SUBMISSION BY YACHTING NEW ZEALAND TO THE PRIMARY PRODUCTION SELECT COMMITTEE
IN RELATION TO
THE AQUACULTURE LEGISLATION AMENDMENT BILL (NO 3)

INTRODUCTION

1. Yachting New Zealand (YNZ) thanks the Select Committee for the opportunity to make a submission.

2. This submission is made on behalf of YNZ by David Abercrombie CEO of YNZ.

3. Mr Abercrombie's contact details are:

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4. YNZ wishes to be heard before the Select Committee to speak to its submission, and will be represented by David Abercrombie, CEO of YNZ, and/or YNZ's legal counsel, Philip Milne of Simpson Grierson.

SUMMARY OF SUBMISSIONS

5. YNZ has the following general concerns in relation to the Bill:

(a) Aquaculture should be restricted to Aquaculture Management Areas which have been defined in Coastal Plans through the normal public process.

(b) Adequate processes already exist under the RMA to create new AMA's and if needs be to fast track proposals of national importance.

(c) The proposals in the Bill are unnecessary and will lead to the gold rush situation which the current provisions were introduced to address.

(d) Councils, and those who have concerns about farms, are likely to be overwhelmed by a rush of applications;

(e) A more sensible approach would be to focus the debate on the plan provisions rather than on case by case applications/

(f) YNZ wishes to ensure that there is a fair opportunity for the public of New Zealand to make submissions and, if needs be, appeals on the merits of:

(i) Coastal Plan provisions that address aquaculture
(ii) specific applications for coastal permits for aquaculture, and
(iii) applications for renewal of applications for aquaculture.

6. If the Bill proceeds generally in its current form, then YNZ also has specific concerns relating to the following:

(a) the abolition of Aquaculture Management Areas.

(b) the proposed amendment to section 88(2B) of the RMA which would limit the assessment of effects required for replacement consents for existing farms;

(c) the proposed addition of section 28B(c) of the RMA which would increase powers of the Minister for Aquaculture and which may lead to regulations which would subvert local decision making.

(d) the potential for rights of submission and appeal in relation to aquaculture proposals to be eroded as is currently happening with the Coromandel proposal. (ie the use of processes other than the normal RMA plan change process, removing rights of appeal by interest groups such as YNZ.

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YACHTING NEW ZEALAND'S INTEREST

7. YNZ has established a Cruising Committee, which is responsible for advocacy on behalf of recreational boating interests. Within the context of this Bill, YNZ has a particular interest in ensuring that aquaculture activities within the Coastal Marine Area do not adversely affect:

(a) mooring and anchoring opportunities for recreational boating;

(b) amenity, landscape and natural character of areas valued for recreational;

(c) free and safe navigation on routes used by recreational vessels; and

(d) recreational fishing opportunities and recreational fish stocks and ecology.

8. The coastal marine area (**CMA**) is public space – the "*commons"*- which most New Zealanders hold dear. Any privatisation of public space for commercial purposes should be very closely controlled and should not compromise public rights of passage or enjoyment.

YNZ is not opposed to aquaculture or the expansion of aquaculture activities. However, it seeks to ensure that there are robust processes and safeguards in place so as to ensure that aquaculture is not established or expanded in inappropriate areas. It also seeks to ensure that any existing marine farms are open to proper public scrutiny at the time of applications for renewal, with no presumption that renewals should be granted.

9. YNZ is a national sports organisation that represents 126 yacht clubs - from Taipa in the north to Bluff in the south. Also affiliated are 50 class associations and 40 maritime associations. New Zealand is a leader in world sailing, having won and defended the America's Cup, won Round the World races, Admiral's Cup and One Ton Cups, 16 Olympic medals, the Youth World championships and an Optimist World Championship. No other country in the world can tick all of these boxes.

10. Most of this success has been achieved using boats and equipment designed and built in New Zealand - leading to the development of a highly successful marine industry and many professional career options within our sport. Over a 45 year period, a series of backyard industries has grown into a world leading marine industry sector, with export sales equalling those

of the New Zealand wine industry. The relationship between sport and industry continues to be very close and productive.

11. New Zealand offers some of the best cruising grounds in the world for sailors and boaties generally. There are good cruising areas close to major centres and offering numerous recreational options which are attractive to boaties and international visitors alike. Many sailors are involved in both power and sail driven activities.

12. The coincidence of the world's best sailors, boat-building technology and New Zealand's pristine cruising waters provides the 'cluster effect' which drives innovation and competitiveness, and continues to deliver commercial and sporting success on the world stage for New Zealand.

13. Tourism has consistently been New Zealand's largest industry, although exceeded by dairy in the past year or so. At around $9.3 billion per year , it is vital that the value promoted to tourists via New Zealand's 100% pure green image is in fact what they experience.

14. Marine tourism is very much a part of New Zealand's attractiveness to overseas visitors. Yachting campaigns have for many years significantly contributed to or were part of campaigns to promote destination New Zealand. The boating industry also depends upon people being attracted to the sea and buying boats.

15. While the waters of areas such as Marlborough and Northland may be ideal for marine farms, the effects of farms on amenity values and natural character and their obstruction to navigation potentially carry a huge opportunity cost and in some cases a risk to safe boating. This is already apparent in some areas such as Marlborough where there marine farms have been developed in inappropriate locations due to originally inadequate local policies.

16. The Hauraki Gulf, Northland, Coromandel, Marlborough Sounds, Nelson/Able Tasman and Banks Peninsular are very important recreational boating resources. New Zealand is one of the world's premier boating areas, and it attracts not only thousands of local boats but also a great many international visitors as well. The feature that makes the area so special is the wide variety of attractive, sheltered anchorages. Many other cruising grounds, particularly in the Northern Hemisphere, offer mainly marina-to-marina cruising. The ability to go to an unspoilt bay and anchor for the night, or even just for a picnic with friends, makes the foreshore and islands of these areas invaluable.

17. The attractiveness and ready accessibility of these areas underpins much of the New Zealand boating industry. However other areas such as Stewart Island and the outer Sounds, although less accessible, are very important for the remote experience and wild and scenic values. Again, these are features that both New Zealanders and adventure tourists value.

18. There is also a significant marine safety aspect to keeping cruising areas free from obstruction. The wide variety of orientations offers shelter from virtually any weather. New Zealand's weather can be idyllic, but it can also be hostile and changeable, and the ability to find a sheltered anchorage is essential to safe family boating.

THE WAY FORWARD

19. YNZ wants to ensure continued freedom of navigation in the coastal marine area and unimpeded access to sheltered bays for both enjoyment and safety. Aquaculture should be able to make applications for further development, but this should be in areas of low recreational interest and low environmental values and with little risk to New Zealand's reputation as a world class destination for tourists. Marine farms are hazards to navigation, are ugly additions to pristine

areas of our coast, and have significant environmental impact. They have the potential to erode the value of tourism. They should be confined to the least valued areas of the coast and to appropriate offshore locations where they do not pose a hazard to navigation.

20. YNZ's preferred solution is to simplify the current approach, while encouraging the aquaculture industry to focus its efforts on branding and growing high value species in low-interest areas of the coastal marine area. The fact that industries have chosen not to use the private plan change mechanisms provided for under the current regime is not a reason to completely change the regime.

21. Some changes could be made to make the current regime more workable. For instance, the industry could be incentivised to apply for private plan changes by allocating to the successful applicant a percentage of any new Aquaculture Zones created. The process could also bed streamlined by allowing private plan change and resource consent applications to be heard in tandem.

22. If major changes are to be made (as proposed in the Bill) then it is YNZ's clear preference to engage in a consultative and mediated approach rather than through litigation. In our experience greater certainty is desired by most parties. Given that marine farming and recreational interests are clustered in well defined areas it seems reasonable to deal with 'high interest' and 'low interest' areas differently in the regulatory and process approaches. The areas indicated below are of such importance and profile that they must be carefully considered as an integrated whole so that competing needs are resolved within a framework based upon sound principles rather than expediency.

23. In YNZ's view, 'high interest' areas include:

(a)	Northland (East coast)	high value, high use
(b)	Auckland (Hauraki Gulf)	high value, high use
(c)	Coromandel	high value, high use
(d)	Nelson/ AbleTasman	high value, high use
(e)	Marlborough Sounds	high value, high use
(f)	Banks Peninsula	high value, moderate use
(g)	Fiordland	very high value, low use
(h)	Stewart Island	very high value, low use

24. These areas should only be considered for further development by way of a private or council initiated plan change. This could either be heard by independent commissioners with rights of appeal, or by a 'Board of Inquiry' process as provided for under the Resource Management Act 1991. YNZ is deeply concerned by the process which is being adopted in relation to the current Coromandel aquaculture area proposal. The process appears to cut across normal RMA processes.

GENERAL CONCERNS IN RELATION TO THE BILL

25. The current restrictions on aquaculture were introduced to address the "gold rush" of applications and the unpreparedness of some Regional Councils for that.

26. YNZ is deeply concerned that the changes proposed in the Bill will rekindle the gold rush and result in a dramatic increase in applications. YNZ is concerned that Councils, and those who have concerns about farms, will be overwhelmed by the rush of applications.

27. YNZ submits that the current regime, where applications are only permitted in relation to AMAs, should continue. Rather than remove the requirement for AMAs, YNZ submits that the legislation should be amended so as to encourage, and if needs be fast track, applications for new AMAs.

28. There are adequate processes already available under the RMA. It is submitted that the following general regime would be more appropriate:

    (a) no Aquaculture applications except in AMAs;

    (b) aquaculture to be a controlled activity within an AMA (consent must be granted but subject to conditions) in contrast to current situation where aquaculture is a discretionary activity within an AMA;

    (c) aquaculture interests may apply for "private" Plan Changes to introduce new AMAs;

    (d) regional/unitary councils may of their own volition introduce new AMAs;

    (e) any person may apply for a plan change to designate areas as being prohibited for aquaculture;

    (f) plan changes to be heard by independent accredited panels;

    (g) normal rights of submission and appeal to apply;

    (h) ability to refer proposals of national importance to a Board of Inquiry;

    (i) ability to direct refer any proposal to the Environment Court; and

    (j) a separate regime to address allocation of occupation rights within an AMA once it becomes operative.

29. The advantage of this process is that the focus would move away from the consent process and towards rationale planning for aquaculture. The debate would be focussed on areas that are suitable (AMAs) and areas that are unsuitable for aquaculture (prohibited). There could also be provision for areas where aquaculture is a discretionary or non complying activity. All of this can be readily accomplished without significant amendments to the RMA.

30. This would avoid potentially interested parties such as YNZ being overwhelmed with applications, as seems likely if the Bill is passed in its current form.

31. YNZ is concerned that the Bill in its current form will lead to a renewed "rush" with hasty and potentially inappropriate decision making. It is concerned that environmental, recreational and local interests may be overwhelmed with a huge number of applications, as well as significant changes to Coastal Plans. This was the situation which the current aquaculture provisions were introduced to deal with. It is vitally important that we do not revert to that unsatisfactory and undemocratic situation.

32. In summary, YNZ's fundamental aim is to ensure that there is a fair opportunity for the public of New Zealand to make submissions and if needs be appeal on the merits of:

    (a) coastal Plan provisions which address aquaculture;

    (b) specific applications for coastal permits for aquaculture; and

    (c) applications for renewal of applications for aquaculture.

SPECIFIC CONCERNS IN RELATION TO THE BILL

33. If the Bill proceeds generally in its current form, then YNZ has some specific concerns relating to the following:

    (a) the abolition of Aquaculture Management Areas. (see above)

    (b) The need for adequate time for Regional and Unitary Councils to amend Coastal Plans if AMA's are removed.

    (c) the proposed amendments to section 88(2B) of the RMA, which would limit the assessment of effects required for replacement consents for existing farms;

    (d) the proposed addition of section 28B(c) and new sections 360A and 360B of the RMA, would provide objectionable and entirely unnecessary powers to the Minister for Aquaculture;

The abolition of Aquaculture Management Areas

34. The key change proposed by the Bill is the abolition of the concept of Aquaculture Management Areas, thus treating aquaculture no differently from any other discretionary activity. This change is unnecessary and undesirable. The preferred approach would be to restrict applications to AMAs but allow for properly planned new AMAs subject to a full public process including submissions and merits appeals. It should be for regional councils, boards of inquiry or the Environment Court to determine the appropriateness of any new AMAs or extensions to existing AMAs.

35. The legislation should require prospective marine farmers to prove that aquaculture should take place in a given area, rather than placing the burden on those opposed to this development to prove why it should not occur. This precautionary approach is justified when dealing with the commercialisation of highly valued public space. AMAs provide a planned, controlled approach to the allocation of water space for aquaculture.

36. YNZ's preferred solution is to simplify the current approach while encouraging the Aquaculture industry to focus its efforts on branding and growing high value species in low-interest areas of the coastal marine area. YNZ would prefer that aquaculture applications only be permissible within AMAs, but that there should be a simplified processes to allow the aquaculture industry to apply to councils to develop new AMA.

37. For instance, the industry could be incentivised to apply for private plan changes by allocating to the successful applicant a percentage of any new aquaculture zones created. Councils could also streamline the process by allowing private plan change and resource consent applications to be heard in tandem.

The necessity of time for Regional and Unitary Councils to amend Coastal Plans

38. YNZ submits that there needs to be adequate time for coastal plans to be amended to prepare for the rush of applications for aquaculture activities.

39. YNZ is concerned that areas outside of current AMAs will be open for coastal permit applications on a fully discretionary basis except in the few areas where Coastal Plans have restricted

aquaculture (for example, parts of Marlborough Sounds where aquaculture is prohibited or non complying). This would cause difficulties:

(a) in areas where aquaculture is a discretionary activity, coastal plans may not have developed clear rules, policies and assessment criteria to guide decision making;

(b) in the absence of such provisions there will be a large number of pending and new applications to be assessed on their merits and an absence of clear policy guidance; and

(c) interested parties will be overwhelmed with applications, on which they will need to submit, attend hearings and potentially appeal.

40. YNZ submits that if the AMA requirement is to be removed (which in its view is neither necessary or desirable) then there needs to be time for regional and unitary councils to define zones where aquaculture is generally acceptable, areas where it is generally inappropriate (non complying activity with clear policies as to any exceptions) and inappropriate (prohibited activity).

41. Coastal plans need to be amended to provide for clear rules, policies and assessment criteria in relation to the zones established as above.

42. YNZ submits that the Bill should allow time for this to occur before allowing pending applications and new applications to proceed. It strongly urges the Committee to avoid another "gold rush" situation.

The proposed amendment to section 88(2B) of the RMA

43. Clause 75 of the Bill proposes that section 88 of the RMA be changed in the following manner:

***88 (2B**) If an application is for a coastal permit to undertake an aquaculture activity to which section 165ZH(1)(a)(ii) applies, subsection (2) applies except that the assessment of environmental effects under Schedule 4 relates only to information about the effects of the activity and changes to the environment that mean that the effects of the activity are no longer the same or similar in character, intensity, or scale to those **anticipated** at the time the original consent was granted.*

44. The proposed amendment to section 88 of the RMA, as set out above, would have the effect that applicants seeking a new consent for the same aquaculture activity would only need to provide information on environmental effects if these have changed since the original consent was granted, or if there has been a change in the environment. This amendment is proposed to …"*make the process of re-consenting simpler and less costly"* but may deprive the public and those who are affected by marine farms of the ability to challenge whether the farms are sustainable and in accordance with the purpose and principles of the RMA.

45. There appears to be an underlying assumption that, since the farms have been consented and are already in existence, they can be assumed to have been fully assessed originally. There also seems to be an assumption that those who are affected by such farms had a full opportunity to challenge the farms when they were first consented. In fact neither assumption is necessarily correct.

46. At the time a farm is first consented, the effects of the farm are unknown and the hearing and any appeals are to some extent based on speculation. By the time the application for replacement is

considered the effects are known. It is unreasonable and unnecessary to deprive a consent authority and the public of the opportunity to challenge whether the effects of the farm are still acceptable.

47. **There is no need to provide that existng effects do no need to be reassessed.** If the effects were appropriately assessed originally, then the applicant should have no difficulty providing a copy of that original assessment. If the effects of the farm have been acceptable then the applicant should have not problem obtaining a new consent. There are already adequate safeguards to protect applicants from ill conceived appeals in relation to reasonable proposals. The Environment Court is well equipped to deal with such matters and now has the ability to require security for costs. Furthermore an applicant may seek direct referral or a proposal of national importance may be called in. **There is no need for this exclusion.**

48. The other assumption that is incorrect is that the public, the consent authority (and, if appealed, the Court) will already have had a full opportunity to consider the effects of the farms at time they were originally consented. This is not correct in the case of farms that were "*controlled activities*" at the time they were consented. For such a proposal the Council and Court would have had no power to decline consent. (Consent must be granted for a controlled activity.) **This change would mean effects are not properly assessed by an applicant even though such effects may not have be able to be assessed at the time of the original application, and even though submitters could not have had the original proposal declined.**

49. YNZ submits that it is undemocratic and unnecessary to introduce this particular amendment. In practice it is not particularly onerous for an applicant to have to address all of the effects of a proposed renewal. This is the situation for all other consents at the time of renewal. No proper case has been made to justify the claim that the usual situation is causing any undue hardship to applicants. Indeed it is highly unusual for a replacement consent to be appealed, let alone declined. In most cases there will be little opposition to the replacement of an existing consent. Where there is opposition it is usually for a good reason. If there are appeals there are adequate safeguards to avoid any abuse of process by submitters.

50. At a more general level this amendment cuts across the fundamental principle of public participation that lies behind the consent provisions of the RMA. No other category of consent is subject to this same "favouritism" as proposed here. There is no proper justification for this change.

51. YNZ seeks that this particular amendment not proceed.

52. **An alternative it seeks to limit this exclusion to the replacement of consents for activities that were not controlled activities at the time the prior consent was granted**. However, that would not address all of the issues outlined above.

53. In addition, there should be no amendment to the matters that the consent authority must consider. Even if the applicant does not have to address effects unless they have changed, the consent authority should consider all effects of the continuation of the farm.

The proposed addition of section 28B(c) of the RMA

54. YNZ is strongly opposed to the proposed powers of the Minister to override local democratic decision making and Environment Court decisions.

55. Clause 65 of the Bill, which proposes that a new section 28B(c) of the RMA be inserted, reads:

New section 28B(c)

(c) recommending the making of regulations under sections 360A to 360C that amend regional coastal plans in relation to aquaculture activities in the coastal marine area

56. The proposed new Sections 360A and 360B of the RMA read:

360A Regulations amending regional coastal plans in relation to aquaculture activities
(1) The Governor-General may, by Order in Council, amend provisions in a regional coastal plan that relate to the management of aquaculture activities in the coastal marine area.
(2) An amendment made under subsection (1)—
(a) becomes part of the operative plan as if it had been notified under clause 20 of Schedule 1; and
(b) is subject to the other provisions of this Act; and
(c) may be amended—
(i) under this section; or
(ii) in accordance with Schedule 1; or
(iii) under any other provision of this Act.
(3) In this section and sections 360B and 360C, amend provisions includes—
(a) omitting provisions (whether other provisions are substituted or not):
(b) adding provisions.
360B Conditions to be satisfied before regulations made under section 360A
(1) Regulations must not be made under section 360A(1) except on the recommendation of the Minister of Aquaculture.

57. This very wide power would allow the Minister to amend coastal plans, which the public have submitted on and in some cases may have appealed. It would allow the Minister to subvert local decision making and potentially override Council and Environment Court decisions. Unlike plan changes to coastal plans, there is no provision for independent decision makers or rights of appeal. **The proposed powers are draconian and unnecessary**.

58. **There is a perfectly adequate existing process, whereby Regional Councils can amend coastal plans to provide for aquaculture, the marine industry can also apply to zone areas for aquaculture and others can propose zones where aquaculture would be restricted or prohibited**.

59. **There is no need for the Minister to have powers to supplant or override those processes**. It is accepted that the Minister should have the power to restrict aquaculture activities where that would have undue effects on fisheries or on recreational or commercial fishing. It is not accepted that the Minister's powers should extend to lifting restrictions on aquaculture that have been imposed at a local level.

60. This clause is obnoxious and effectively provides for planning by Ministerial decree so as to facilitate the activities of private commercial interests in public sea space. It goes completely against the participatory process of the Resource Management Act.

61. These provisions could potentially be used to override existing Council or Environment Court decisions to make aquaculture in particular sensitive areas, a prohibited or a non complying activity. It could also be used to make aquaculture a controlled activity where consent can not be declined.

62. By way of example, the Marlborough Sounds Coastal Plan contains areas zoned as controlled, discretionary, non complying and prohibited. Those provisions are the result of years of submissions, hearings and appeals. The appeals were resolved by negotiation and consent orders rather than hearings. The provisions are now well accepted and reflect the communities'

wishes. It would be entirely inappropriate for the Minister to use regulations to change such provisions.

63. **These proposed powers seem to have been sought by the aquaculture industry in an attempt to subvert local decision making and avoid the legitimate scrutiny by the public.**

64. If the marine industry seeks to have restrictive provisions relaxed it can await the next review of the plan or can seek private plan changes. **There are perfectly adequate provisions already available under the RMA to deal with any perceived issue.**

65. If the marine industry and Government see the need to "fast track" changes to coastal plans, there is already a mechanism to do so under the existing RMA provisions via a Board of Inquiry. **YNZ submits that there is no justification for a power for the Minister to make regulations which override local decision making and avoid any independent scrutiny by a Board of Inquiry or the Environment Court.**

Thank you for considering our submission. We would like to be heard in support of the submission.

David Abercrombie
CEO Yachting New Zealand