

## **Proposed Regional Plan for Northland**

### **Submission on publicly notified Proposed Regional Plan for Northland**

**To:**

**Northland Regional Council**

**by email:** [submissions@nrc.govt.nz](mailto:submissions@nrc.govt.nz)

#### **Submitter details**

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#### **Trade competition**

3. YNZ could not gain an advantage in trade competition through this submission. In any event, the members of YNZ are, or could be, directly affected by the subject matter of the submission that:
- a. Adversely affect the environment; and
  - b. Do not relate to trade competition or the effects of trade competition.

#### **Council Hearing**

4. YNZ wishes to be heard in support of its submission. YNZ would be prepared to consider presenting a joint case with others who have made a similar submission.

**Provisions of the Proposed Regional Plan that this submission relates to**

5. The following:

- a. Definitions;
- b. Structure of plan;
- c. Objectives:
  - i. Objective F.0.1.
- d. Policies:
  - i. D.4 Land and Water:
    - D.4.3 – Coastal water quality standards; and
    - D.4.7 – Wastewater discharges to water.
  - ii. D.5 Coastal:
    - D.5.2 – Aquaculture – avoid adverse effects;
    - D.5.9 – Moorings outside mooring zones;
    - D.5.11 – Regionally significant anchorages; and
    - D.5.12 – Recognised anchorages;
- e. Rules:
  - i. C.1.1 General Structures:
    - C.1.1.6 – Monitoring and sampling equipment – permitted activity;
    - C.1.1.11 – Structures for scientific, research, monitoring or education purposes – controlled activity;
    - C.1.1.16 – Structures outside significant marine areas – discretionary activity; and
    - C.1.1.22 – Structures within a significant marine area – non-complying activity.
  - ii. C.1.2 Moorings and anchorage:
    - C.1.2.1 – Vessels not underway – permitted activity;
    - C.1.2.2 – Sewage management – permitted activity;
    - C.1.2.6 – Relocation of a mooring by the Harbourmaster – permitted activity;
    - C.1.2.10 – Vessels not underway and sewage management – discretionary activity; and
    - C.1.2.11 – Moorings in significant areas – non-complying activity.

iii. C.1.3 Aquaculture:

- C.1.3.4 – Extensions to authorised aquaculture – restricted discretionary activity;
- C.1.3.6 – New aquaculture outside areas with significant values – discretionary activity;
- C.1.3.9 – Extensions to existing aquaculture in areas with significant values – discretionary activity;
- C.1.3.10 – Marae-based aquaculture in areas with significant values – discretionary activity;
- C.1.3.12 – Small scale and short duration aquaculture in areas with significant values – non-complying activity; and
- C.1.3.14 – Aquaculture in areas with significant values – prohibited activity.

iv. C.1.7 Marine Pests:

- C.1.7.1 – Hull biofouling – permitted activity;
- C.1.7.2 – In-water vessel hull and niche area cleaning (development zones) – permitted activity; and
- C.1.7.6 – Passive release of biofouling from vessels – discretionary activity.

f. Maps:

i. I Maps:

- Aquaculture exclusion areas map;
- Regionally significant anchorages map; and
- Marine Pollution limits map

g. Section 32 Report.

## **Submission**

YNZ's submission is:

### ***Introduction***

6. YNZ is New Zealand's National sports body for competitive and recreational sailing and boating. YNZ represents the needs and interests of over 250 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.

### ***Definitions***

7. Introduce a definition for "Recognised Anchorages" as defined in Plan Change 4 to the Operative Regional Plan:

"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"

8. Introduce a definition for "Recognised Recreational Anchorages":

"means an anchorage (refer Recognised Recreational Anchorages Maps) of value to the boating community because of its shelter, holding, amenity and/or significant recreational values"

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***

#### ***Objective F.O.1***

11. The single objective is not sufficient to address the matters which the Proposed Plan must address.
12. The Proposed Plan does not contain any objectives (except for the single objective which simply paraphrases Section 5 of the RMA), stated to be because:

Firstly very few readers of an operative plan want to know the background to particular provisions. Secondly, the story behind the provisions is the Section 32 report. It's therefore important that the Section 32 report clearly shows how values have been traded off - which is what we have hoped to achieve in this Section 32 report.

13. The policies are explicitly stated not to provide the basis for rules, which is an extraordinary proposition. The s 32 report states:

Policies that provide the basis for rules serve little value. Firstly, rules need a basis, but it doesn't need to be in the plan. The (policy) basis for rules is the s 32 report. Very few readers of an operative plan want to understand the rationale behind rules. If they do, then that's what the s 32 report is – and it tells the whole story. Secondly, while in theory the development of rules starts with the objectives then policies, the reality is that people operate the other way round.

14. The above approach is fundamentally incorrect in law (particularly for the consideration of restricted discretionary and discretionary activities under s 104(1) of the RMA), and it does not fulfil the mandatory requirements of s 67 of the RMA.

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. Address matters such as mooring and anchorages; and
- c. Seek to maintain and where necessary enhance water quality including in coastal waters, while recognising:
  - i. The 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.

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<sup>1</sup> The RMA s 2 definition references the definition in s 2(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.

17. The regulations were made under s 360 of the RMA, and legally are an exemption to s 15. 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>
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.

### ***Policies***

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

##### ***Introduce additional Policies***

20. With reference to *D.4.3 (Coastal water quality standards)* and *D.4.7 (Wastewater discharges to water)*, either amend these policies, or in the alternative introduce a new policy, which has the effect of making 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. The policies should identify that wastewater discharge to coastal water of untreated and treated sewage from vessels is subject to specific provision.
21. 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.

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

## ***D.5 Coastal***

### *New Policies*

22. Introduce policies equivalent to those incorporated into the Operative Regional Coastal Plan through Plan Change 4.

23. Introduce a policy which addresses adverse effects associated with aquaculture:

#### *Aquaculture – adverse effects*

Recognise the adverse effects associated with aquaculture, including:

- (i) Physical exclusion of other uses from the area occupied by aquaculture, such as recreational activities.
- (ii) Restriction of public access.
- (iii) Impacts on waahi tapu, customary activities, and sites and areas of cultural, spiritual and historical significance to Maori.
- (iv) Interference with navigation, including anchoring and the ability to seek shelter in adverse weather conditions.
- (v) Visual impacts of farm structures, particularly in areas of significant landscapes or high natural character.
- (vi) Impacts of abandoned or deteriorated farm structures.
- (vii) Potential siltation and build-up of organic matter.
- (viii) Disposal of shell debris from oyster washing and sorting processes.
- (ix) Impacts on the feeding activity of some species of wading birds.
- (x) Impacts on the migration, feeding, resting, and recovery of marine mammals.
- (xi) Loss of ecological carrying capacity.

24. 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, Recognised Recreational Anchorages, and port or harbour approaches.

*D.5.2 Aquaculture – avoid adverse effects*

25. Amend D.5.2.
26. Replace “5) anchorages referred to in cruising guides, pilot books and similar publications as being suitable for shelter in adverse weather” with “Recognised Anchorages and Recognised Recreational Anchorages”
27. The defined terms are more appropriate references. They accurately identify the full range of anchorages upon which adverse effects should be avoided due to the shelter they offer and the significant amenity and recreational value they have.

*D.5.9 Moorings outside Mooring Zones*

28. Amend D.5.9.
29. 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,
30. 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.
31. Replace “7) e) Regionally Significant Anchorage” with “Recognised Anchorages and Recognised Recreational Anchorages”.
32. The defined terms are more appropriate references. They accurately identify the full range of anchorages where moorings outside Mooring Zones are not appropriate due to the values of those anchorages (the shelter they offer and the significant amenity and recreational value they have) and the potential for moorings to have significant adverse effects upon those values.

*D .5.11 Regionally Significant Anchorages and D.5.12 Recognised Anchorages*

33. Amend these policies.
34. Recognised Anchorages should be defined in the Plan (as addressed above). Policy D.5.12 should be reordered ahead of current D.5.11 and amended to state:

Recognised Anchorages

- (i) Recognise the value of Recognised Anchorages to the boating community, and
  - (ii) Avoid adverse effects upon Recognised Anchorages, including by avoiding structures that would adversely affect the ability of vessels to anchor in Recognised Anchorages, except structures installed to reduce the environmental impact of repetitive anchoring where the structure is available for public use.
35. Recognised Recreational Anchorages should be defined in the Plan (as addressed above). Policy D.5.11 should be reordered after current Policy D.5.12 and amended to state:

Recognised Recreational Anchorages

- (i) Recognise the value of Recognised Recreational Anchorages (refer Maps) to the boating community because of their shelter, holding, amenity and/or significant recreational values, and

- (ii) Avoid adverse effects upon Recognised Recreational Anchorages, including by avoiding structures that would adversely affect the ability of vessels to anchor in Recognised Recreational Anchorages, except structures installed to reduce the environmental impact of repetitive anchoring where the structure is available for public use.

### ***Rules***

- 36. As detailed below, amend C.1.1.6, C.1.1.11, C.1.1.16, C.1.1.22 by reference to Recognised Anchorage and Recognised Recreational Anchorage definitions. The defined terms accurately identify the full range of anchorages where structures are not appropriate due to the values of those anchorages (the shelter they offer and the significant amenity and recreational value they have) and the potential for moorings to have significant adverse effects upon those values.

#### *C.1.1.6 Monitoring and sampling equipment – permitted activity*

- 37. Amend rule – monitoring and sampling equipment shall not be established in a Recognised Anchorage or Recognised Recreational Anchorage as a permitted activity – that activity shall be non-complying.

#### *C.1.1.11 Structures for scientific, research, monitoring or education purposes – controlled activity*

- 38. Amend rule – structures for scientific, research, monitoring or education purposes shall not be established in a Recognised Anchorage or Recognised Recreational Anchorage as a controlled activity – that activity shall be non-complying.

#### *C.1.1.16 Structures outside significant marine areas – discretionary activity*

- 39. Amend rule – replace “11) b) Regionally Significant Anchorage” with “Recognised Anchorages and Recognised Recreational Anchorages”

*C.1.1.22 Structures within a significant marine area – non-complying activity*

40. Amend rule – replace “8) Regionally Significant Anchorage” with “Recognised Anchorages and Recognised Recreational Anchorages”

*C.1.2.1 Vessels not underway – permitted activity*

41. Amend the rule:

- a. There is no resource management requirement or purpose for limiting consecutive anchoring days to 14. There is no viable or supportable cost benefit analysis or factual basis which supports the proposed 14 night maximum.
- b. The rule as worded is also uncertain and potentially unenforceable from a practical perspective.

42. Subsection “4)” of the rule should be deleted and replaced with the following:

- 4) the vessel is not:

- a) in an enclosed water the vessel is anchored for no more than 60 consecutive calendar days or part days and does not re-anchor within that enclosed water 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
- b) 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).

*C.1.2.2 sewage management – permitted activity*

43. Amend the rule:

- a. There are separate regulations and rules addressing disposal of sewage.
- b. There is no resource management requirement or purpose for limiting overnight stays by reference to whether a holding tank has been pumped out within the last ten nights, or the vessel has navigated into waters where a discharge of sewage is permitted within that ten-night timeframe. Compliance with regulations and rules addressing disposal of sewage must be complied with as a matter of law. There is no viable or supportable cost benefit analysis or factual basis which supports the proposed ten night maximum.
- c. It is not appropriate, practical or necessary for a skipper and/or owner of a ship to keep evidence, and/or written and electronic records as proposed in the rule.
- d. The rule imposes a 500 m separation distance from marine farms in subsection “4)” thereby failing to acknowledge different separation distances from marine farms apply for discharge of sewage based on the standard of treatment of sewage.

44. Subsections “2)”, “3)” and “4)” of the rule should be deleted.

*C.1.2.6 – Relocation of a mooring by Regional Harbourmaster – permitted activity*

45. Amend rule. Reference to “Regionally Significant Anchorage” should be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”, for reasons consistent with those already set out in this submission.

*C.1.2.10 Vessels not underway and sewage management – discretionary activity*

46. 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.

47. The section 32 reports prepared by the Council lack probative evidence to justify any change to the parameters set out in those regulations.

48. 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)).

49. The limits provided for in this Plan should:

- a. *provide for discharge of untreated sewage from a ship as a permitted activity provided it is:*
  - i. *more than 500 m (0.27 NM) from Mean High Water Springs; and*
  - ii. *greater than 5 m water depth; and*
  - iii. *more than 500 m (0.27 NM) from a marine farm, marine reserve or mataitai reserve.*
- b. *provide for discharge of Grade A sewage from a ship as a permitted activity provided it is:*
  - i. *more than 100 m (0.27 NM) from a marine farm.*
- c. *provide for discharge of Grade B sewage from a ship as a permitted activity provided it is:*
  - i. *more than 500 m (0.27 NM) from Mean High Water Springs; and*
  - ii. *more than 500 m (0.27 NM) from a marine farm, marine reserve or mataitai reserve.*

*C1 .2.11 – Moorings in significant areas – non-complying activity*

50. Amend rule. Reference to “Regionally Significant Anchorage” should be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”, for reasons consistent with those already set out in this submission.

*C1 .3.4 – Extensions to authorised aquaculture – restricted discretionary activity*

51. Amend rule. Reference to “Regionally Significant Anchorage” should be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”, for reasons consistent with those already set out in this submission. Matters of discretion should include effects on recreational and amenity values.

*C1 .3.6 – New aquaculture outside areas with significant values – discretionary activity*

52. Amend rule. Reference to “Regionally Significant Anchorage” should be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”, for reasons consistent with those already set out in this submission.

*C1 .3.9 – Extensions to existing aquaculture in areas with significant values – discretionary activity*

53. Amend rule. Reference to “Regionally Significant Anchorage” should be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”, for reasons consistent with those already set out in this submission. The activity status should be amended to non-complying.

*C1 .3.10, C.1.3.12 and C.1.3.14*

54. Amend rules. Reference to “Regionally Significant Anchorage” should be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”, for reasons consistent with those already set out in this submission.

*C.1.3.14*

55. YNZ seeks that the aquaculture prohibited areas agreed via the Plan Change 4 process remain in totality in the new Regional Plan. There were numerous areas where aquaculture was already a prohibited activity under the existing plan for various reasons: Significant Ecological Areas, Natural and Cultural Heritage, Site and areas of significance to Tangata Whenua, Outstanding Natural Features, etc. Therefore, throughout the Plan Change 4 process, the focus was on which areas outside of the existing prohibited zones, and which parts of the coast were also not appropriate for aquaculture; essentially extending those existing zones. There may be reasons from our point of view where an area may not be suitable for aquaculture based on navigation safety or recreational value (for example) but not expressly added as a prohibited zone, due to already having protection for one of the reasons listed above. YNZ seeks that no gaps are created by removing protection of an area

under one of the values listed above and not contemplating the total prohibited areas as ruled on in Plan Change 4.

56. YNZ would like a general comment that we seek the full content of Plan Change 4 (wording, objectives, policies, rules and aquaculture prohibited zones) be carried over as written into the Northland Regional Plan.

#### *C.1.7 Marine Pests*

##### *C.1.7.1 Hull Biofouling -permitted activity*

57. Amend rule. Subsection “2)” shall be deleted. The provisions of the Marine Pathways Plan are under appeal, and it is not appropriate that this Plan either replicate or impose different rules than ultimately imposed in the Operative Marine Pathway Plan.

##### *C.1.7.2 In-water vessel hull and niche area cleaning*

58. Amend rule, or make provision through introduction of a new rule or amendments to a different rule, to enable in-water vessel hull and niche area cleaning as a permitted activity in the General Coastal Zone provided the biofouling does not exceed Level 3, and subsections 1, 4, 5, 6 and 7 from this rule apply.

##### *C.1.7.6 Passive release of biofouling from vessels – discretionary activity*

59. Rule may need amendment consequent on the final wording of C.1.7.1. The rule should not have the effect of requiring a vessel with ablative antifouling, or perhaps any vessel underway where water pressure may force biofouling to drop off, to apply for a resource consent so long as the biofouling in question does not contain any marine pest.

#### ***I Maps***

##### *Aquaculture exclusion areas map*

60. Replace “Anchorages referred to in cruising guides, pilot books or similar publications as being suitable for shelter in adverse weather” with “Recognised Anchorages” and “Recognised Recreational Anchorages” to be consistent with definitions.

*Regionally significant anchorages map*

61. Replace the “Regionally significant anchorages map” with a map series (either consolidated or separate by reference to each definition) which identifies “Recognised Anchorages” and “Recognised Recreational Anchorages” in accordance with the relevant definition. Further significant work is required to make the maps accurate, as identified in feedback by YNZ to NRC prior to notification. The Regionally significant anchorages mapping fails to identify a large number of Recognised Anchorages and Recognised Recreational Anchorages. Significant work was conducted in conjunction with the Northland Regional Council to canvas anchorages which would require protection under the new Plan, many of the anchorages identified as part of this work are not shown in the maps. Associated text to be consequentially amended.

*Marine Pollution Limits map*

62. 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.
63. Amend provisions to recognise and allow for discharge of sewage from ships in line with the Resource Management (Marine Pollution) Regulations 1998 as a permitted activity.
64. The section 32 reports prepared by the Council lack probative evidence to justify any change to the parameters set out in those regulations.
65. 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)).
66. The limits provided for in this Plan should:
- a. *provide for discharge of untreated sewage from a ship as a permitted activity provided it is:*



- i. more than 500 m (0.27 NM) from Mean High Water Springs; and*
  - ii. greater than 5 m water depth; and*
  - iii. more than 500 m (0.27 NM) from a marine farm, marine reserve or mataitai reserve.*
- b. provide for discharge of Grade A sewage from a ship as a permitted activity provided it is:*
  - i. more than 100 m (0.27 NM) from a marine farm.*
- c. provide for discharge of Grade B sewage from a ship as a permitted activity provided it is:*
  - i. more than 500 m (0.27 NM) from Mean High Water Springs; and*
  - ii. more than 500 m (0.27 NM) from a marine farm, marine reserve or mataitai reserve.*

### **Section 32 Report**

67. The section 32 analysis is fundamentally flawed, in particular because of the lack of any specific objectives or policies that form the basis for the rules. The analysis does not properly address the requirements of the Act, specifically:

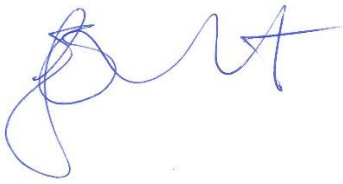
- a. The extent to which the objectives (in this case one only) are the most appropriate way to achieve the purpose of the Act; and
- b. Whether the provisions (policies and rules) are the most appropriate way to achieve the objectives, including an assessment of their efficiency and effectiveness.

### **Relief Sought**

68. YNZ seeks the following relief from Council (or other relief or other consequential amendments as considered appropriate or necessary to address the matters set out in the submission):

- a. Amend as detailed above in this submission;

- b. Such additional or further consequential relief as is required to give effect to the primary relief sought.



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

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15 November 2017

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