AQUACULTURE SUBMISSIONS

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SUBMISSION ON: TAG REPORT- RE-STARTING AQUACULTURE

JOINT SUBMISSION BY:
TE NGARU ROA AA MAUI, LOST WAVES AND SURFBREAK PROTECTION SOCIETY

We are thankful for the opportunity to comment on the report of the Aquaculture Technical Advisory Group (the TAG).

Introduction

Te Ngaru Roa aa Maui is a surfing organisation situated in Whaingaroa Raglan based on Tangata Whenua values. The environmental unit was established to address issues pertaining to adverse affects in coastal waters and potential hydrological effects on coastal processes which affect surf breaks. Part of its values is the natural character of the coastlines plus amenity values and the wellbeing of Maori and coastal communities.

Surfbreak Protection Society is a Society dedicated to the conservation of the "treasures" of the New Zealand Surfing Community - our surfbreaks - through the preservation of their natural characteristics, water quality, marine eco systems and low impact access for all. We strive to be Aotearoa's Kaitiaki "Guardians - Trustees" of our surfbreaks and the natural environments that compliment them.

Lost Waves is a similar organisation in that its core values are to protect surf breaks from adverse effects of inappropriate subdivision and development plus adverse effects of discharges to the ocean environments.

All the groups campaign for clean, safe recreational waters, free from adverse effects of sewage effluents, toxic chemicals and promote a solution based argument of viable and sustainable alternatives.

Overview

We recognize that the government is concerned that the "complexity, cost, and uncertainty of the current regime are impeding aquaculture growth and that no new space has been created under the 2004 aquaculture reforms; BUT the recommendations but forward by the TAG have both positive and negative effects. We note that there is an emphasis on The Aquaculture Reform Act 2004 and its amendments as being ineffective. Also that it has been challenging given the complexities of a multi-statute regulatory system, with multiple agencies and two levels of governance.

We are of the opinion that it is not the Aquaculture Reform Act 2004 or the AMA areas set in place by Judge Kenderdine that has been the "choke point", but the lack of integrated approach by Mfish, Mfe and DoC. Also Central Government has for too long, dumped policy responsibility to regional councils without clear direction and resourcing. Each ministry has been charged with "their" responsibilities and have remained singularly focused.

There is a lack of sufficient information on coastal users and research on the biophysical coastal process at a sufficiently detailed level to be able to draw useful zones on maps when identifying aquaculture areas. There has been a lack of research on provisions for cultural, recreational and public concerns. That issue is rightly a Central Government issue and to now turn around and undertake this hasty process is still not going to the heart of the matter.

We are of the opinion that the TAG report has gone too far and swung the pendulum to the extreme side of unlocking the process with a single focus on development and growth at the expense of environmental and community concerns.

Establishment of an Aquaculture Agency

The establishment of an Aquaculture Agency will assist the industry to have a voice that is focused on promotion and development; BUT the functions the TAG has suggested are not supported. The ability to become an applicant, make the rules, interfere with regional councils on consents plus advice the minister along with being the "watchdog" is problematic and should not be progressed. TNRM are opposed to the AQA working with other departments on amendments to the RMA, NZCPS and MFE. In addition the recommendation for the AQA to be involved in the drafting of legislation is not supported. The new AQA should only be focused on the industry only and not undertake activities that can be seen as conflicting interests. It should be seen as an agency that has clear separation from any conflicts of interests to bring creditability to the industry.

Ministerial powers

TNRM are cautious of the TAG recommendation that a separate Minister should be responsible for aquaculture particularly as the recommendation is to give Ministerial power to insert appropriate provisions into plans where there is a national interest in doing so. It sets a dangerous precedent and amounts to political interference. The new approach circumvents long established procedures that are already in place particularly within the RMA. TNRM are also of the opinion that section 360 of the Act should be left as it is as the clauses do not exclude or hinder regulations for aquaculture. Rules in Regional coastal plans been through the rigour of robust consultation and should remain so. Additionally the recommendation to exclude the right of appeal is a breach if natural justice. The RMA has adequate checks and balances and should not be tampered with.

Aquaculture fund & levy

We agree with the TAG report that the greatest barriers to timely planning is a lack of funding and that Councils must carry significant "working capital" costs. Currently those costs are carried by ratepayers and it is more appropriate in this instance for the industry and the Government to cover costs.

We are supportive of the fund being utilised for planning and technical work to enable aquaculture scientific investigation of environmental effects; but are opposed that they be used for processing complex or large-scale consents particularly if the AQA undertakes that task.

The setting of a levy is also supported but we have concerns that the industry would "expect" to have a major influence on the outcomes. Furthermore we have concerns that the levy would not fit with the coastal occupation charges for other users and diminish the current regime to the point that fair cost of using public spaces is not progressed.

National Policy Statement & National Environmental Standard for aquaculture

We support the creation of the National Policy Statement & National Environmental Standard particularly to give councils clarity around the environmental parameters for aquaculture development and to provide industry with national consistency in terms of aquaculture management. It is expected that the standards will include sound environmental parameters as it is crucial to demonstrate that the industry is serious and being balanced.

Through the creation of National Policy Statement & National Environmental Standard the hapu and environmental groups will be able to participate providing there is no undue haste undertaken. We would caution that the policy be flexible to cater for regional differences.

We are supportive of the EPA having a role in the monitoring but are not supportive of the AQA developing the framework. That should be left to the Department of Conservation as it has the responsibilities of coastal matters. The involvement of the EPA for monitoring and technical matters is also supported as it has a greater arms length distance from the minister and the industry.

New Zealand Coastal Policy Statement

We are supportive of a policy in the NZCPS but are not supportive of the draft text and question why there needs to be a "Crown Interest". We are highly concerned that it is economically focused and contains scant regard to the environmental effects. While it may be appear sound to state that the need for aquaculture to be environmentally sustainable, it is NOT aquaculture that has to be sustainable it is the receiving environment and its carrying capacity. There has to be stronger provision for regional councils to protect the environment and not be unduly weighted on economics and the industry. In addition the AQA should not be involved in drafting the policy and that task should remain with the Department of Conservation.

Removal of the AMA Restriction

We do agree that the AMA has not worked to the satisfaction of the industry but strongly disagree the reasons why. It is not the fault of the RMA in section 12A, nor the fault of regional council, but the fault of under resourcing. Central government has failed to give meaningful direction and commit resources to NES and a National policy statement. The provisions within 12A (2) are adequate protection for the industry.

To now state that Councils would retain the ability, through their plans, to prohibit aquaculture in specific areas and then state is has to be justified in terms of section 32 of the RMA are not supported. That leaves the onus again on the ratepayers. The AMA and the prohibition clauses are a result of public dissatisfaction who consequently sought active protection of rampant development in the marine area giving little protection to the environment and the community's landscape values and sense of place.

The TAG has not put forward justification that removal of the AMA is the best course of action but only actions that would benefit private interests over maori or public space. It has not suggested what tools the councils need to have in place other than what is available now to allow them the ability to prohibit areas. Any changes will have to reflect this. If

central government had given support previously, mapping of inappropriate places would have be done by now. Some resourced council's have been able to make changes to coastal plans while others have not. What is problematic is that some council's may favour the recommendations and when plan changes come around the process is flawed and those councils do not pay heed to hapu and environmental groups or the community.

We agree with TAG that Ministers can utilise RMA section 25A or section 25B and wish that remain available and that is important to exclude parties initiating private plan changes to enable aquaculture in areas that are excluded. We also have serious reservations of the period during the transitional phase and the likely costs to ratepayers and maori plus communities if the transitional phase has not been carefully thought through.

Aquaculture Zones

We are not supportive of aquaculture zones as the current AMA areas are adequate and those coastal plans that have allocated areas have been through the rigour of public participation. The recommendation to have a zone that allows for any species or mix of uses and for rotational farming is to be resisted along with the recommendation to have standard policies and objectives as well as rules to apply in deemed or planned Aquaculture Zones. While it is expedient for the industry to have simple approval it does so without thought to the purpose of the RMA and the fact that each region has specific and different needs.

Each species has different environment issues and it has to be site specific and not a simplistic "shotgun" approach. It is also simplistic to consider in the UAE test as only commercial fishing interest to be considered and settlement issues as the only affected parties. It is problematic to understand how an Aquaculture Zones will provide for a maximum amount of aquaculture within it including biomass limits and carrying capacity; if no research has been undertaken or consideration of the environmental, maori and community issues are not undertaken. It is our opinion that there is no need for AMAs to be re-specified and we are opposed to trying to make these zones controlled or permitted activities.

Hearing panel councillors be accredited

We support the TAG proposal to have accredited Hearing Commissioners under sec 39A and that a list of experts could be held but are not supportive that should fall on the duties of AQA but more appropriately with the EPA. Also it is our opinion that a list of Maori commissioners be placed on that list and that an equal mix of 50% is on all coastal hearing panels.

Consented areas becoming aquaculture zones

We oppose the view that under the consenting regime being recommended by TAG, newly consented areas, for which the UAE test has been completed, should attract the aquaculture zone status. That in our opinion is a de facto plan change and should be left to the normal RMA plan change procedures.

Role of the Minister of Conservation

We do not support the Minister for the Environment as a more appropriate Minister to align responsibilities for call-in decisions across the marine and terrestrial environments. That task correctly sits with the Minister of Conservation. The TAG has correctly identified that the issue is complex. It is our view, that despite their thoughts about phase two of the RMA changes or attempts to influence change, it should stay with the Minister of Conservation or assigned to a separate Oceans Ministry with its own Minister. The ocean under crown management is much larger than the land mass and should have a separate Ministry to administer the affairs of tangaroa.

Experimental aquaculture

The ability to create experimental aquaculture is a Claytons' or de facto right to occupy space and is not supported. The Crown Minerals Act has a similar process of prospecting, exploration and then rolls over to mining or full production and the template consent process as described is not supported.

Minimum coastal permit term of 20 years

We do not see the necessity to have a permitted minimum coastal permit term of 20 years. On the one hand the TAG is asking for experimental use of limited areas for all sorts of purposes and now wants a standard 20 years occupation rights. The current process under the RMA is best to work through the process and already has a 35 year maximum.

Enhancing coastal permit renewal

We do not support the proposal that a new consent for an existing aquaculture activity should be treated as a controlled activity. Nor do we support the application would not be notified and that the consent would have to be granted provided that the activity complies with the standards and terms set out in the plan. Certainly the consent holder should bear the scrutiny of whether they have been good stewards that are deserving of holding a property right for private interest in public spaces.

What is being suggested is akin to the peppercorn leases in the high country of holding public spaces for long lengths of time for private gain. In addition the right of occupation does not mean the right to pollute or cause adverse effects into the marine environment. The amended RMA has a regime that is currently effective which allows current holders the right of renewal subject to certain parameters including an assessment of environmental effects. The idea of a rolling review of evergreen consents is also opposed. The RMA has mechanisms that allow for reviews and if consents are to be reviewed it should be the right to call in the consent and not extend it by piecemeal segments.

Increase flexibility of coastal permits

It appears that what is being suggested is a generic use process all over the country. The ability to apply for a variation to change species or technology or respond to changing environmental requirements plus the ability to offer flexibility to species by broad categories or self and supplementary fed are strongly opposed. There are many issues globally over self fed and supplementary fed species including the medicinal products that are used. It is well documented that caged fish species have created major problems with disease into the wild stock along with other issues. [1]

There are distinct differences in the different species and categories and the environmental effects are diverse along with the capacity or mass of marine farms in any areas. This process limits the discussion on the adverse effects but none the less it is our opinion that what is being proposed is outrageous and is not supported.

There should be consideration of density along with marine and landscape issues and how the farms fit into the locality. The density issue was a feature in the Pegasus Bay case and what was being proposed was without any forethought of other coastal users. The late Jonathan McCarthy had to appeal to the environment court to highlight that surfers "swell corridors" were placed at risk and that the hydrological process are an important factor in ocean movement and impacts the surrounding local area and beaches. [2]

In mediation the lines were spaced further apart as a compromise. The aquaculture industry should adopt a standard practice that considers those affects along with the adverse effects to recreational fishing and other coastal users.

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[1] **Excerpt- Impacts of marine farming on wild fish populations by Russell Cole 2008 Finfish farming pg9-------** In the northern Baltic, nutrients from rainbow trout farms are thought to have led to production of algal mats, that have impacted on the fauna of the area. Sorokin et al. (1996) suggested that a toxic phytoplankton bloom in an Italian lagoon was linked to aquaculture.

[2] Excerpt- Impacts of marine farming on wild fish populations by Russell Cole 2008
---Aquaculture may change the physical, chemical, and biological properties of the water column. Aquaculture structures may modify the physical properties of the water column by reducing wave action and altering the flow rate. Optical properties of the water column may be changed by addition or removal of materials, or by shading due to structures.---

In the landscape review of the Coromandel Peninsula undertaken by Bernie Brown Associates for Environment Waikato, it was noted that parts of the aquaculture area could not sustain the surrounding landscape values and that the visual affect alone was to the point that no more should be placed in certain areas. In addition there was an assessment of finfish farming being in stark contrast to the low visual impact of mussels.

It is clear that we have to ask the question what can nature "fit" and still stay in harmony. Aquaculture in some places has to be dispersed with smaller nodes of activity, and not be concentrated to become cancerous to the environment and landscape and nor should it be allowed to have generic consent to "flip flop" between different categories and species.

Reducing the lapsing period to 3 years

We agree with TAG that there is a need to prevent speculation for coastal space where that speculation is unrelated to any genuine desire to develop the space for aquaculture activity. The industry has proven already that it is not slow to seek private gain by any means it can which caused part of the complexity to date and should have mechanisms in place to avoid such behaviour.

Use it or lose it

While on face value the "use or lose it" appears to have merit it has not considered the 20% hold and park clauses of potential treaty settlements or of the allocation to maori. If the right to lose it after three years takes place the treaty settlement will become null and void. While it is has some merit in the situation where there was a gold rush mentality which took place previously, it must not compromise tangata whenua interests. In addition TAG has not put forward any suggestions on how that is to be overcome.

Aquaculture consent register under the Fisheries Act

We support the establishment of a consent register under the Fisheries Act, particularly if the public can obtain a source of easily accessible information on the nature and extent of aquaculture activity. We support its use in regional planning, fisheries plans and planning for marine protected areas but have reservations that register should be transferred to the functions to an Approved Service Delivery Organisation that is an industry-owned organisation. It needs to demonstrate that there is a clear separation of functions and not open to manipulation.

Improve the standing of council hearings

The TAG claim that often there is an expectation that a council decision relating to aquaculture will be appealed to the Environment Court; but we will state that the tensions for space and profit has resulted in some unsatisfactory applications that are questionable and needed to be challenged. Besides that is no reason to "throw out" a process that has been adequately dealt with by the amendments of the ACT in 2005 which directs that the Environment Court must have regard to the decision that is the subject of the appeal or inquiry.

What is being suggested is onerous; the law requires the Environment Court to hear the matter de novo which is designed to cover the whole aspect of the hearing including any changes the applicant wish to make. What is being suggested is against natural justice and we strongly oppose any changes suggested by TAG.

Allocating space for aquaculture

We support the TAG comments that allocation of water space to aquaculture cannot be separated from other allocation decisions in the coastal marine area and that the allocation of coastal and marine resources between users is a complex issue.

We have concern in the statement that it is the fault of the RMA and its focus on managing the effects of activities. By the time aquaculture allocation gets to the resource consent stage, much deliberation has been undertaken and it is crucial that environmental issues are part of decision making. The ability to test whether an activity needs to be avoided, remedied or mitigated is a balance that needs to remain.

The allocation of space must ensure that other coastal users are considered, there should be adequate consultation including environment groups, hapu and the general public.

We are not are not supportive of the recommendation that the RMA is amended to provide a statutory test to trigger the consideration of alternative allocation tools and that it should be fashioned on section 28 of the Crown Minerals Act.

Cost recovery and charges

We support the TAG recommendation that sec 36 remain untouched and free from further tweaking as it is appropriate under the current regime for applicants to be charged for the full cost of their resource consent. We do agree that planning is a normal activity for a Council and funded from rates but this should not be a burden that is placed on ratepayers and should be borne by the applicant or the industry as the activity is solely for private gain.

Why should profits be privatised and cost socialised? Why should ratepayers subsidise the industry?

While it may have been expedient for Northland Regional Council and Bay of Plenty to have chosen to have ratepayers foot the bill; we are of the opinion that should not be the case for all areas. We have reservations about recovering the costs through a tender process and maintain that there is provision in sec 64A that is entirely appropriate for charges in a "coastal occupational charge"

We are strongly opposed to the recommendation that section 64A of the RMA be amended so that coastal occupational charges do not apply to marine farmers.

Rating of marine space

We note that this was not the majority view of the TAG and are extremely concerned that it could be part of the mix and most definitely oppose any such notion.

Interface between aquaculture and fishing plus the UAE

We support the recommendation for the retention of the UAE test for commercial fishing as it is the only test that is applied as a threshold and to address impacts on fishing. The UAE test for fishing interests focus mainly on commercial fishing interests and while it does also consider customary and recreational fishers; it does not address the other users of the coast which will be impacted upon; nor does it address the environmental effects.

As Iwi have interests on both the Aquaculture Settlement of 20% and the assets from the Maori Fisheries Settlement, the applicant and the quota owners must be assured that the process would clearly need to be worked through to provide a robust system that resulted in early agreement.

In addition it is prudent to question if the consideration of customary fishing caters for customary rights which include Mataitai reserves, or just the activities of customary food gathering. We are highly concerned that the aquaculture zones could be placed in areas that are set aside for mataitai reserves or are currently been advanced or may be advanced in the future. For many years now some Hapu have been seeking these reserves and have been stymied by Mfish and this rushed process to unlock the spaces are of concern.

There is the issue of existing kaimoana beds including scallops; and the concern that the industry pressure to assert rights over areas that are currently reserved for maori and recreational fishermen will create increased tension which is hugely unproductive.

Lastly, we are cautious of the two processes being conducted in parallel with the RMA process, even if each retains its separate statutory integrity and what TAG are suggesting may not be practicable in reality or produce the desired outcome.

UAE outside an Aquaculture Zone

It is clear in the TAG report that an applicant should only be able to address potential undue adverse effects on commercial fishing outside an aquaculture zone by negotiating with potentially affected commercial fishers to reach agreement to allow aquaculture to proceed and suggests they are the only ones Mfish needs to consider. None of the affected parties above have even been given consideration and therefore we cannot support that recommendation.

Customary and recreational fishing

TAG has correctly identified a process to work through some of the issues but is concerned that somehow Mfish will not undertake due process and suggests changes to the RMA to "force" Mfish to undertake a UAE assessment in relation to customary fishing. Currently the crown pay for the assessment through Mfish so what TAG has suggested shows concern that in the past the process has not been satisfactory. That certainly has to be discussed with maori and Mfish.

In some areas of Aotearoa there has been customary hapu fishing groups set up to assist with the issues of regulations and customary activities and we suggest they are not forgotten as only actual kaitiaki will be contacted along with Mandated Iwi Organisation. Additionally there is the data base held by Te Puni Kokiri on the Kahui Mangai site which has the registered iwi and hapu environmental groups.

Processing the "frozen" applications under 150B(2) of the RMA

We support that an analysis of the frozen applications should take place to reveal whether there are some which will represent a major impediment to an effective re-start for aquaculture and that it will be considered on a regional basis. We do have concerns with many of the TAG recommendations including the removal of AMA areas and are mindful that the mechanisms can be undertaken without that taking place.

Transitional provisions

We do have concerns that the provisions of the Northland Regional Council Plan Change 4 could become the transitional provisions by default. It is our opinion that the issues should be widely consulted on before any such provisions are finalised.

Consultation

We are extremely concerned that TAG recommends to only undertaking a targeted consultation process with iwi, regional councils, and industry during the development of policy and we strongly recommend that consultation be undertaken with key environmental groups who have the expertise to contribute to balancing the ledger in favour of the environmental and community concerns. We have grave concerns that the speed of actions will result in Iwi, hapu, environmental groups and the community not having the opportunity to participate until the select committee stage.

We wish to record strong objection to the process the Crown proposes to follow and maintain that the task set for the TAG to adequately work through the issue to better define the proposals and recommendations have been rushed and as a consequence there is a lack of detail in their report which results in either continuing flawed methods to address the aquaculture industry and community concerns or environmental degradation.

It is clear that there is no intention to consult or provide for any engagement between the Crown and iwi in respect of the policy the Crown adopts as a result of the TAG recommendations which we find as totally unacceptable. The interests of Iwi are multilayered particularly in relation to the treaty settlement legislation in aquaculture and the allocation portion of 20% plus the customary fishing rights. It is prudent for the Crown to "take a breath" and avoid costly litigation which would result in delays and not achieve the outcomes for many years as in the past.

General comments

In the TAG terms of reference it is stated that the government is committed to creating an environment that is conducive to sustainable economic growth and a key to that is developing an effective and enabling regulatory regime for aquaculture. It is also envisioned it is necessary to achieve a growth in aquaculture earnings from $360 million per annum to over $1 billion by 2025 plus Ernst and Young estimate that it could be in the order of between $1.7 to $2.2 billion per annum by 2025 if some basic business practices are followed and further water space is made available.

Conclusion

We are highly concerned with many of the recommendations by the TAG report and the Governments undue haste to unlock the new frontiers of economic growth. This current consultation process and the requirement that the final policy is due to Cabinet policy by February 2010 along with a Bill to be introduced by the middle of 2010 is hasty and likely only result in business interests being catered for at the expense of the environment and

community. Such past practices as this has proven to be detrimental for both the environment and coastal users. Following standard business practice could mean profit at all costs over other considerations.

We also consider that TAG has failed in its duty to recognise environmental limits, commitments to our Treaty partner, and the diversity of stakeholders that have existing rights and interests in the coastal marine area as set out in the terms of reference.

We do not support many of the recommendations as above and wish our views to be taken into consideration. We also wish to state that we wish to be kept informed of the process and are contact details are below.

Nāku noa, nā

Malibu Hamilton

Ko te moana i te wai kau
No Tangaroa ke tenei marae
He maha ona hua e ora ai nga manu o te rangi
Te iwi ki te whenua

The sea is not any water
It is the marae of Tangaroa
It yields life for many things
The birds in the sky
The people on the land

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