

BEFORE THE INDEPENDENT HEARING PANEL

UNDER

the Resource Management Act 1991

IN THE MATTER OF

the hearing of submissions on Proposed Plan
Change 1 to the Regional Coastal Plan: Kermadec
and Subantarctic Islands

Memorandum of Counsel on behalf of the Minister of Conservation

Dated: 22 June 2026

Department of Conservation | *Te Papa Atawhai*

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MAY IT PLEASE THE HEARING PANEL

Introduction

1. This memorandum of Counsel is filed on behalf of the Minister of Conservation (the **Minister**). It responds to paragraph 6.1 of Minute 2, which provided the Department of Conservation (**DOC**) on behalf of the Minister one week to lodge any response to written submissions received from submitters in accordance with that paragraph.
2. Three memoranda from submitters were received on behalf of:
 - a. Heritage Expedition (2018) Ltd (**HEL**);
 - b. Seaeagle Fishing Ltd; and
 - c. Sanford Ltd and Seafood New Zealand Ltd (Deepwater Council).

Position of submitters on proposed process

3. Each of the submitters who has provided a response has confirmed they would be willing to engage with DOC to see if an agreed position can be reached in relation to possible amendments to the forms required for the biofouling inspection process, as proposed by PC1.¹
4. Seaeagle Ltd and Seafood New Zealand Ltd (Deepwater Council), however, have raised process concerns in relation to the evidence given by Ms Sarah Hucker at Day 2 of the hearing. These submitters seek an additional process step, whereby the submitters are given an opportunity to respond to the matters raised by Ms Hucker, either through a written response or through a limited reconvening of the hearing.

Response to matters raised by submitters

5. Ms Hucker's evidence related to the proposed changes to the biofouling provisions, in particular the inspection requirements. Counsel wishes to emphasise the following points:

¹ Memorandum of Counsel on behalf of Sanford Ltd and Seafood New Zealand Ltd (Deepwater Council) paragraph 15(a); Memorandum of Counsel on behalf of Seaeagle Ltd, paragraph 15(b); Memorandum of Counsel on behalf of Heritage Expedition (2018) Ltd, paragraph 3.

- a. In her evidence, Ms Hucker described the reasons for the proposed changes, explained the effect of the proposed changes, and described the differences between the operative plan and the proposed plan. To that extent, the evidence was primarily interpretative, and covered matters either set out in the s 32 and s42A reports or in the proposed provisions themselves rather than introducing 'new' evidence. DOC's view having heard the submitter presentations on Day 1 was that there were matters relating to the biofouling provisions that would benefit from an oral explanation rather relying on a written s42A reply.
 - b. The sequencing of the evidence (coming after the Minister and fishing industry submitters had presented their cases but prior to the conclusion of submitter cases) was due in part to the need to accommodate various submitter witnesses in different time zones. This meant that there was time in the middle of Day 2, but not at the end of Day 2. The suggestion to sequence Ms Hucker's evidence was made to efficiently use available hearing time.
6. That said, the Minister acknowledges that the session took place over an hour, that Ms Hucker provided responses to specific questions from the Panel, and that the fishing industry submitters were not present to hear the evidence and discussion. In those circumstances, the Minister would not oppose the process step requested to allow submitters the opportunity to provide a written response to Ms Hucker's evidence given in the session on Day 2. The Minister considers that any response should be limited to any new matters raised in Ms Hucker's evidence that go beyond the s 32 or s 42A reports (and accompanying appendices) and on which submitters consider they have not had the opportunity to comment.
 7. The Minister's position is that if that step is provided for, there would not be a need to reconvene the hearing, although accepts that will be a matter for determination by the Panel.

Suggested process

8. At paragraph 6.3 of Minute 2, the Panel indicated as follows:

If our decision in sub paragraph 6.2 above is to make that invitation we will trigger that and set a time for discussions to occur and for the s42A

reporter to report back, also allowing for submitters to provide alternative versions of the forms if they wish.

9. Counsel suggests that a process to accommodate the anticipated discussions and the additional process step requested by submitters could be achieved by the following directions:
 - a. Any submitter who wishes to provide a written response to new matters raised by Ms Hucker's evidence presented on Day 2 of the hearing must do so by **5pm Monday 29 June 2026** (or a date one week following the Panel's direction on receipt of this memorandum);
 - b. In accordance with paragraph 6.3 of Minute 2, DOC is to initiate discussions with the relevant submitters² in relation to possible amendments to the biofouling inspection forms as proposed in PC1;
 - c. The s42A report writer must provide his section 42A reply in relation to submissions on the biofouling inspection forms by **5pm Thursday 16 July 2026**; and
 - d. Following the conclusion of the discussions in (b), any submitter who wishes to provide alternative forms may do so by providing those forms in writing to the Panel by **5pm Thursday 16 July 2026**.
10. In relation to (d), the Minister has no expectation of a further process step following the receipt of any alternative forms from submitters – i.e. no further s 42A reply. Rather from that point it will be for the Panel to evaluate the forms and make a determination.
11. Counsel wishes to inform the Panel that the s42A author Mr Gooding is travelling overseas and will be unavailable after 17 July until 17 August. The dates in paragraph 9 are suggested on the basis that this will provide a reasonable timeframe for the process and will accommodate Mr Gooding's availability.
12. If the Panel agrees with the proposed process, the Minister considers that the scope of Mr Gooding's s 42A reply to be provided by Thursday 16 July (above at 9(c)) should be extended to cover any reply matters relating to submissions on the biofouling provisions – i.e. Topic 7 in Mr Gooding's s 42A

² Being those identified in paragraph 1 of Minute 2.

report. This would be a slight departure from Minutes 2 and 3, which anticipated that the later s 42A reply would only address matters covered by Minute 2 (i.e. any proposed changes to the inspection forms)³. Minute 3, for example, specifically directed that the earlier s 42A reply (i.e. to be provided by 8 July) would include the proposed redrafting of Rule 29 now provided by HEL, which also relates to the biofouling provisions.

13. The Minister considers this change would be appropriate to ensure that any matters raised through submitters' written response (above at 9(a)) and/or through the discussions in relation to the forms (above at 9(b)) can be considered by Mr Gooding as part of his assessment of the overall topic and recommendations. As previously directed by the Panel,⁴ this s 42A reply would be strictly confined to response to any new issues or matters not previously addressed in Mr Gooding's s42A reply or evidence.
14. For completeness, Counsel acknowledges that in addition to Rule 29, HEL has also provided suggested drafting for Rules 40 and 56. While not strictly provided for by Minute 3, Counsel confirms that Mr Gooding will consider this proposed drafting as part of his s42A reply due on 8 July, unless the Panel has any concerns.



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22 June 2025

³ Minute 2, paragraph 7; Minute 3, paragraph 2.2.

⁴ Minute 3, paragraph 2.2.