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To: Committee Secretariat
Environment Committee
Parliament Buildings
Wellington



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SUBMISSION: FAST-TRACK APPROVALS BILL

Introduction

1. The New Zealand Sport Fishing Council (**NZSFC**) is a recognised national sports organisation of 50 affiliated clubs with over 36,000 members nationwide. The Council has initiated LegaSea to generate widespread awareness and support for the need to restore abundance in our inshore marine environment, and to broaden NZSFC involvement in marine management advocacy, research, education, and alignment on behalf of our members and LegaSea supporters.¹
2. The New Zealand Angling and Casting Association (**NZACA**) is the representative body for its 24 member clubs throughout the country. The Association promotes recreational fishing and the camaraderie of enjoying the activity with fellow fishers. The NZACA is committed to protecting fish stocks and representing its members' right to fish.
3. The New Zealand Underwater Association comprises three distinct user groups including Spearfishing NZ, affiliated scuba clubs throughout the country and Underwater Hockey NZ. Through our membership we are acutely aware that the depletion of inshore fish stocks has impacted on the marine environment and the wellbeing of many of our members.
4. Collectively we are 'the submitters'. The joint submitters are committed to ensuring that sustainability measures and environmental management controls are designed and implemented to achieve the Purpose and Principles of the Fisheries Act 1996, including in particular "*maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations...*"
5. The Submitters understand the need to expedite the delivery of infrastructure projects of national or regional significance and public benefit and support legislation to achieve this while delivering good environmental outcomes. However, as it stands, the submitters **oppose**

¹ www.legasea.co.nz

the Fast-track Approvals Bill (**Bill**) only as it relates to the marine environment and land based activities which can adversely affect the marine environment (e.g. through runoff of contaminants).

6. The Bill is proposed as a “fast-track”, which suggests procedural speed. However, the effect of the Bill is to circumvent environmental protections which are in place for very good reason. Kaitiakitanga and the ethic of stewardship must remain be at the heart of any fast track legislation to ensure that we are properly protecting the environment for future generations.
7. The purpose of the Bill makes no reference at all to environmental protection. The Bill is unreasonably weighted in favour of the approval of projects. It places excessive and unfettered powers to approve projects in the hands of development Ministers and unjustifiably removes public participation and checks and balances.
8. Existing fast track processes (e.g. the Covid Fast Track Act and RMA Board of Inquiry process) already provide for a high degree of procedural expediency for appropriate, significant projects. This belies the true policy intent of the current Bill, which is to approve projects that are essentially unconsentable when tested against existing environmental protections.
9. This submission now turns to address the specific concerns of the Submitters with the Bill, particularly:
 - a. The lack of balance in the purpose statement of the Bill and its decision making framework;
 - b. The lack of rigour and transparency in listing and referral of projects;
 - c. Inadequate transparency and public input to decision making.
10. The submission concludes with setting out those features which need to be included for a fast track process to be supported.

Imbalance in purpose of the Bill and decision-making framework

11. The purpose of the Bill is:

to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.
12. This statement of purpose lacks any balance in relation to whether the “*infrastructure and development projects*” yield significant **net** benefits (i.e. benefits less costs) and what level of environmental loss might be unable to achieve these benefits. The effect of this purpose is to prioritise development regardless of the environmental cost.
13. This lack of balance is compounded by the Bill’s process and decision-making criteria for RMA approvals, which are manifestly inadequate. Once referred by Ministers, the fast-track process is little more than a rubber-stamping exercise for projects. It is not appropriate that the development purpose of the Bill should take priority, and not be qualified by any consideration of the natural environment at an equal weighting.
14. The Submitters are particularly concerned that the protection of the marine environment for current and future generations will be undermined by the approach.

15. The Bill proposes that ministers can choose to accept or reject panel recommendations. It is deeply problematic that Ministers make the final decisions under this Bill. While the Submitters are strong supporters of ministerial discretion in the context of the Fisheries Act 1996, this is because the Purpose and Principles of that Act set environmental bottom lines, and ministerial discretion only exists within these bounds. No such safeguards exist within the Bill which is weighted towards development at the expense of all other matters.

Lack of rigour and transparency in listing and referral of projects

16. Some projects will be listed in the Bill and proceed to consideration by a panel, without the need for any statutory assessment as to whether they are eligible for fast-track. The composition of the advisory group tasked with listing projects in the Bill is heavily weighted towards development interests and does not provide any comfort that balanced decision making will occur.
17. The Submitters are very concerned that projects are to be listed in the Bill late in the parliamentary process by way of supplementary order paper. These projects remain completely unscrutinised by the public despite being included in the final law. That is not how good law ought to be made. It is the Select Committee's role to examine the content of our law, based on detailed submissions from experts, stakeholders and the public.
18. It would be alarming in the extreme if the listed projects were to include, for example, Trans Tasman Resources Limited's iron sands mining project, which has already been rejected by the Supreme Court of New Zealand and sent back for re-consideration by the Environmental Protection Authority. Equally concerning would be the fast tracking of various aquaculture projects which have been knocked back over the years. There are also only very few cases where projects are specifically *not* eligible to enter the fast-track for environmental reasons. One of the most concerning aspects is that prohibited RMA activities are specifically made eligible. These outright bans are for the most environmentally dangerous activities, which this Bill will enable.
19. In any event, the eligibility criteria for of projects for referral ("significant regional or national benefits") are discretionary, open to ministerial interpretation, and unduly broad. They capture almost all activities. The Bill must be more targeted than this. At the very least, a **net benefit** test must apply. If a new fast track bill is to be legislated, then it must be limited in its application to infrastructure and housing projects with significant net regional or national public benefits.

Insufficient public involvement and other checks and balances

20. The Bill dispenses with almost all opportunities for the public to be involved in decisions having significant effects on New Zealand's environment and natural resources. This is undemocratic.
21. Public notification is not allowed by panels either.² Panels must invite comment from a narrow range of people and groups and can choose to invite comments from any person that they consider "appropriate". But there is no requirement that the public be involved in the process.
22. All this is particularly concerning because the very projects that are likely to be referred to panels are also the ones that are likely to have significant adverse environmental effects and

² Schedule 4, cl 20.

warrant the additional scrutiny provided through submissions and expert evidence from non-governmental organisations.³

23. While appeals on questions of law are available to any person with an interest greater than the public generally, it is unclear how notice of decisions would be provided to such people. In addition, given that the decision-making criteria in the Bill are so open and stacked in favour of the approval of projects, challenges on environmental grounds to the grant of approvals will be exceedingly unlikely to succeed.
24. The Submitters strongly oppose this proposed exclusion of the public voice.

Features of a Fast Track regime that the Submitters could support

25. As noted, the Submitters are not opposed to a fast-track regime in principle. However, to be supported, this must include:
 - a. **Environmental balance:** Environmental effects should be considered with equal weighting to the benefits of development.
 - b. **Notification:** The Public should be notified and given the opportunity to provide comments on any applications with more than minor adverse effects on the environment. This would provide notice of the appeal period to all interested persons on questions of law. This would still provide for a fast track by removing merits appeals before the Environment Court.
 - c. **Decision made by expert panel:** The decisions on applications should be made by the expert panel who have the technical expertise and political independence needed to make sound decisions.
 - d. **Review conditions:** There should be mandatory requirements for strong review conditions on consents. When moving at speed, it is likely that the quality of decision making will not be as high as with the standard track and it will be necessary to correct issues when they arise. Strong review conditions are therefore needed.
 - e. **Environmental bottom lines:** The bill needs to be explicit about the type and level of adverse environmental effects which are unacceptable and form bottom line.

Conclusion

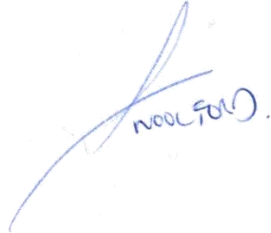
26. The Bill requires significant adjustment to provide environmental balance and bottom lines, suitable controls on the eligibility and referral of projects, robust review conditions, as well as greater transparency and public participation.
27. With these important amendments the Submitters would support the Bill. Otherwise the Bill is not fit for purpose and existing fast track processes should be retained.
28. The Submitters wish to be heard in support of their submission.

³ Even prohibited activities – which by definition are environmentally harmful – are eligible for fast-tracking and therefore little public scrutiny.

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