

## **Feedback on the Draft Northland Regional Plan**

**To:**

**Northland Regional Council**

**by email**

### **Feedback – Submitter details**

1. Name of feedback submitter: Yachting New Zealand Inc (YNZ)
2. Primary Contact: Andrew Clouston – Participation and Development Manager

### **Specific parts of the Draft Plan the feedback relates to include**

3. The following:
  - a. Definitions
  - b. Structure of plan
  - c. Objectives/policies:
    - i. Objective F.0.1
    - ii. D.1.4 Affected parties
    - iii. D4.4 Managing discharges where the quality of water exceeds the limit
    - iv. D.4.7 General requirements for wastewater and stormwater discharges
    - v. D.5.3 Aquaculture – where it is not appropriate
    - vi. D.5.6 Aquaculture – general matters
    - vii. D.5.13 Moorings
    - viii. D.5.14 Regionally Significant Storm Anchorages
    - ix. D.5.15 Regionally Significant Recreational Anchorages
    - x. D.5.27 Marine pests
  - d. Rules:
    - i. C .1 .2 .1 anchoring – permitted activity
    - ii. C.1.2.3 Existing mooring in a Mooring Zone – permitted activity
    - iii. C.1.2.6 Existing mooring outside a Mooring Zone – permitted activity
    - iv. C.1.2.9 Mooring within areas with significant values and storm anchorages – non-complying
    - v. C.1.7 Marine Pests
    - vi. C.4.9.6 Other Discharges – discretionary activity

- vii. C.4.9.7 Discharges of untreated sewage from a ship or offshore installation – prohibited activity
- e. Maps
  - i. I.2 Aquaculture prohibited areas map
  - ii. I.6 Regionally significant anchorages map
  - iii. I.7 Vessels sewage discharge restriction areas map

## **Feedback**

YNZ's feedback is:

### ***Introduction***

4. YNZ is New Zealand's National sports body for competitive and recreational sailing and boating. YNZ represents the needs and interests of over 200 member yacht and boating clubs and class associations. YNZ gets involved at both central and local government level when environmental and legal issues directly affecting New Zealand's recreational boat owners and operators are at issue.

## **Comments on plan**

### ***Definitions***

5. Delete one of "Harmful aquatics organism" or "marine pest". Use one consolidated defined term to avoid circularity or potential confusion.
6. Replace "Recognised anchorages of refuge" with "Recognised Anchorages" as defined in Plan Change 4: "means an anchorage which is referred to in cruising guides, pilot books and similar publications as being suitable shelter for small/large craft in adverse weather"
7. Delete "slime layer" – the definition of "Microfouling" is sufficient
8. Delete "Storm anchorage" – this issue is addressed by the definition of "Recognised Anchorages".
9. Delete the definition of "Vessel" and instead adopt a definition of "Ship" as follows: "has the same meaning as in Section 2 of the Maritime Transport Act 1994"

### ***Structure of plan***

10. Reorder structure. The Objective section should precede the Policies section which should in turn precede the Rules section.

## ***Objectives/policies***

### *Objective F.0.1*

11. The single objective as worded is not achievable. Of necessity, all use and development cannot maximise present and future environmental, cultural, social and economic values. In a range of circumstances some of these values may be maximised through use and development while others may not (to varying degrees).
12. The core purpose of the Act, being sustainable management of natural and physical resources, does not require all use and development to maximise present and future environmental, cultural, social and economic values.
13. Further, it is not clear what is anticipated by a directive to “maximise” the values referenced.
14. As a minimum the single objective needs to be significantly reworked by reference to the core purpose of the Act. In addition, it is unlikely that a single objective will be sufficient to address the matters which the Plan must grapple with.
15. If a more comprehensive suite of objectives is introduced (which would be appropriate) then objective(s) should be introduced which:
  - a. specifically address coastal waters;
  - b. seek to maintain and where necessary enhance water quality including in coastal waters, while recognising:
    - i. recognition on a national scale by way of Regulation that management of discharge of untreated and treated sewage from vessels requires specific provision; and
    - ii. health and safety risks to vessels if they are required to discharge sewage significant distances from Mean High Water Springs.
16. The discharge of sewage from ships<sup>1</sup> is controlled by the Resource Management (Marine Pollution) Regulations 1998 which provide for specific and limited variations through Coastal Plan provisions to the regulatory provisions controlling these discharges.
17. The regulations were made under s360 of the RMA, and legally are an exemption to s15. The regulatory controls on contaminant discharges from ships are not subject to the policy provisions of the New Zealand Coastal Policy Statement (“NZCPS”).<sup>2</sup>

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<sup>1</sup> The RMA s2 definition references the definition in s2(1) of the Maritime Transport Act 1994. It covers the entire range of vessels from ocean-going ships to small recreational craft including dinghies and small yachts. However for practical purposes it is the larger yachts (generally keelers) and launches equipped with accommodation and marine toilets that the regulations are aimed at.

<sup>2</sup> This was recognised by the Board of Inquiry Report on the NZCPS - Volume 2 Working Papers page 300, 2008

18. As a result, specific objective, policy and rule treatment of discharge of sewage from ships is appropriate, and further making specific provision for such discharge is not contrary to the policy provisions of the NZCPS, and in particular Policy 23.
19. An objective should be introduced which makes specific reference to these health and safety matters. For example:

Protect the values of the CMA, and activities that rely on high water quality, from the adverse effects from the discharge of sewage from ships, while providing for the health and safety of ships and their occupants.

#### *D Policies*

##### *D.1.4 Affected parties*

20. This policy, purporting to address which persons must be considered an affected person with regard to notification, should be deleted. The correct approach to notification is addressed in provisions in the Act and case law. It is inappropriate for a Regional Plan to attempt to redefine, or place a gloss or spin upon that statutory position and associated case law.

#### *D.4 Land and water*

##### *D4.4 Managing discharges where the quality of water exceeds the limit*

21. Amend policy to make clear that (as addressed above in the context of objectives) maintenance and where necessary enhancement of water quality must recognise and allow for discharge of sewage from ships in line with the Resource Management (Marine Pollution) Regulations 1998.

##### *D.4.7 General requirements for wastewater and stormwater discharges*

22. Amend policy to make clear that wastewater discharge to coastal water of untreated and treated sewage from vessels is subject to specific provision.

#### *Introduce additional Policies*

23. Introduce policies which specifically address coastal waters, and which make clear that (as addressed above in the context of objectives) maintenance and where necessary enhancement of water quality must recognise and allow for discharge of sewage from ships in line with the Resource Management (Marine Pollution) Regulations 1998.

24. As addressed above in the context of objectives, if a more comprehensive suite of objectives is introduced addressing coastal waters and discharge of sewage from ships, then policies giving effect to those objectives are required.

#### *D.5 Coastal Space*

25. Introduce a policy which addresses avoiding, remedying or mitigating adverse effects on water transportation and recreation. The policy should refer to recognised navigational routes (both commercial and recreational), Recognised Anchorages, and/or port or harbour approaches.

#### *D.5.3 Aquaculture – where it is not appropriate*

26. Replace “recognised anchorages of refuge” in D.5.3(d) with “Recognised Anchorages” to be consistent with definition.

#### *D.5.6 Aquaculture – general matters*

27. Delete “not unduly compromise the public use of existing boat ramps, jetties and wharves” because it is inconsistent with the requirement in “D.5.4 Aquaculture – avoid adverse effects” which requires that aquaculture avoid adverse effects on “the use and functioning of existing coastal structures including jetties, walls, boat ramps...”

#### *D.5.13 Moorings*

28. Delete:
- 2) not by itself and/or in combination with existing moorings in the same bay/inlet, result in more than minor adverse effects, and
  - 3) not be allowed where the mooring will more likely than not result in setting a precedent for additional new moorings in the same bay/inlet,
29. These deletions are appropriate because:
- a. an application for resource consent should be addressed on its merits by reference to the provisions of the Act, and it is not appropriate for a Policy to import a higher standard of assessment (in effect that the activity must have no more than minor adverse effects); and

- b. the appropriate application of precedent is addressed in case law. The terminology proposed (“will more likely than not result in setting a precedent”) is imprecise, legally inaccurate by reference to case law principles, uncertain and speculative.

#### *D.5.14 Regionally Significant Storm Anchorages*

30. Amend wording to be consistent with definition as follows:

- a. rename policy “Recognised Anchorages”
- b. amend text as follows: “Recognise the value of Recognised Anchorages to the boating community, including by avoiding structures that would adversely affect the ability of vessels to anchor in a Recognised Anchorage, except:
  - 1) structures installed to reduce the environmental impact of repetitive anchoring where the structure is available for public use.”

31. Delete the “Regionally significant anchorages map”, and rely upon the “Recognised anchorages” definition.

32. In the alternative if the map is to be retained then it should identify “Recognised anchorages” in accordance with the relevant definition, and further significant work is required to update it and make it accurate. The draft version fails to identify a large number of Recognised anchorages.

#### *D.5.15 Regionally Significant Recreational Anchorages*

33. Delete D.5.15 Regionally Significant Recreational Anchorages, and rely upon amended D.5.14 Recognise Anchorages as proposed above.

#### *D.5.27 Marine pests*

34. Amend title of this policy to be consistent with consolidated defined term adopted (i.e. one of “Harmful aquatics organism” or “marine pest”).

35. Delete “3) decision makers assuming the threats of significant or irreversible effects from the introduction or spread of marine pests are a reality if there is scientific uncertainty as to the extent of those effects, and” because it is not an accurate or appropriate application of the precautionary principle.

36. Amend the reference to conditions in resource consents by introducing a requirement to adopt the “best practicable option” which reflects the appropriateness of a cost benefit analysis, so that it is worded as follows:

- 4) putting conditions in resource consents requiring that best practicable option measures are implemented to manage the risk of introducing or spreading marine pests for activities that have a risk of introducing or spreading marine pests.

## **Rules**

### *C.1.2.1 anchoring – permitted activity*

#### 37. Amend the rule:

- a. There are separate regulations and rules addressing disposal of sewage. It is not appropriate for an anchoring rule to replicate or enlarge upon those rules, or reference those rules.
- b. There is no resource management requirement or purpose for limiting overnight stays by reference to whether a holding tank or portable toilet has been pumped out within the last five nights, or the vessel has navigated into waters where a discharge of sewage is permitted within that five-night timeframe. Compliance with regulations and rules addressing disposal of sewage must be complied with as a matter of law. There is no cost benefit analysis or factual basis which supports the proposed five night maximum.
- c. There is no resource management requirement or purpose for limiting consecutive anchoring days to 14. There is no cost benefit analysis or factual basis which supports the proposed 14 night maximum.
- d. The rule as worded is also uncertain and potentially unenforceable from a practical perspective.
- e. It is not appropriate, practical or necessary for a skipper and/or owner of a ship to keep written and electronic records as proposed in the rule.

#### 38. The rule should be worded as follows:

Anchoring a vessel is a permitted activity, provided:

- 1) the activity complies with C.1.8 'Coastal works general conditions', and
  - 2) no person stays overnight on a vessel anchored in a vessel sewage restriction area (I.7 'Vessel sewage discharge restriction areas map') unless:
    - a) the vessel is equipped with a sewage treatment system which is specified in Schedule 5 and 7, or is compliant with Schedule 6, of the Resource Management (Marine Pollution) Regulations 1998 and which is installed, maintained and operated in accordance with manufacturer's instructions, or
    - b) the vessel is equipped with a sewage holding tank or the vessel has a portable toilet on board, and
  - 3) the vessel (including its anchor) is more than 75m away from a marine farm structure, and
  - 4) the vessel is anchored for no more than 60 consecutive calendar days or part days in an estuary or a harbour and does not re-anchor within that estuary or harbour within 3 calendar days. (This rule does not apply to vessels anchoring in the outer Bay of Islands and outer Whangaroa Harbour between 1 November and 31 March or vessels actively being used in the construction, maintenance, repair of structures),
- and

5) in the outer Bay of Islands and Whangaroa Harbour between 1 November and 31 March, the vessel is anchored for no more than 60 consecutive calendar days or part days in one location and does not re-anchor within that location within 3 calendar days. This rule does not apply to vessels actively being used in the construction, maintenance, repair of structures), and

6) the vessel (including its anchor) is not anchored within a Coastal Commercial Zone.

#### *C.1.2.3 Existing mooring in a Mooring Zone – permitted activity*

39. Amendments are required to this rule with respect to overnight stays and provision of written or electronic records consistent with the amendments detailed above with respect to the Anchoring rule. Those parts of the rule limiting overnight stays to 5 nights and referencing provision of written or electronic records should be deleted.

#### *C.1.2.6 Existing mooring outside a Mooring Zone – permitted activity*

40. Amendments are required to this rule with respect to overnight stays and provision of written or electronic records consistent with the amendments detailed above with respect to the Anchoring rule. Those parts of the rule limiting overnight stays to 5 nights and referencing provision of written or electronic records should be deleted.

#### *C.1.2.9 Mooring within areas with significant values and storm anchorages – non-complying*

41. Delete reference to “Storm Anchorage Area”.

#### *C.1.7 Marine Pests*

42. These rules should be reworded to align with those imposed in the Auckland Unitary Plan, which is appropriate because:
- a. Marine Pests do not respect Regional/District boundaries;
  - b. consistent management and rules in the neighbouring regions is efficient, likely to be more effective, and will promote sustainable management;
  - c. a significant proportion of visiting ships to Northland have their home ports in the Auckland region.

#### *C.4.9.6 Other Discharges – discretionary activity*

#### *C.4.9.7 Discharges of untreated sewage from a ship or offshore installation – prohibited activity*

43. Amend rules to recognise and allow for discharge of sewage from ships in line with the Resource Management (Marine Pollution) Regulations 1998 as a permitted activity.



44. The section 32 reports prepared by the Council lack probative evidence to justify any change to the parameters set out in those regulations.
45. Any change to the distance or depth dimensions stated in the Marine Pollution Regulations is restricted to what the regulations permit – reference regulation 11 (3), (and in respect of the discharge of treated sewage, regulation 12 (2) and 12 A (2)).

### ***I Maps***

#### *1.2 Aquaculture prohibited areas map*

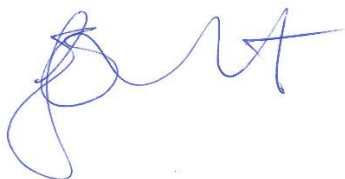
46. Replace “recognised anchorages of refuge” in 4) with “Recognised Anchorages” to be consistent with definition.

#### *1.6 Regionally significant anchorages map*

47. Delete the “Regionally significant anchorages map” and associated text, and rely upon the “Recognised Anchorages” definition.
48. In the alternative if the map is to be retained then it should identify “Recognised Anchorages” in accordance with the relevant definition as addressed above in this feedback (with the text amended accordingly), and further significant work is required to update it and make it accurate. The draft version fails to identify a large number of Recognised Anchorages.

#### *1.7 Vessels sewage discharge restriction areas map*

49. Amend this map and associated text in accordance with feedback above regarding objectives, policies and rules addressing discharge of treated and untreated sewage from a ship.



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**Yachting New Zealand Inc by its authorised agent**

**Jeremy Brabant**

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Address for service of the Feedback Submitter:

Jeremy Brabant

Barrister

PO Box 1502 Auckland 1140

[jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz) / +64 21 494 506