

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2024-485-367
[2025] NZHC 3951

| | |
|---------------|--|
| UNDER | the Judicial Review Procedure Act 2016; Part 30 of the High Court Rules; the Declaratory Judgments Act 1908; and the Common Law |
| IN THE MATTER | of an application for judicial review and/or for declaratory judgments |
| BETWEEN | OTAGO ROCK LOBSTER INDUSTRY ASSOCIATION INCORPORATED Applicant |
| AND | THE MINISTER OF CONSERVATION First Respondent THE MINISTER OF TRANSPORT Second Respondent THE MINISTER FOR OCEANS AND FISHERIES Third Respondent |

Hearing: On the papers

Appearances: M S Smith KC for Applicant
N C Anderson and N N El Sanjak for Respondents
P D Anderson for Forest and Bird
A J L Beatson for Environmental Defence Society and World
Wide Fund for Nature New Zealand
L Wichman for Fish Mainland

Judgment: 12 December 2025

JUDGMENT OF ISAC J

Introduction

[1] The Otago Rock Lobster Industry Association (ORLIA) is an incorporated society representing the interests of the commercial kōura/rock lobster fishing industry in the CRA7 (Otago) quota management area. It has applied for judicial review of decisions by the Minister of Conservation under the Marine Reserves Act 1971 preceding the intended establishment of six marine reserves off the southeast coast of the South Island, together with the concurring decisions of the Minister of Transport and the Minister for Oceans and Fisheries (the second and third respondents, respectively).

[2] On 10 October 2025, the parties filed an agreed statement of facts and joint memorandum seeking orders by consent to resolve the application for judicial review. In addition to the parties, the Royal Forest and Bird Protection Society of New Zealand Inc, the Environmental Defence Society Inc, the World Wide Fund for Nature New Zealand (WWF) and Fish Mainland (collectively, the interested parties), agree that it is appropriate for the application for judicial review and declarations to be granted on the basis set out in the joint memorandum.

[3] As I directed in my minute of 13 October 2025, I now consider the application for judicial review on the papers.

Background

[4] The following background is taken from the set of agreed set of facts provided by the parties and interested parties.

South-East Marine Protection Forum process

[5] In February 2018, members of Te Roopu Manaaki ki te Toka / South-East Marine Protection Forum proposed two options for the establishment of a network of marine protected areas in the southeast region of the South Island.

[6] In May 2019, the Ministers of Conservation and Fisheries announced their agreement to consult on one of the Forum's proposed networks, which included

six proposed marine reserve areas under the Marine Reserves Act 1971 (the Act).¹ The Ministers agreed that statutory consultation would proceed on the basis of the legislative tools under both the Act and the Fisheries Act.

Director-General's application for marine reserves

[7] On 3 June 2020, the Director-General of Conservation formally notified an application under s 5(1)(a) of the Act for Orders in Council declaring six areas of sea and foreshore to be marine reserves. Relevant to this judicial review application is the inclusion of the proposed Te Umukōau marine reserve.

[8] Public notices of the Director-General's intention to apply for Orders in Council for the proposed marine reserves (as required under ss 5(1)(b) and 5(1)(c) of the Act) were published on various dates between 17 February 2020 to 31 July 2020 in newspapers across New Zealand.²

Statutory public consultation

[9] Submissions were received from 4,056 individuals or organisations, with 283 submissions received on the proposed Te Umukōau marine reserve.³ In their opposing submission, the applicant, ORLIA, stated that the proposed Te Umukōau marine reserve was of particular concern and would have a significant impact on its members because of the inclusion of specific reef structures of importance to commercial rock lobster fishing within the proposed boundary of Te Umukōau. ORLIA's objection included statutory declarations by the CRA7 fishers, with maps and descriptions in their own words of the areas where they focus their fishing effort.

¹ It also included five Type 2 marine protected areas and one kelp protection area to be progressed under the Fisheries Act 1996 (Fisheries Act).

² As required under s 5(2) of the Act, the plans of the proposed marine reserve areas were included in the Director-General's application and were available free of charge during ordinary office hours at the Department of Conservation's offices in Christchurch, Dunedin, and Invercargill and at the Department of Conservation's Visitor Centres in Wellington, Geraldine, and Dunedin and at public libraries in Waimate, Oamaru, and Balclutha. The Plan was also either displayed or available for viewing with the Consultation Document at each of the locations described above, including displaying them on external noticeboards where available. In the case that any member of the public was not able to access the online version of the Consultation Document including the plans or were not able to reach any of the locations above, the public was invited to contact Te Papa Atawhai and request a hard copy of the Consultation Document be sent to them.

³ Of those 283 submissions, 32 per cent of the submissions fully supported the proposal, 59 per cent objected and 9 per cent partially supported the proposal.

Engagement with Te Rūnanga o Ngāi Tahu

[10] The Crown also engaged with Te Rūnanga o Ngāi Tahu and its papatipu rūnaka as the proposed marine reserves sit within the takiwā of the iwi, and the principles of the Treaty of Waitangi are given effect to when establishing any marine protection areas.

[11] Kāi Tahu indicated that the proposed Te Umukōau marine reserve was of most concern and was likely to have the largest impact on its commercial fishing interests because it encompasses areas of deep reef of particular importance for the rock lobster fishery in CRA7 quota management area. During discussions, Kāi Tahu tabled three proposed amendments to the boundaries of Te Umukōau marine reserve, described as sites D1-A, D1-B and D1-C.

Assessment of proposed boundary of Te Umukōau marine reserve

[12] After analysing the submissions, the Department of Conservation prepared a report to the Minister of Conservation on the southeast marine reserve application providing the Department's advice and recommendations, and advising whether the Minister should uphold any objections pursuant to s 5(6) of the Act.

[13] In relation to the proposed Te Umukōau marine reserve, this included an assessment of whether declaring site D1 a marine reserve would "interfere unduly with commercial fishing" (s 5(6)(c)). In making this assessment, the report considered the information received in objections, the location of relevant reef structures mapped through multibeam surveying and other publicly available data, as well as commercial fishing data provided by Fisheries New Zealand used to estimate where fishing events occur.

[14] As a result of this analysis (and taking into account relevant case law), the Department concluded that site D1 would likely unduly interfere with commercial rock lobster fishing in the CRA7 quota management area.

[15] The report recommended the adoption of an amended boundary for Te Umukōau (Site D1-A) as it would:

- (a) reduce the percentage of commercial catch in the CRA7 quota management area affected by the proposed marine reserve from 13.1 per cent (applying Site D1) to approximately 5.1 per cent (under Site D1-A);
- (b) exclude important rock lobster fishing area in the northeast of the original Te Umukōau (Site D1) marine reserve boundary including the reef structure identified by officials during engagement with Kāi Tahu as “The Church”; and
- (c) in the assessment of officials, mean the interference of the proposed Te Umukōau marine reserve (Site D1) on commercial rock lobster fishing would no longer be undue.

[16] The commercial fishing data relied upon estimates of where fishing events occur.

[17] When proposing the amended boundary of Te Umukōau be adopted (Site D1-A), the Department of Conservation did not seek the views of ORLIA or any other persons who objected to the proposed Te Umukōau marine reserve on the basis of interference with commercial rock lobster fishing (besides those represented by Kāi Tahu).

[18] Consequently, on 10 July 2023, a briefing paper attaching the Department’s report was provided to the Minister of Conservation and signed on 16 August 2023. The Minister then sought the concurrence of the Minister of Transport and Minister for Oceans and Fisheries (as required by s 5(9) of the Act).

[19] The Minister of Transport’s concurrence decision was sent to the Minister of Conservation on 31 August 2023, and the Minister for Oceans and Fisheries’ concurrence decision was sent to the Minister of Conservation on 15 September 2023.

[20] On 5 October 2023, the Minister of Conservation and Minister for Oceans and Fisheries announced the six new marine reserves.

[21] On 21 June 2024, ORLIA filed the current application for judicial review in relation to the decision making for the marine reserves.

[22] Orders in Council declaring the six marine reserves are yet to be promulgated.

Legal principles

[23] Section 3(1) of the Act provides that:

... the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.

[24] Section 4(1) of the Act provides the Governor-General with authority — subject to the completion of the procedure in s 5 — to declare, by Order in Council, any area described in that order to be a marine reserve (subject to such conditions as may be recommended by the Minister of Conservation).

[25] Section 5 of the Act prescribes a detailed procedure to be followed prior to the recommendation of any Order in Council under s 4(1). Relevantly it provides:

- (a) who may make an application (s 5(1)(a));
- (b) how (and to whom) notice of the application is to be given (s 5(1)(b)-(c));
- (c) for a plan of the area sought to be declared a marine reserve to be made available for inspection (s 5(2));
- (d) for the making of objections to the proposed Order in Council (s 5(3)), the making of answers by the applicant (s 5(4)), and the reference of the objections and any responses to the Minister of Conservation (s 5(5));
- (e) for the Minister of Conservation to consider (without being bound to follow any formal procedure but subject to the requirements of natural

justice), any objections, answers by the applicant, and any independent advice received against grounds listed in s 5(6) of the Act, including (of particular relevance for present purposes) whether declaring the area a marine reserve would “interfere unduly with commercial fishing” (s 5(6)(c));

- (f) for notification of the Minister’s decision, together with the grounds therefor, to any objectors and the applicant (s 5(8)); and
- (g) for the Minister of Conservation to recommend an Order in Council (s 5(9)):
 - (i) if the Minister decides that no objections should be upheld and that “to declare the area a marine reserve will be in the best interests of scientific study and will be for the benefit of the public, and that it is expedient that the area should be declared a marine reserve”, either conditionally or unconditionally; and
 - (ii) the Ministers of Transport and Fisheries concur.
- (h) The Act is administered by the Department of Conservation.⁴ As a consequence, to the extent consistent with its express terms, the Act is to be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

The Minister of Conservation’s accepted error

[26] The first respondent accepts that — in the particular circumstances of this case — his predecessor erred in failing to consult with the applicant and other persons who objected to the proposed Te Umukōau marine reserve on the basis of interference with commercial rock lobster fishing, regarding the impact of an amendment to the boundary of that proposed reserve on commercial rock lobster fishing. The failure to do so invalidated the resulting ministerial decisions under s 5(6) and s 5(9) of the Act.

⁴ Conservation Act 1987, sch 1.

[27] In particular, the Minister accepts that, legally, his predecessor should have consulted with ORLIA and other relevant objectors regarding the amendment to the boundary of the proposed Te Umukōau marine reserve, given:

- (a) the rights and interests of ORLIA and other relevant objectors in respect of the area of the proposed Te Umukōau marine reserve;
- (b) the amendment to the boundary was intended to avoid undue interference with commercial fishing; and
- (c) the importance of particular reef structures for commercial rock lobster fishing in that area.

[28] It is also important to record that the Minister's admission is contingent on the Court's acceptance of the proposed resolution outlined in the joint memorandum of counsel.

Orders sought

[29] In light of the accepted error, the parties have agreed that the decision of the (then) Minister to establish the proposed Te Umukōau marine reserve, and the associated concurrence decisions of the (then) Minister of Transport and Minister for Oceans and Fisheries, should be the subject of limited reconsideration following additional targeted consultation regarding its boundary. While the respondents do not consider every amendment to the boundaries of a proposed marine reserve (within the area previously notified) will necessitate additional consultation with objectors, the parties and Interested Parties agree the factors listed above at [27] support the need to have tested the proposed boundary amendment with ORLIA and other relevant objectors to ensure it would have the desired effect.

[30] The parties therefore jointly seek the following orders by consent:

- (a) an order under s 16(2) of the Judicial Review Procedure Act 2016 that the Minister of Conservation's decisions not to uphold any objections and to recommend the establishment of the Te Umukōau marine

reserve, as well as the follow-on concurrence decisions of the Minister of Transport and the Minister for Oceans and Fisheries, are set aside on the basis of the Minister of Conservation's failure to consult with ORLIA and other relevant objectors⁵ on the impact of an amendment to the boundary of that proposed reserve on commercial rock lobster fishing;

- (b) an order under s 17(3) of the JRPA that the Minister of Conservation is to reconsider:
 - (i) the objections by ORLIA and other relevant objectors regarding Te Umukōau marine reserve under s 5(6) of the Marine Reserves Act in light of additional targeted consultation regarding its boundary; and
 - (ii) (if those objections are not upheld) the decision to recommend an Order in Council under s 5(9) of the Act establishing Te Umukōau marine reserve in light of additional (targeted) consultation regarding its boundary (after seeking the concurrence of the Minister of Transport and Minister for Oceans and Fisheries);
- (c) directions under s 17(4)(b) of the JRPA that, in conducting the reconsideration described at paragraph [30(b)] above:
 - (i) the Minister of Conservation is to consult with ORLIA and relevant objectors regarding the impact on commercial rock lobster fishing of any proposed amendments to the notified Te Umukōau marine reserve boundary (known as site D1), including but not limited to the boundary amendment known as Site D1-Y that is presently (subject to the outcome of the

⁵ Here the expression "relevant objectors" refers to those persons who objected to the proposed Te Umukōau marine reserve on the basis of interference with commercial rock lobster fishing, as the parties defined that term in the joint memorandum of counsel of 10 October 2025 at paragraph 3.

consultation process and official advice) the Minister of Conversation's preferred boundary;

- (ii) the Minister of Conversation is to consult with the interested parties, and engage with Te Rūnanga o Ngāi Tahu, on the impact of any proposed amendments, including but not limited to Site D1-Y; and
- (iii) the Minister is to have regard to material prepared in connection with this proceeding, including the spatial mapping of particular reef structures within the Te Umukōau marine reserve;
- (iv) the Minister of Conversation (and Minister of Transport and Minister for Oceans and Fisheries for the purposes of concurrence) is to limit the reconsideration under paragraph [31(b)] to assessing:
 - 1. the extent to which an amendment to the boundary of the proposed Te Umukōau marine reserve is required to alleviate undue interference with commercial rock lobster fishing; and
 - 2. any associated impacts of a boundary amendment on the matters identified in s 5(9) of the Act;
- (d) all costs associated with this proceeding are to lie where they fall; and
- (e) in accordance with r 15.20(4) of the High Court Rules, this proceeding is discontinued on the terms noted at paragraphs [30(a)] to [30(d)] above.

[31] The parties and Interested Parties agree that the limited reconsideration of Te Umukōau marine reserve does not affect the implementation of the other five marine reserves that the (then) Minister of Conversation decided to recommend are established at the same time as Te Umukōau marine reserve and that are also the

subject of ORLIA's application for judicial review. The parties and Interested Parties agree that Orders in Council declaring the other five marine reserves are no longer affected by this proceeding and any remaining steps needed for their finalisation can now be taken.

Consideration

[32] In giving a direction to a decision-maker under s 17(3) of the JRPA, the Court must:

- (a) advise the person of the reasons for the direction; and
- (b) give the person such directions as it thinks just as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

[33] Based on the agreed facts and the submissions of the parties, I am satisfied it is appropriate to grant the relief sought by the parties. There is an admitted error of process amounting to an error of law affecting rights and interests. The error has affected the decisions of both the Minister of Conservation as well as the concurrence Ministers. However, the orders sought also acknowledge the limited extent to which the decision-making process has misfired, and the degree of reconsideration is therefore limited (as noted above at [31]) to an assessment of:

- (a) the extent to which an amendment to the boundary of the proposed reserve is required to alleviate undue interference with commercial rock lobster fishing; and
- (b) any associated impacts of a boundary amendment on the matters identified in s 5(9) of the Act.

[34] The direction at [30(c)] is sufficiently focussed, while affording the Minister of Conservation flexibility as to the exact process to be followed. It is also consistent with s 5(6) of the Act, which provides the Minister "shall not be bound to follow any formal procedure" in considering an objection.

Conclusion and results

[35] I make the orders sought, on the terms as set out at paragraph [30], by consent.

[36] As agreed by the parties, all costs associated with this proceeding are to lie where they fall.

[37] I also reserve leave to apply, should there be any issue the parties wish to raise following issue of this judgment.

Isac J

Solicitors:
Crown Law Office, Wellington for Respondents