

Before the Independent Hearings Panel
At Department of Conservation

Under the Resource Management Act 1991 (**RMA** or **Act**)

In the matter of Proposed Plan Change 1 to the Regional Coastal Plan:
Kermadec and Subantarctic

Memorandum of Counsel on behalf of Sanford Limited and Seafood New Zealand Limited (Deepwater Council)

2 July 2026

Submitter's solicitor:

Ben Williams / Conor Meredith

Anderson Lloyd

Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011

PO Box 13831, Christchurch 8141

p + 64 335 1250

Ben.williams@al.nz / conor.meredith@al.nz

**anderson
lloyd.**

May it please the Panel

- 1 This memorandum of Counsel is filed on behalf of Sanford Limited and Seafood New Zealand Limited (Deepwater Council) (together **Fishing Industry Interests**) in response to Minute 4 of the Hearing Commissioners (**Commissioners**) dated 25 June 2026.
- 2 As per the directions of Minute 2, the Fishing Industry Interests:
 - (a) welcome the opportunity to respond to the new matters raised by Ms Hucker in evidence on day 2 of the hearing; and
 - (b) confirm they will engage directly with DOC on how the forms associated with the biofouling standards and inspections could be improved and made more navigable and will provide the Commissioners with amended forms to reflect these discussions.
- 3 For completeness, this is without prejudice to the Fishing Industry Interests' primary position that the Commissioners should recommend declining the notified changes to the forms, as well as the proposed removal of Approved Persons, and grant the relief sought in their submissions to exempt domestic vessels from these new biofouling requirements.
- 4 In addition to not deleting Appendix 5 and retaining the Approved Persons requirements, the Fishing Industry Interests consider this could be achieved by:
 - (a) retaining Appendix 4, Form 1 in its current operative form, but with it applying only to domestic vessels; and
 - (b) developing a new Appendix 4, Form 3 specifically for international vessels. This could be based on the as notified Form 1, which appears intended to align with the Craft Risk Management Standard for Vessels 2023 (**CRMS**) that vessels of this nature are already in compliance with.

Additional matters covered in Ms Hucker's evidence

- 5 In addition to the proposed changes to the layout of the Appendix 4 forms, Ms Hucker's further evidence canvassed a range of associated matters, including:
 - (a) the key drivers for the amended provisions;
 - (b) the increased evidential requirements for video and photographic material;

- (c) Appendix 2 to Darryn John Shaw's evidence, including the approved diver contractor/inspector's view that the proposed dive inspection standards and reporting requirements would materially increase workload and per-vessel costs;
 - (d) the proposed deletion of Appendix 5 and the consequential removal of the requirement for inspections to be undertaken by an Approved Person;
 - (e) consistency between the MPI Craft Risk Management Standard and the biofouling forms requirements;
 - (f) the practical implementation of dive inspections under the form's requirements; and
 - (g) the preparation of additional or combined vessel-specific forms.
- 6 As a starting point, the Fishing Industry Interests consider that aspects of Ms Hucker's general comments and justifications for the proposed amendments to the biofouling provisions that were presented during her additional evidence, were directed more to the internal policy rationale or *assumed* factual reasons for the proposed amendments (i.e. rather than an actual evidential basis).
- 7 Ms Hucker also appeared to make assumptions as to the reasons for those changes and to address matters beyond her direct expertise, including as to the additional resourcing and practical challenges of implementing the amendments.
- 8 The Fishing Industry Interests therefore emphasise as a part of their overall response that a number of statements made by Ms Hucker are not supported by evidence. The Fishing Industry Interests respectfully ask that the Panel take particular care in ensuring that any changes are made for legitimate and evidentially supported reasons. Again, the Fishing Industry Interests are strongly of the view that the existing plan and regime is working very well without issue and much of the commentary provided on the efficacy and appropriateness of the existing (or proposed regimes) is simply not supported by the evidence.
- 9 The Fishing Industry Interests address the matters below that would have been responded to had they been present at the hearing.

Comments regarding the key drivers for the proposed changes

- 10 During Ms Hucker's presentation of additional evidence, there were numerous references to a perceived need to update the biofouling provisions and, by extension, the Appendix 4 forms.
- 11 Consistent with what has been stated above, the Fishing Industry Interests remain of the view that since the measures were introduced in 2017 minimal evidence has been presented, or research undertaken, to show that the current provisions are ineffective (or that they have resulted in, or give rise to a risk of, biosecurity impacts in the Subantarctic Islands).
- 12 DOC also commented that, when the provisions were introduced, it assumed they would require updating. It is unclear whether that assumption is the basis for the proposed changes, or whether there is tangible evidence justifying their current position.

Niche Areas – Sea Chests

- 13 One of the key justifications advanced at the hearing by Ms Hucker as to the proposed changes concerned the risks arising from niche areas, with the view expressed that these risks are mitigated with the proposed deletion of clause 2.4 of Appendix 4. This clause currently provides an exemption from inspecting niche areas where inspection is 'not practical'.
- 14 For wider context it is noted that this approach in relation to niche areas was carefully considered and developed as a part of the original plan mediation process. An appropriate balance was struck between inspection requirements and risk/accessibility in relation to niche areas. Within this weight and confidence was also placed on the Approved Persons regime to 'get it right'.
- 15 In the Fishing Industry Interests' view, it remains unclear what practical change would now result from deleting that clause, given that the amended Appendix 4 still appears to recognise circumstances in which a niche area, for example, such as a sea chest, need not be inspected, with the core distinction only being that a reason must be recorded for its exclusion.
- 16 Related to this, Ms Hucker also commented that the current provisions do not capture sea chests, this is incorrect:
 - (a) as noted, the operative plan (Appendix 4, para 2.4) requires all niche areas to be inspected 'if practicable' to do so, meaning the level of inspection is extensive, and there is no evidence to suggest it has not been effective in mitigating biosecurity concerns; and

- (b) Form 1 in the operative plan does currently include provision for sea chest inspections. This is reasonably limited to out-of-water inspections, with only the sea chest grating needing to be inspected in water.
- 17 In relation to this , during discussions, Ms Hucker reiterated that *“Form 1.... in the operative plan just refers to the sea chest grating.”* The Commissioner then qualified this be stating *“your point is – it’s therefore inadequate”* to which Ms Hucker replies *“yes, yes that is my point”*:
 - (a) again, this appears to be driven from DOC's concern that the current Form 1 does not include sea chest inspection. This is not in fact correct - they are expected to be inspected to the extent that is practically achievable; and
 - (b) in the case of in-water inspections, that inspection is necessarily undertaken at the sea chest grating, because removal of the grating is generally not possible.
- 18 That practical limitation, which remains, reflects the purpose and construction of sea chest gratings. Sea chests are protected by gratings to prevent damage at sea, and it is important that those gratings do not dislodge or break away. Common securing arrangements include:
 - (a) welding the securing bolts to the vessel;
 - (b) welding the grate directly to the hull; or
 - (c) securing each bolt to another using mousing wire.
- 19 Against that context, it is unclear what practical change the proposed amendments would achieve. The amended forms appear to permit a listed area, such as a sea chest, to be excluded from inspection where reasons are recorded. Ms Hucker also confirmed at the hearing that an inaccessible sea chest, as is commonly the case, would not cause an inspection to fail.
- 20 The amendments therefore appear to add cost and resourcing requirements without materially improving the inspection outcome.
- 21 If the additional evidential requirements will not, in practice, increase the level of inspection for the areas, the justification for imposing them is questionable. The issue appears to be a misunderstanding of the current form requirements and vessel practicalities, particularly the ability to access a sea chest, rather than any substantive deficiency in Form 1 or the biofouling provisions more generally.

Practical implementation of the requirements of the amended forms

- 22 The proposed changes will incur significant additional costs and resources for operators, including by requiring:
- (a) inspection of a far broader range of areas, including the insertion of additional horizontal and vertical transect requirements. A comparison of these additional requirements is attached as **Appendix A** – emphasising the (perhaps trite) observation that the images only reflect one side of the boat – meaning the number of required transects is double that illustrated, plus the inclusion of the transom;
 - (b) three photographs for each relevant area and all niche areas that are present within, as opposed to one, with extensive video footage also now required;
 - (c) further additional photographs and video footage in low-light conditions, without specifying what triggers this requirement or the extent of material required;
 - (d) additional evidence in relation to any areas listed in the forms as required, that are not present on the hull;
 - (e) all photographs and videos to be labelled;
 - (f) ongoing apparently permanent storage of the additional photos and video footage, requiring extensive capacity, with associated indefinite requirements to provide these at DOC's request;
 - (g) justification in the forms for any areas not inspected (previously this justification not being required at all); and
 - (h) continuing to require a Level of Fouling rank while deleting the associated note in Form 2 that DOC will provide training on how to undertake that ranking process and
 - (i) a PDF report of the photographs to be provided to DOC. While as referenced in the section 42A report¹ international vessels may already prepare such reports under the CRMS, domestic vessels are not subject to that standard, making this an additional unjustified and resource-intensive obligation.

¹ Section 42A Report at [225].

- 23 In the Fishing Industry Interests' view, the additional transect requirements set out at **Appendix A**, if relevant at all, are likely only to benefit larger vessels - this reflecting DOC's comments that they were modelled on the CRMS, which is designed for larger international vessels, not smaller domestic scampi vessels. The amended forms should therefore be limited to imposing these requirements on vessels to which they are suited.
- 24 For completeness, Ms Hucker suggested that some costs may be offset because the requirements align with the CRMS, allowing the information prepared for MPI to also be provided to DOC. However, the CRMS applies only to international vessels entering New Zealand. It does not apply to domestic vessels, and there is therefore no equivalent cost saving for those operators.
- 25 In short, taken together, the matters listed above demonstrate the practical difficulty operators will face in meeting the proposed requirements and/or the lack of any connection with actual effects or improved environmental outcomes. The time required to conduct an inspection, and the associated report writing, will significantly increase due to the additional photographic and video footage requirements. Those increased costs and resource demands will be material and will be incurred each time an inspection is required.
- 26 Those practical difficulties are likely to be compounded by the limited availability of persons with the necessary experience to adequately undertake the required work, particularly in the locations and timeframes relevant to vessels operating in the Subantarctic Islands.
- 27 In practice, operators may face difficulties being able to meet these extensive additional requirements within required operational windows, which could delay vessel movements, increase costs, and create further uncertainty in complying with the amended requirements.

Appendix 2 to Darryn Shaw's evidence

- 28 The Fishing Industry Interests are concerned by DOC's treatment of Appendix 2 to Mr Shaw's evidence and in particular the email from Mr Rob Feist of Divepro Limited, dated 2 June 2026, setting out his preliminary view on the further costs likely to arise from the proposed amendments to the Appendix 4 forms and the biofouling requirements more broadly.
- 29 This Appendix 2 provides an informed and practical reflection of the additional costs likely to be incurred by operators if the proposed amendments are adopted, including from the increased inspection, photographic, video and reporting requirements.

- 30 DOC's additional evidence also appeared to cast doubt on whether Divepro properly understood the existing standards. Divepro carries out most of the diving work for the scampi fleet and appears on DOC's published register of Approved Hull and Niche Area inspectors (and was approached in the context of the email provided on the basis of it properly understanding what is proposed).
- 31 In short, DOC has not provided any substantive response to the detail of Divepro's costings. Instead, it appears to rely on an opinion that is not supported by a practical understanding of the scale of work required to undertake an inspection or the associated costs. In this context, Divepro's practical experience and expertise ought to be recognised when assessing the likely implications of the proposed changes.
- 32 In any event, and to provide further clarity to the Panel on the increased costs likely to arise from the amended forms, the Fishing Industry Interests attach further correspondence from Divepro as **Appendix B** to this memorandum. This further explains:
- (a) Mr Rob Feist's experience, including 40 years in the dive industry and 10 years running Divepro;
 - (b) how the estimated increased costs arising from the amended provisions were calculated;
 - (c) the practical challenges associated with undertaking dive inspections, and the cost and resourcing burden created by the additional evidential requirements; and
 - (d) the difficulties created by the amendments requiring divers to spend longer periods in the water, particularly given the challenging underwater conditions and the practical reality of undertaking work in operational ports.

Deletion of Appendix 5 – Approved Persons

- 33 Despite the additional comments by Ms Hucker in relation to this deletion of Appendix 5, the Fishing Industry Interests consider that it is difficult to justify imposing more extensive photographic and video requirements while also removing the safeguard of assessment by an appropriately experienced and approved inspector.
- 34 The Fishing Industry Interests place weight on the appropriateness and certainty provided by the Approved Persons regime. They do not see more extensive photographs an appropriate substitute for the regime. The regime

is not just about taking photographs – it also requires expertise and an understanding of what is actually being looked at (and for example in relation to niche areas, what needs to be looked at).

- 35 Requiring significantly greater photographic/video records as proposed will increase operators' compliance costs and may elevate biosecurity risk, particularly if the material is not reviewed contemporaneously or by a person with the necessary expertise to assess it. Related to this, Ms Hucker commented that DOC is not expecting any inspector or DOC staff undertaking the review to have any specific scientific expertise for identifying and determining the risk of biofouling.
- 36 By contrast, the current regime relies on inspections by Approved Persons who often have established working relationships with operators, are familiar with the relevant vessels, and undertake the inspection directly. That provides a level of practical knowledge and real-time context that, in the Fishing Industry Interests' view, makes the existing process materially preferable to the proposed alternative.
- 37 Of particular concern was Ms Hucker's commentary on how an operator might determine whether an individual has the necessary expertise to undertake the required inspections. Her position appeared to be that this risk has simply shifted to the operators, who are now responsible for undertaking their own due diligence. The Fishing Industry Interests is confused as to what due diligence Ms Hucker is referring to, when as stated above DOC no longer expects an inspector to have scientific expertise in biofouling.
- 38 Although the Fishing Industry Interests recognise the importance of having an appropriately qualified person, they are not able to talk to or address all operators. They are strongly of the view that certainty and the best outcome is achieved only by retaining the Approved Persons regime.
- 39 Comments were also made that removing the requirement for inspections to be undertaken by Approved Persons may create practical benefits for operators, on the basis that they would now be able to undertake inspections themselves. However, for the majority of operators in the Subantarctic Islands, that is unlikely to be feasible, not least because:
 - (a) operators are unlikely to have ready access to the specialised dive equipment, photographic equipment, lighting, and video recording equipment required to meet the amended forms requirements;
 - (b) operators, or members of their crew, are unlikely to hold the necessary commercial diving qualifications, health and safety

certifications, and practical experience to safely undertake hull and niche area inspections;

- (c) self-inspection is unlikely to provide the same level of independence, consistency, and reliability as inspections undertaken by experienced Approved Persons familiar with the relevant vessels and inspection standards;
- (d) operators are unlikely to have the administrative capacity, and potentially the IT training, to label, collate, review, and submit the increased volume of photographic and video material required under the amended forms; and
- (e) self-inspection is likely to create additional legal, health and safety, insurance, and evidential risks for operators.

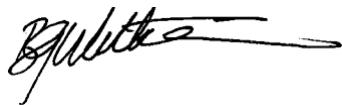
40 These concerns are further reinforced by the correspondence from Divepro at **Appendix B**, which provides a qualified view of the practical challenges of operating in environments of this nature.

Conclusion

41 For the reasons set out above, the Fishing Industry Interests remain concerned that the proposed amendments to the biofouling forms and inspection requirements are not justified by the evidence, would impose material additional costs and practical burdens on operators, and would remove important safeguards associated with inspections by Approved Persons.

42 Accordingly, the Fishing Industry Interests continue to seek the relief set out in their submissions, including that domestic vessels be exempt from the proposed new biofouling requirements.

Dated this 2nd day of July 2026



Ben Williams / Conor Meredith
Counsel for Fishing Industry Interests

Appendix A – Operative verse Proposed Biofouling Transects

Appendix A – Vessel Transects

Operative Plan Biofouling Inspection Transects

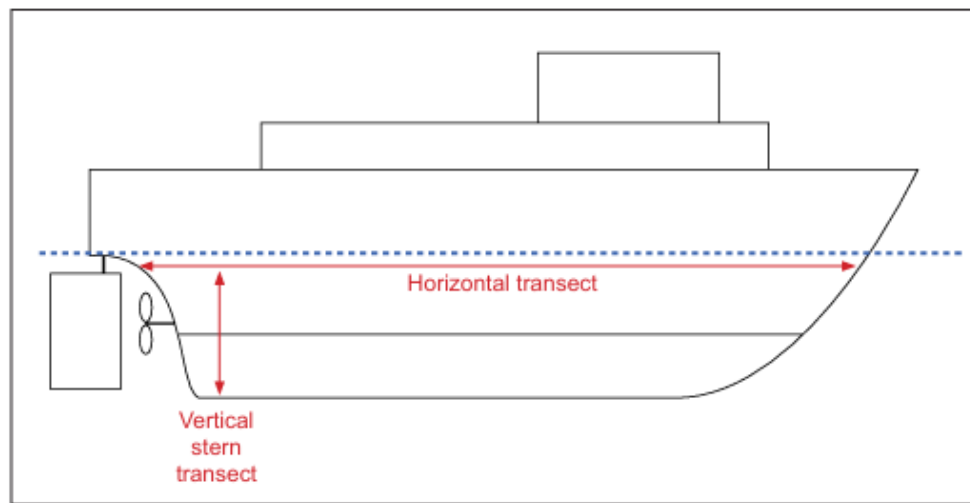


Figure A4.1. Biofouling inspection of general hull areas using vertical stern transects and horizontal transects of both port and starboard areas.

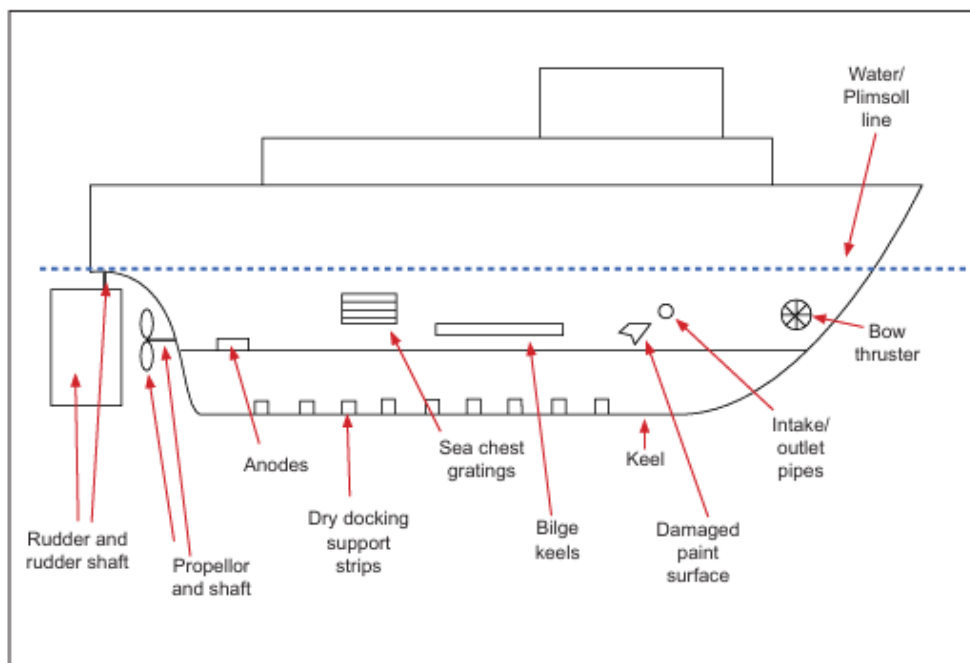
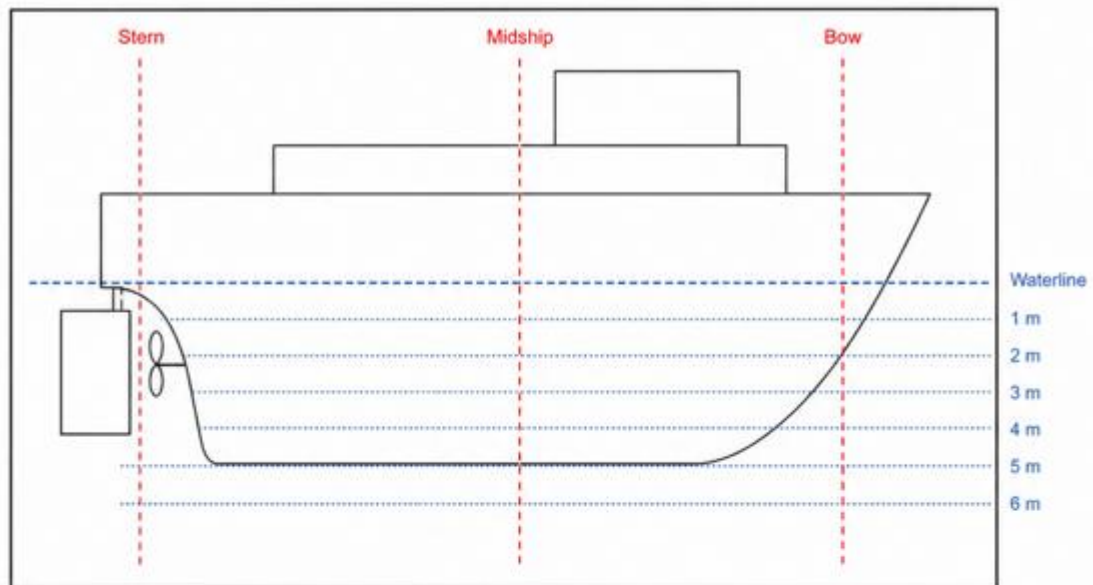


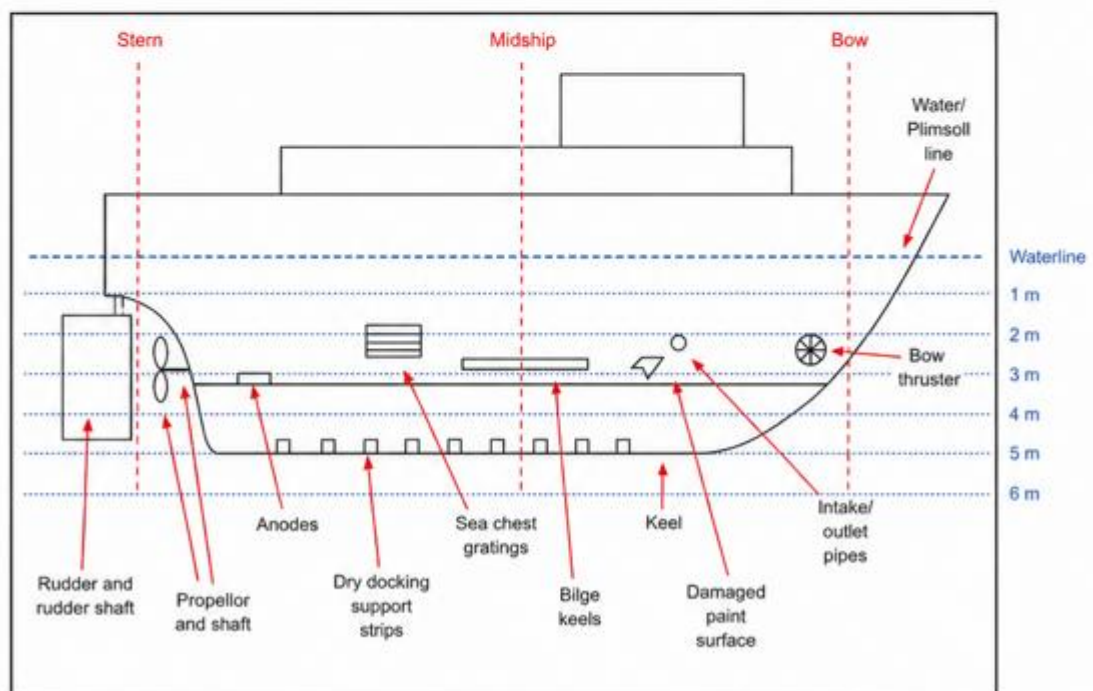
Figure A4.2. Biofouling inspection of niche areas.

Appendix A – Vessel Transects

Proposed Biofouling Inspection Transects



Additional vertical and horizontal inspection transects.



The proposed plan change inspection transects also include 1m incremental inspections of the Transom.

Appendix A – Vessel Transects

Operative Plan Niche Area Photo Evidence – Approx. Quantity

Niche Area	Operative Plan Photo Qty
Transducers x 4	4
Anodes x 18	18
Sea Chest x1	Not Practicable
Sea Chest Grating x1	1
Docking Blocks x 12	12
Prop Rope Guard x1	6
Port Keel Cooling Strip (approx. 1.5m x 10m)	10 (1m spacings)
Stbd Keel Cooling Strip (approx. 1.5m x 10m)	10 (1m spacings)

Note: *Niche areas may require more or less photos to achieve the representative photo evidence.*

Proposed Plan Niche Area Photo & Video Evidence – Approx. Quantity

Niche Area	Proposed Plan Photo Qty	Proposed Plan Video Qty	Low Light Video
Transducers x 4	12	4	Unknown
Anodes x 18	54	18	Unknown
Sea Chest x1	Not practicable	Not Practicable	Not Practicable
Sea Chest Grating x1	3	1	Unknown
Docking Blocks x 12	36	12	Unknown
Prop Rope Guard x1	18	6	Unknown
Port Keel Cooling Strip (approx. 1.5m x 10m)	30	10	Unknown
Stbd Keel Cooling Strip (approx. 1.5m x 10m)	30	10	Unknown

Note: *The quantity of low light video requirements cannot be assumed. It would be determined at time of inspection.*

Appendix B – further Approved Inspector, Biofouling Increased Cost Estimation

From: Rob Feist <rob@divepro.co.nz>
Sent: Wednesday, 1 July 2026 9:26 pm
To: Dean Jurasovich <DJurasovich@sanford.co.nz>
Subject: RE: Biofouling inspection requirement changes.

This Message Is From an External Sender

This message came from outside your organization.

[Report Suspicious](#)

Hi Dean,

My cost estimate was based on a simple and somewhat best-case scenario of time taken to undertake the program outlined in the proposal.

I have worked in the diving industry for over 40 years and started Divepro 10 years ago.

I am an approved provider of inspection services under the current system.

The estimation of price I supplied is based on my understanding gained through experience in the industry previously, and subsequently operating a commercial diving company.

I operate in the ports south of Lyttelton most often.

We are bound by conditions which differ in each location including the fishing company which owns the vessel, the Port company that operates the port, and the weather and sea conditions.

Each of these brings variables which I must manage, along with my own company needs and requirements.

The water temperature in Otago harbour today was 6.3 degrees. There is a limit as to how long an exposure to water at that temperature is reasonable, while meeting health and safety requirements.

Operations in Timaru are often affected by the water visibility in the port. The consequences of this include difficulty obtaining high quality images at a standard I expect to be able to provide to my client and that meet

the requirements. Tidal changes and shipping movements can make a critical difference to the ability to capture good quality images, and this can cause delay while we wait for improved conditions after vessel movements etc.

One of the other issues we face is that ports require divers to be “out of the water” during shipping movements as part of the Health and Safety management regime they operate. As a consequence we are often interrupted during a working day to allow the Port Company to continue to operate the port. These delays are something I have to allow for in my planning and with a longer period required to capture the number of images and the additional images and video being requested I must allow for additional time.

A representative series of photographs and videos could be taken above water in good conditions in a very short space of time.

That situation is not the same for a diver underwater.

Where on shore a photographer has consistent positive reference as to position, the diver does not. We have to establish the location to be photographed and video taken, move to it and then position ourselves there. While we maintain position, without significant movement of the camera, manage the camera and lighting wearing gloves to operate the camera. This all takes time, and the additional time taken is extended with each additional area and photograph and video.

Every set of images has to be identified, catalogued, and reported on. Again, the additional images take additional time. The number of times we have an un-interrupted window of opportunity to complete the work requirements is limited and multiple dives are often required to complete an inspection to the current requirements.

When the photographs are taken the camera is washed and digital storage card removed. The photographs are then transferred to computer and into a file for the vessel inspection by date. Video files do not have the date and time stamp that the photos have included. These files need to have the inspection date recorded in the file properties.

I need confirmation from the divers who undertook the inspection that I have made no errors in the transfer of files and that all labelling is correct.

The diver/s are required to attend to the scoring of each location fouling assessment and record that in hard copy for subsequent scanning and upload.

A report is also required including photographs which justify the decision to pass or fail the vessel as a result of the inspection.

As you can see this is a non-trivial exercise and the additional work required under the proposed new protocol brings with it more than a simplistic linear increase in the time required to fulfil the obligations.

From both physical and physiological points of view consideration must be given to the time individuals are exposed to the environment, and the ‘bottom time’ on deep draft vessels must also be considered as it is limited.

Changing divers part way through a job of this nature adds both time and potential issues regarding positive relocation onto the same target location.

The need for this may arise from air supply limits, battery state, water quality, port company requirements, weather conditions, vessel requirements or other issues as detailed above.

I hope this helps to clarify my concerns and the considerations I have when attempting to price the increase in work due to the proposed changes to the requirements.

Regards
Rob Feist

Robert Feist

Divepro Ltd
10 years accident free

021762734
rob@divepro.co.nz

