1 Schedule of Historic Heritage, (c) occupation of the common marine and coastal area, (d) structures in the coastal marine area

Matters of discretion F2.23.1(3)(d) re-consenting established aquaculture activities

Assessment criteria F2.23.2 (2) to (5) overlays, (9) occupation, (17) structures, (19) Re-consenting established aquaculture activities

Rule F2.19.9 (A116) applies to the re-consenting of all aquaculture activities where there is no change to the activity, area or species. The rule does not use the defined term “Lawfully established aquaculture activities” and so it is not limited to “aquaculture activities consented and operational at 30 September 2013”.

Duplication:

Rule (A116) duplicates the activity status for NES-MA regulation 14 “replacement coastal permits for existing marine farms not within inappropriate areas for existing aquaculture activities: restricted discretionary activity”.

The AUP does not have any areas identified as “inappropriate areas for existing aquaculture activities” so regulation 14 applies to the whole coastal marine area, including the General Coastal Marine Zone and all the overlay areas. The prohibited activities in several of the other coastal zones could be taken as an indication that aquaculture is an inappropriate activity. However, there is no existing aquaculture in the areas covered by the relevant zones so those rules only apply to new marine farms. NES-MA regulation 6 specifies that “inappropriate area for existing aquaculture activities means an area of the coastal marine area that, after 1 January 2019, has been identified as inappropriate for existing aquaculture activities in a policy statement or plan or proposed policy statement or plan”.

AUP rule (A116) does not include all of the requirements listed in regulation 14(2) regarding having the same activities authorised by the current coastal permit. However, the requirements would have been applied to AUP rule (A116) using the commonly accepted meaning of the words “re-consenting established aquaculture activities”. This rule is intended to be limited to sites with an existing consent and to the area, site, species and structures authorised by the current coastal permit. This rule is a duplication that should be removed.

Conflict:

The matters of discretion in NES-MA regulation 18 (“matters over which discretion is restricted for replacement coastal permits under this Part and Part 4”) are different to the matters of discretion in AUP F2.23.1(2) and (3)(d) for re-consenting established aquaculture activities.

Water quality

A key difference is the consideration of effects on water quality. The matters of discretion in F2.23.1(3)(d) (i) includes “effects on water quality” whereas the NES-MA does not include effects on water quality in regulation 18. Water quality is not intended to be considered under the other matters of discretion in regulation 18 as it has been specifically included as an additional matter for other activities. The NESMA includes the effects on water quality as a matter of discretion in regulation 19

(for replacement coastal permits for existing marine farms that involve fed aquaculture), in regulations 33 and 36 (for replacement coastal permits in respect of a change in consented species and a change to the marine farm structures) and in regulation 39 (for replacement coastal permits in respect of a change in consented species on finfish farms).

The inclusion of effects on 'water quality' in the AUP matters of discretion could be seen as a 'more stringent' rule than the NES-MA. As noted above, NES-MA regulation 23 allows for a more lenient rule for a replacement coastal permit under regulation 14 or 16 than a restricted discretionary activity. There is no provision allowing for rules to be more restrictive than regulations 14 and 18. This means that the 'water quality' matter of discretion in the AUP is a conflict and should be removed in accordance with RMA s 44A.

Ecological values

For the F2.23.1(3)(d) matters of discretion for ecological values, mana whenua values, navigation and safety, and consent duration and monitoring, the NES-MA has similar but much more explicitly specified matters of discretion in regulation 18. This is either duplication or conflict and should be removed from the AUP.

Where the AUP allows for consideration of "effects on ecological values", the NES-MA covers ecological considerations in regulation 18 with:

- (g) the effects of the activity on reefs, biogenic habitat, and regionally significant benthic species within the area of interest:
- (h) management practices to minimise adverse interactions between marine mammals or seabirds and the marine farm, including entanglements, injury, and mortality:
- (i) the management of biosecurity risks:
- (j) the management of the effects on the environment of noise, rubbish, and debris:

The use of "area of interest" in (g) relates to a defined term:

area of interest means the footprint of the surface structures of a marine farm, and in addition—

- (a) 20 metres around the footprint of the surface structures of an inter-tidal marine farm; or
- (b) 20 metres from the boundary of the consented area of a sub-tidal marine farm; or
- (c) an area of effects around the footprint of a marine farm involving fed aquaculture that is defined in a scientific report—
 - (i) prepared by subject matter experts, using best-practice criteria for ecologically significant effect; and
 - (ii) endorsed by the regional council

Similarly, the use of "regionally significant benthic species" is defined in regulation 9 to mean benthic species protected under the Wildlife Act, listed as threatened or at risk, or identified as regionally significant in a policy statement, plan or published scientific report. The AUP "effects on ecological values" would allow for consideration of effects on reefs and biogenic habitat over a larger area, and of effects on other benthic species. The AUP matter of discretion is therefore more restrictive and is a conflict with the NES-MA that should be removed.

Mana whenua values

Where the AUP allows for consideration of “effects on Mana Whenua values” the NES-MA addresses this in regulation 18 with:

- (f) the effects of the activity on matters identified in the report required by clause 5 of schedule 6.

Regulation 15 establishes that where a schedule 6 report has not been provided, the words in (f) are replaced with “the effects of the activity on tangata whenua values”. The use of “mana whenua” in the AUP could be more lenient than the NES-MA use of “tangata whenua” as it could relate to a smaller group of parties to be consulted. The process set out in NES-MA schedule 6 includes seeking the views of iwi, hapū, customary marine title groups, and protected customary rights groups. In the AUP, “mana whenua” is defined as “Māori with ancestral rights to resources in Auckland and responsibilities as kaitiaki over their tribal lands, waterways and other taonga. Mana Whenua are represented by iwi authorities”. The AUP definition does not include customary marine title groups and protected customary rights groups. The Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA Act**) defines these groups as meaning “an applicant group to which a customary marine title order (or protected customary rights order) applies or with which an agreement is made and brought into effect”. There are currently no such orders or agreements applying in Auckland so the distinction between between mana whenua and tangata whenua does not have a material difference.

All of Auckland’s coastal marine area has applications for customary marine title and in areas where there is an application for a customary marine title order, a resource consent applicant must seek the views of the applicant group (MACA s62(3)). Therefore, consultation with applicant groups will need to occur for re-consenting existing farms and could be seen as more restrictive than the NES-MA in terms of the groups who must be consulted as mana whenua or tangata whenua². The requirement to consult applicant parties is due to the MACA, not the AUP, so no amendment to the AUP is needed in response to this requirement.

The AUP overlay for “sites and places of significance to mana whenua” is not included in the aquaculture activity table but the overlay should be considered under the aquaculture policies (F2.15.3(1) and (3)) and could be taken into consideration through the matters of discretion for aquaculture re-consenting or realignment relating to effects on mana whenua values (F2.23.1(3)(d) and (e)). Similarly, sites in the mana whenua overlay could be taken into account under the NES-MA if they are noted in the report prepared under schedule 6 or when considering tangata whenua values under regulation 15.

The AUP matter of discretion for effects on mana whenua values is either a duplication or conflict with the NES-MA and should be removed.

Navigation and safety

Where the AUP allows for consideration of “effects on navigation and safety”, the NES-MA includes:

- (d) the layout, colour, positioning, density, lighting, and marking of marine farm structures within a marine farm, for the purpose of ensuring—

² If there are protected customary rights orders in future, the resource consent authority does not need to seek the views of the protected customary rights group if the application is to permit existing aquaculture activities to continue to be carried out provided there is no increase in the area or change in the location of the coastal space occupied by the aquaculture activity (MACA Act s55(3)). Similarly, existing aquaculture activities are an “accommodated activity” and may be carried out despite a customary marine title being recognised (MACA Act s64). The NES-MA means these groups will be consulted under schedule 6.

- (i) continued reasonable public access (including recreational access) in the vicinity of the marine farm; and
 - (ii) navigational safety, including the provision of navigation warning devices and signs; and
 - (iii) with respect to colour, the visibility and coherent appearance of marine farm structures:
- (e) the integrity and security of the structures, including the anchoring systems:

Consent duration and monitoring

Where the AUP allows for consideration of consent duration and monitoring, the NES-MA has:

- (a) the duration and lapsing of the coastal permit:
- (b) review conditions:
- (l) information, monitoring, and reporting requirements:

Additional matters – overlays, existing investment, occupation and structures

The AUP also includes matters of discretion relating to the overlays, existing investment, occupation and structures that are not considered in the NES-MA. With respect to the overlays, the AUP includes:

- (2) Additional matters for:
- (a) activities in a D9 Significant Ecological Areas Overlay – Marine 1 and 2; D10 Outstanding Natural Features Overlay and Outstanding Natural Landscape Overlay; and D11 Outstanding Natural Character Overlay and High Natural Character Overlay; and D17 Historic Heritage Overlay; and
 - (i) effects on the characteristics and qualities that contribute to an area’s values;
 - (ii) effects on the ecological values of the D9 Significant Ecological Areas Overlay – Marine 1 and 2; and
 - (iii) effects on views, visual amenity and landscape values in a D10 Outstanding Natural Landscape Overlay, D11 Outstanding Natural Character Overlay or High Natural Character Overlay.
 - (b) activities affecting a place identified in Schedule 14.1 Schedule of Historic Heritage:
 - (i) effects on the identified historic heritage values.
- (3) Specific matters for identified activities:
- (d) re-consenting established aquaculture activities
 - (iv) where the activity is within an overlay, effects on the characteristics and qualities of the overlay;

In the NES-MA, regulation 21 establishes that where the marine farm is located within an outstanding area, in addition to the matters of discretion in regulation 18, an additional matter of discretion is “the effects of the activity on the values and characteristics that make the area, feature, or landscape outstanding”. Outstanding areas are defined in regulation 5 as areas identified in a RPS or plan as an outstanding natural feature, outstanding natural landscape or area of outstanding natural character. This means there is a duplication in the matters of discretion for the ONC, ONL and ONF overlays.

The NES-MA does not explicitly allow for consideration of “effects on views, visual amenity and landscape values” in outstanding areas (AUP F2.23.1(2)(a)(iii)) with respect to replacement coastal permits (regulation 18). The NES-MA only allows for consideration of visual effects in terms of marine farms that involve fed aquaculture, a change in consented species with changes to surface or subsurface structures, or change in consented species on finfish farms (regulations 19(2)(g), 33(2)(r), 36(2)(w), 39(2)(t) and (u)). However, visual effects would generally be considered in terms of considering the “values and characteristics that make the area, feature, or landscape outstanding”. It is either a duplication or conflict with the NES-MA. The point cannot be removed from F2.23.1(2) as it applies to activities other than aquaculture. It should be amended to note that it applies other than where the activity is subject to the NES-MA.

There is no recognition in the NES-MA of the characteristics and qualities of the Significant Ecological Area-Marine (SEA-M), High Natural Character (HNC) or Historic Heritage overlays. They are addressed as follows:

- SEA-M – The NES-MA includes consideration of “significant marine ecological areas” only with respect to realignment of existing marine farms (regulation 16), and a change in consented species with changes to surface and subsurface structures that involve realignment (regulation 35). Realignment is not a restricted discretionary activity under regulations 16 and 35 if the new area is in a significant marine ecological area.
- HNC – The NES-MA has no consideration of “high natural character” even though it is referred to in Policy 13(1)(c) of the New Zealand Coastal Policy Statement.
- Historic heritage – “Effects on historic heritage” is considered through a matter of discretion for realignment of marine farms (regulations 22 and 36).

To require consideration of these additional AUP overlays for replacement coastal permits would be more restrictive than the NES-MA and so would be a conflict that should be removed. The implications of the differences are:

- SEA-M – Several existing farms are within a SEA-M overlay. The effects on ecological values are considered under various matters of discretion in regulation 18. Applications for replacement consents for existing farms in SEA-M would be able to consider the ecological values of the area (to the extent that they are relevant to the matters of discretion in regulation 18(g), (h) and (i)) even though the overlay is not listed.
- HNC – Several existing marine farms are within areas of High Natural Character. The values of this overlay cannot be considered under the NES-MA. This is not a significant concern as the existing marine farms are noted in the descriptions of the HNC areas. The areas were determined to be of significance with the existing level of marine farm development. The NES-MA provides for the continuation of this same level and form of development and also allows for some modification. A change in consented species with a change in consented surface structures would be a restricted discretionary activity (regulations 32 and 35).
- Historic heritage – There are no existing marine farms that overlap an historic heritage overlay site so this aspect is of low relevance to the replacement consent process.

The AUP includes consideration of the existing level of economic investment as follows:

F2.23.1(3)(d)(v) the existing level of economic investment in lawfully established aquaculture activities.

This point was included in response to submissions from marine farmers to give consistency with RMA section 104(2A):

(2A) When considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder.

This is not included in the NES-MA but RMA section 104(2A) would still apply and the matter would need to be considered. There is no issue created if it is removed from the AUP for replacement marine farm consents.

The AUP includes matters of discretion relating to occupation and structures as follows:

(2) Additional matters for:

(c) occupation of the common marine and coastal area:

(i) the effects of the location, extent, timing and duration of the occupation, including exclusive occupation.

(d) structures in the coastal marine area:

(i) effects on views to and from the surrounding area, and visual amenity effects from the presence of the structure.

The NES-MA allows for consideration of occupation, and the extent to which it is exclusive occupation, under the matters of discretion relating to duration and lapsing of the coastal permit, public access and navigational safety. There is no consideration of views and visual amenity effects but they may be considered in outstanding areas in relation to the values and characteristics that make the area outstanding.

Amendment:

Amend the rule, matters of discretion and assessment criteria as follows:

~~(A116) Re-consenting established aquaculture activities~~ [Rule removed as it duplicates NES-MA regulation 14 for replacement coastal permits for existing marine farms.]

~~F2.23.1(2) Additional matters for:~~ (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail over this rule.)

~~(a) activities in a D9 Significant Ecological Areas Overlay – Marine 1 and 2;...~~

~~F2.23.1(3)(d) re-consenting established aquaculture activities:~~

~~(i) effects on Mana Whenua values and ecological values and water quality;~~

~~(ii) effects on navigation and safety from the established aquaculture activities;~~

~~(iii) consent duration is a minimum of 20 years and a maximum of 35 years and monitoring;~~

~~(iv) where the activity is within an overlay, effects on the characteristics and qualities of the overlay; and~~

~~(v) the existing level of economic investment in lawfully established aquaculture activities.~~

[Matters of discretion removed as they duplicate or conflict with NES-MA regulations 18 to 21 for replacement coastal permits for existing marine farms.]

~~F2.23.2 (2), (3), (4), (5), (9), (17) ...~~ (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.)

~~F2.23.2 (19) Re-consenting established aquaculture activities~~

[Assessment criteria removed as they related to matters of discretion that duplicate or conflict with NES-MA regulations 18 to 21 for replacement coastal permits for existing marine farms.]

The proposed amendment for the matters of discretion refers to the NES-MA matters of discretion in regulation 18 (replacement coastal permits) and regulations 19 (additional matters for farms that involve fed aquaculture), regulation 20 (additional matters for offshore farms), and regulation 21 (additional matters for marine farms within outstanding areas). Auckland does not currently have any marine farms that are offshore or have fed aquaculture. If such farms are consented in future, and they then sought replacement consents, they would have fallen under rule (A116) and the corresponding matters of discretion, so these regulations should be listed in the note.

3.3 Extensions

Rule (A117) Minor extension of lawfully established aquaculture activities limited to a maximum of 25 percent of the size of the originally consented current farm – RD in GCMZ, D in overlays

Matters of discretion F2.23.1(2) Additional matters for: (c) occupation of the common marine and coastal area, (d) structures in the coastal marine area

Matters of discretion F2.23.1(3)(e) extensions and realignment of established aquaculture activities

Assessment criteria F2.23.2(9) occupation, (17) structures, (20) Extensions and realignment of established aquaculture activities

Duplication:

The rule is not addressed in the NES-MA.

Conflict:

The rule is not addressed in the NES-MA.

Amendment:

No amendment.

3.4 Realignment

Rule (A118) Minor realignment of lawfully established aquaculture activities limited to moving 1/3 of the farm area, while 2/3 of the farm area stays within the same space as originally consented – RD in GCMZ, D in overlays

Matters of discretion F2.23.1(2) Additional matters for: (c) occupation of the common marine and coastal area, (d) structures in the coastal marine area

Matters of discretion F2.23.1(3)(e) extensions and realignment of established aquaculture activities

Assessment criteria F2.23.2(9) occupation, (17) structures, (20) Extensions and realignment of established aquaculture activities

Duplication:

The rule duplicates the activity status for NES-MA regulation 16 'Realignment of existing marine farms: restricted discretionary activity' for the GCMZ where realignment of one third of the farm is a restricted discretionary activity. Regulation 16 allows for a new area that is not more than one-third of the authorised area of the existing marine farm.

Regulation 16 includes several requirements that are implicit in the AUP rule for realignment. The regulation requires that:

- (a) there is a current coastal permit under the Act for the existing marine farm to occupy the coastal marine area:
- (d) the total area to be occupied is the same as, or less than, the area authorised by the current coastal permit:
- (e) the species to be farmed are only those authorised by the current coastal permit:
- (f) the structures and anchoring systems are to be the same as, or similar to, those authorised by the current coastal permit, including in height, reflectivity, and bulk (but not including in colour), while allowing for any modification in location that is required by the realignment.

I consider that these requirements are essentially duplication of the AUP rule, even though they are not listed out in the AUP rule. The AUP rule applies to "realignment of lawfully established aquaculture activities" which must mean the activities is the same as that lawfully established, but realigned to a different location. This has the same effect as the regulation requirement for an existing coastal permit, to have the same or smaller area, and to not change the species or structures used in the farm.

Conflict:

Overlays

In the AUP, realignment is a discretionary activity in the overlays. NES-MA regulation 16 only applies to realignment if the new area is not located within a significant marine ecological area. This means a realignment in the SEA-M overlay would be considered under the AUP rules. The rule could be removed for the GCMZ column (as a duplication of the restricted discretionary activity status) but needs to be retained for the SEA-M columns.

With respect to the ONF, ONL and ONC overlays (outstanding areas in the NES-MA), regulation 16 requires that if the existing marine farm is not within an outstanding area, the new area is not located within an outstanding area. This means that where an existing farm is in an outstanding area, the new part can be in an outstanding area as a restricted discretionary activity. In contrast, the AUP has a discretionary activity for all realignment in an ONF, ONL or ONC. This means the AUP is more restrictive for realignment where the existing farm is in an outstanding area, but is not more restrictive where the farm is not in an outstanding area. The rule needs to be retained for the ONF, ONL and ONC columns for situations where a farm that is not in an outstanding area could realign into an outstanding area and would fall outside of regulation 16.

The NES-MA has no recognition of areas of high natural character (AUP HNC overlay). The AUP discretionary activity for realignment in the HNC overlay is more restrictive than the NES-MA regulation 16. Regulation 23 allows for a more lenient rule for a replacement coastal permit under regulation 16 than that of a restricted discretionary activity, but not a more stringent rule. The HNC overlay rule should be removed for applications that otherwise comply with regulation 16. It should be retained for applications that fall outside regulation 16 for other reasons such as the size limit.

Regulation 16 applies to the realignment of a marine farm where the new area extends into a historic heritage overlay site. This would be a discretionary activity under AUP rule (A118). NES-MA regulation 22 (additional matters over which discretion is restricted for realignment of marine farms) includes the effects of the activity on historic heritage as a matter of discretion. The AUP rule is more restrictive and so should be removed as it conflicts with the NES-MA. It should be retained for applications that fall outside regulation 16 for other reasons such as the size limit.

Size, repeated realignment and contiguous requirements

Regulation 16 includes requirements that the existing farm does not exceed 10 hectares and that no part of the farm has been realigned in the previous 10 years. The AUP realignment rule applies to all realignment that moves one third of the existing farm. Realignment that does not comply with the regulation 16 requirements would be regulated under the AUP. This rule should be retained in the AUP for larger farms and previously realigned farms. The RD in the GCMZ column for this rule cannot be removed from the plan as it may still apply in some circumstances. The AUP effectively has a size limit as this rule is limited to “lawfully established aquaculture activities” which are defined as “aquaculture activities consented and operational at 30 September 2013”. The large farms which have been consented since the AUP became operative would not be able to use rule (A118) to realign one third of their area.

Similarly, regulation 16 requires that the new area is contiguous to the authorised area of the existing farm. This is not an explicit requirement in the AUP. It is possible that under the AUP there might be a navigation space left between the existing farm and the new area.

The AUP is more lenient than the NES-MA with respect to realignment in terms of farm size, repeated realignment and being continuous, but this relates to the requirements in regulation 16 rather than the activity status. The NES-MA allows for a more lenient activity status for activities controlled by regulation 16. Realignment outside that regulation must be outside the NES-MA and subject to the AUP rules.

Areas identified in the plan as a non-complying or prohibited activity

Regulation 16(3)(c)(iv) requires that the new area is not located within an area where aquaculture activities are identified in the relevant plan or proposed plan as a non-complying or prohibited activity. The regulation does not specify whether the non-complying activity should apply to realignment and appears to cover any rule for aquaculture activities so could include the non-complying activities in rules other than for realignment. The AUP has a non-complying activity for new aquaculture, and for aquaculture not otherwise provided for, in overlays, and so new realigned areas will not be able to extend into the overlays under regulation 16. Under AUP rule F2.19.9(A118) realignment into an overlay is a discretionary activity. Presumably, realignment into an overlay would be outside regulation 16 because of the non-complying activity in (A115) and (A120) but would still fall under rule (A118) as a discretionary activity.

Matters of discretion

Regulation 22 specifies five additional matters over which discretion is restricted for realignment of marine farms. These apply as well as the matters in regulation 18. The additional matters are:

- (a) the effects of the activity on historic heritage:
- (b) a requirement to surrender the coastal permit for any space no longer occupied as a result of realignment:

(c) in relation to the new area to be occupied, conditions relating to adverse effects of the activity on marine mammals and seabirds:

(d) if the relevant marine farm is located within an outstanding area, the effects of the realignment on the values and characteristics that make the area, feature, or landscape outstanding:

(e) the positive effects of the realignment of the marine farm.

The matters of discretion for historic heritage in (a) is similar to the AUP matter of discretion in F2.23.1(2)(a) and (b). The consideration of marine mammals and seabirds under (c) is part of the AUP matter of discretion for “ecological values”. The consideration of values and characteristics of outstanding areas in (d) is consistent with the AUP matter of discretion relating to overlays. The requirement in (b) to surrender the permit for the area no longer occupied is not specified in the AUP but is implicit in the AUP activity description. The inclusion of positive effects in (e) is different to the AUP matters of discretion.

The AUP matters of discretion have largely been discussed above in relation to replacement consents. The realignment matters of discretion also include “the effects from construction or works methods” and “the effects of the location, extent, design and materials of the marine farm”, “effects on coastal processes” and “effects on existing uses and activities”. These additional matters overlap to some extent with the matters in the NES-MA but may also be more restrictive and so conflict with the NES-MA.

The rule is not being removed (as it may still apply in some circumstances) and so the matters of discretion should also be retained. A note should be added to highlight that they will not apply where the NES-MA applies. A corresponding amendment should be made to the assessment criteria.

Amendment:

Amend the rule, matters of discretion and assessment criteria as follows:

Rule (A118) Minor realignment of lawfully established aquaculture activities limited to moving 1/3 of the farm area, while 2/3 of the farm area stays within the same space as originally consented (Does not apply to applications where the realignment is subject to NES-MA regulation 16. The regulation prevails over this rule.)

Matters of discretion F2.23.1(3)(e) extensions and realignment of established aquaculture activities (Do not apply to applications where the realignment is subject to NES-MA regulation 16. The regulation prevails this rule.)

Assessment criteria F2.23.2(20) Extensions and realignment of established aquaculture activities (Do not apply to applications where the realignment is subject to NES-MA regulation 16. The regulation prevails.)

3.5 Experimental aquaculture

Rule (A119) Experimental aquaculture activities that are a maximum of 1ha and 10 years in duration – RD in GCMZ, NC in overlays

Matters of discretion F2.23.1(2) Additional matters for: (c) occupation of the common marine and coastal area, (d) structures in the coastal marine area

Matters of discretion F2.23.1(3)(f) experimental aquaculture activities

Assessment criteria F2.23.2 (9) occupation, (17) structures, (21) Aquaculture activities - research trials

Definition – Experimental aquaculture activities – Aquaculture activities that test new species, including polyculture, and or new technology or techniques.

Duplication:

Rule (A119) allows for small scale experimental aquaculture activities that test new species, technology or techniques. This could duplicate the regulations in Part 4 of the NES (replacement coastal permits for existing marine farms to change consented species) if the experimental aquaculture was at an existing marine farm, but not where it was at a new site. The duplication would only be in the General Coastal Marine Zone, which is also a restricted discretionary activity, but not in the AUP overlays where it is a non-complying activity.

Conflict:

Area of application

Rule (A119) applies throughout the General Coastal Marine Zone, not just in relation to changes in species (with or without a change in structures) at existing marine farms. Where the experimental aquaculture is in an overlay and at an existing farm, there could be a conflict between the AUP and NES-MA as the AUP rule would have a more restrictive activity status.

The whole rule should not be removed as it will apply in circumstances other than those in conflict with the NES-MA, for example, where it is not at an existing marine farm.

Matters of discretion

The AUP matters of discretion for experimental aquaculture are:

- (i) the effects from construction or works methods;
- (ii) the effects of location, extent, design and materials of the marine farm;
- (iii) the effects on coastal processes, ecological values, water quality and natural character;
- (iv) the effects on public access, navigation and safety;
- (v) the effects on existing uses and activities;
- (vi) the effects on Mana Whenua values;
- (vii) the effects of introducing food and antibiotics; and
- (viii) consent duration and monitoring.

These matters of discretion are largely discussed above in relation to other rules. The only additional point is “the effects of introducing food and antibiotics”. The NES-MA also has additional matters of discretion where there is a change in consented species. These are in regulation 27:

- (a) the genetic effects on wild populations of farmed species escaping; and
- (b) the biosecurity effects arising from the farming of the new species.

These matters in the AUP overlap to some extent with the matters in the NES-MA but may also be more restrictive and so conflict with the NES-MA.

The rule is not being removed (as it may still apply in some circumstances) and so the matters of discretion should also be retained. A note should be added to highlight that they will not apply where the NES-MA applies. A corresponding amendment should be made to the assessment criteria.

Amendment:

Amend the note before the activity table, rule, matters of discretion and assessment criteria as follows:

Rules F2.19.9 (A115), (A119) and (A120) do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail over these rules.

Rule (A119) Experimental aquaculture activities that are a maximum of 1ha and 10 years in duration #

Matters of discretion F2.23.1(3)(f) experimental aquaculture activities (Do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail over this rule.)

Assessment criteria F2.23.2(21) Aquaculture activities - research trials (Do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail.)

3.6 Not otherwise provided for

Rule (A120) Aquaculture activities not otherwise provided for – D in GCMZ, NC in overlays

Duplication:

The rule is not addressed in the NES-MA.

Conflict:

The rule is not addressed in the NES-MA.

There may be some circumstances where an activity may have fallen within this rule but is now subject to the NES-MA. This would include replacement consents for existing farms that are changing the consented species. They would have fallen outside rule (A116) as they were not reconsenting the established aquaculture activities, and are now subject to the NES-MA part 4 regulations.

There are also circumstances where a replacement consent for an existing farm does not meet the requirements in the NES-MA and so would fall within this rule so the rule needs to be retained. This

includes farms that are changing the structures and anchoring systems for the farm. They would be outside NES-MA regulation 14 and would not fall within any other rules in table F2.19.9.

Amendment:

Amend the note before the activity table and the rule as follows:

Rules F2.19.9 (A115), (A119) and (A120) do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail over these rules.

(A120) Aquaculture activities not otherwise provided for #

3.7 Notification

F2.20. Notification

Duplication:

N/A.

Conflict:

The NES-MA regulation 24 restricts the notification of applications for replacement coastal permits (with no realignment) as follows:

- (1) Applications for replacement coastal permits under regulation 14 must not be publicly notified or given limited notification, unless public or limited notification is required under the Act.
- (2) Applications described in subclause (1) must not be publicly notified (but limited notification is not precluded) if—
 - (a) the applicant has not undertaken the process outlined in Schedule 6 within the previous 12 months; or
 - (b) the application does not include the report required by clause 5 of that schedule.

Subclause (2) allows for limited notification of tangata whenua if a schedule 6 report has not been included in the application.

An equivalent provision is also included in regulation 44 for applications under regulations 26 and 29 for “change in consented species but no change in structures” and “change in consented species and changes to certain subsurface structures”.

Amendment:

Amend the notification provision as follows:

- (2) Any application for resource consent for an activity listed in Tables F2.19.1 to F2.19.10 and not otherwise listed in F2.20(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991. (This rule does not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail over this rule.)

4. Recommended amendments to the AUP

Underline – text to be added to the AUP

~~Strikethrough~~ – text to be removed from the AUP

Note that there are two cl20A recommendations shown. These are subject to a separate approval process. The cl20A amendments are:

F2.23.1(3) (a) the matters for discretion in F2.23(1) do not apply to F2.23.1(3)(b)-~~(e)~~-(f);

F2.23.2(21) ~~research trials~~ experimental aquaculture activities

Chapter F2 Coastal - General Coastal Marine Zone

Table F2.19.9 Activity table - Aquaculture activities

Note 1

Table F2.19.9 specifies the activity status of aquaculture activities in the coastal marine area. The RMA activities that this table covers are:

- Construction, placement, alteration, removal or demolition of structures used for aquaculture activities (RMA s12(1)(b))
- Disturbance of the foreshore and seabed, incidental to the aquaculture activities (RMA s12(1)(c), (e), (g))
- Deposition of material in, on or under the foreshore or seabed, incidental to the aquaculture activities (RMA s12(1)(d))
- Occupation of the common marine and coastal area by the aquaculture activities (RMA s12(2)(a))
- Activities that contravene a rule in the regional coastal plan (RMA s12(3))
- Discharge of contaminants or water into water, incidental to the aquaculture activities (RMA s15).

Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020

The Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 ('NES-MA') came into force on 1 December 2020. If an activity provided for in Table F2.19.9, including any associated matters of discretion, is also regulated by the NES-MA then the NES-MA applies and prevails over the rules. If the NES-MA regulations do not apply to an activity, then the plan rules apply.

Rules F2.19.9 (A115), (A119) and (A120) do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail over these rules.

Activity		Activity status						
		GCM Zone	SEA-M1, ONC	ONL	SEA-M2, HNC	ONF Type A1 and A	ONF Type V1, V2, B, C, D, E, F	HH
(A115)	New aquaculture activities #	D	NC	NC	NC	NC	NC	NC
(A116)	Re-consenting established aquaculture activities <i>[Rule removed as it duplicates NES-MA regulation 14 for replacement coastal permits for existing marine farms.]</i>	RD	RD	RD	RD	RD	RD	RD
(A117)	Minor extension of lawfully established aquaculture activities limited to a maximum of 25 percent of the size of the originally consented current farm	RD	D	D	D	D	D	D
(A118)	Minor realignment of lawfully established aquaculture activities limited to moving 1/3 of the farm area, while 2/3 of the farm area stays within the same space as originally consented <u>(Does not apply to applications where the realignment is subject to NES-MA regulation 16. The regulation prevails over this rule.)</u>	RD	D	D	D	D	D	D
(A119)	Experimental aquaculture activities that are a maximum of 1ha and 10 years in duration #	RD	NC	NC	NC	NC	NC	NC
(A120)	Aquaculture activities not otherwise provided for #	D	NC	NC	NC	NC	NC	NC

F2.20. Notification

- (1) The occupation of the common marine and coastal area by an activity that would otherwise be permitted, where the area to be occupied is already the subject of an existing occupation consent, will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) Any application for resource consent for an activity listed in Tables F2.19.1 to F2.19.10 and not otherwise listed in F2.20(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991. (This rule does not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail over this rule).
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

F2.23.1. Matters of discretion

...

- (2) Additional matters for: (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail over this rule.)

(a) activities in a D9 Significant Ecological Areas Overlay – Marine 1 and 2; D10 Outstanding Natural Features Overlay and Outstanding Natural Landscape Overlay; and D11 Outstanding Natural Character Overlay and High Natural Character Overlay; and D17 Historic Heritage Overlay; and

(i) effects on the characteristics and qualities that contribute to an area's values;

(ii) effects on the ecological values of the D9 Significant Ecological Areas Overlay – Marine 1 and 2; and

(iii) effects on views, visual amenity and landscape values in a D10 Outstanding Natural Landscape Overlay, D11 Outstanding Natural Character Overlay or High Natural Character Overlay.

(b) activities affecting a place identified in Schedule 14.1 Schedule of Historic Heritage:

(i) effects on the identified historic heritage values.

(c) occupation of the common marine and coastal area:

(i) the effects of the location, extent, timing and duration of the occupation, including exclusive occupation.

(d) structures in the coastal marine area:

(i) effects on views to and from the surrounding area, and visual amenity effects from the presence of the structure.

...

(3) Specific matters for identified activities:

(a) the matters for discretion in F2.23(1) do not apply to F2.23.1(3)(b)-(e) ~~(f)~~;

...

~~(d) re-consenting established aquaculture activities:~~

~~(i) effects on Mana Whenua values and ecological values and water quality;~~

~~(ii) effects on navigation and safety from the established aquaculture activities;~~

~~(iii) consent duration is a minimum of 20 years and a maximum of 35 years and monitoring;~~

~~(iv) where the activity is within an overlay, effects on the characteristics and qualities of the overlay; and~~

~~(v) the existing level of economic investment in lawfully established aquaculture activities.~~

[Matters of discretion removed as they duplicate or conflict with NES-MA regulations 18 to 21 for replacement coastal permits for existing marine farms.]

(e) extensions and realignment of established aquaculture activities (Do not apply to applications where the realignment is subject to NES-MA regulation 16. The regulation prevails over this rule.):

(i) the effects from construction or works methods;

(ii) the effects of the location, extent, design and materials of the marine farm;

(iii) the effects on coastal processes, Mana Whenua values and ecological values and, water quality;

(iv) the effects on public access, navigation and safety;

(v) the effects on existing uses and activities;

- (vi) consent duration and monitoring;
- (vii) where the activity is within an overlay, effects on the characteristics and qualities of the overlay; and
- (viii) the existing level of economic investment in lawfully established aquaculture activities.

(f) experimental aquaculture activities (Do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail over this rule.):

- (i) the effects from construction or works methods;
- (ii) the effects of location, extent, design and materials of the marine farm;
- (iii) the effects on coastal processes, ecological values, water quality and natural character;
- (iv) the effects on public access, navigation and safety;
- (v) the effects on existing uses and activities;
- (vi) the effects on Mana Whenua values;
- (vii) the effects of introducing food and antibiotics; and
- (viii) consent duration and monitoring.

F2.23.2 Assessment criteria:

(2) Activities in the D9 Significant Ecological Areas Overlay – Marine 1 and 2 (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.):

- (a) ...

(3) Activities in an Outstanding Natural Features Overlay (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.):

- (a) ...

(4) Activities in the Outstanding Natural Landscapes, Outstanding Natural Character and High Natural Character Overlay (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.):

- (a) ...

(5) Activities affecting a place identified in Schedule 14.1 Schedule of Historic Heritage (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.):

- (a) ...

(9) Occupation (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.):

- (a) ...

(17) Structures and buildings in the coastal marine area (Do not apply to applications for replacement coastal permits for existing marine farms that are subject to the NES-MA. The regulations prevail.):

- (a) ...

(19) ~~Re-consenting established aquaculture activities...~~, [Assessment criteria removed as they related to matters of discretion that duplicate or conflict with NES-MA regulations 18 to 21 for replacement coastal permits for existing marine farms.]

~~(a) ...~~

~~(b) ...~~

~~(c) ...~~

~~(d) ...~~

~~(e) ...~~

(20) Extensions and realignment of established aquaculture activities (Do not apply to applications where the realignment is subject to NES-MA regulation 16. The regulation prevails.):

(a) ...

(21) Aquaculture activities - ~~research trials~~ experimental aquaculture activities (Do not apply to applications for replacement coastal permits for existing marine farms that include a change in consented species and are regulated under NES-MA regulations 26, 29, 32 or 35. The regulations prevail.):

(a) ...

Definitions

Experimental aquaculture activities

Aquaculture activities that test new species, including polyculture, and or new technology or techniques.

Lawfully established aquaculture activities

Aquaculture activities consented and operational at 30 September 2013.

New aquaculture

Aquaculture activities not consented and operational at 30 September 2013.