

Before the Independent Hearings Panel  
At Department of Conservation

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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

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**Memorandum of Counsel on behalf of Seaeagle Fishing Limited**

18 June 2026

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**Seaeagle Fishing Limited's solicitor:**  
Maree Baker-Galloway / Conor Meredith  
Anderson Lloyd  
Level 2, 13 Camp Street, Queenstown 9300  
PO Box 201, Queenstown 9348  
DX Box ZP95010, Queenstown  
p + 64 3 450 0700 | f + 64 3 450 0799  
maree.baker-galloway@al.nz / conor.meredith@al.nz

**anderson  
lloyd.**

## May it please the Panel

- 1 This memorandum of Counsel is filed on behalf of Seaeagle Fishing Limited (**Seaeagle**) in response to Minute 2 of the Hearing Commissioners (**Commissioners**) dated 11 June 2026.
- 2 Up until today's date Seaeagle was self-represented. As a result of the events Minute 2 relates to, Seaeagle has sought assistance from counsel.
- 3 As per the directions of Minute 2, Seaeagle will participate in the opportunity to engage directly with the Department of Conservation (**DOC**) on how the forms associated with biofouling standards and inspection could be improved and rendered more navigable.
- 4 For completeness, this is without prejudice to Seaeagle's position that it considers the Commissioners should recommend that the notified changes to the forms, and removal of approved inspectors, be declined, and that it should otherwise recommend granting the relief sought as set out in Seaeagle's submission.

### *Process concerns*

- 5 Under the RMA, the Commissioners must '*establish a procedure that is appropriate and fair in the circumstances*'<sup>1</sup>. On this basis, Seaeagle are very concerned that:
  - (a) DOC was allowed, out of sequence, to introduce further evidence after Seaeagle had already presented and addressed the matters raised in DOC's initial presentation of its evidence from earlier at the hearing; and
  - (b) the material presented by DOC was extensive, of an extended duration, and broader than what would be expected in a 'reply'.
- 6 Specifically, in addition to the layout of the forms, Ms Hucker in her evidence, directly addressed several matters of direct interest to Seaeagle including:
  - (a) how a dive inspection would be practically implemented against the requirements within the form, including:
    - (i) threshold inspections and what an inspector is looking for;
    - (ii) how photographs and videos would be collected and of what;

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<sup>1</sup> Resource Management Act 1991, section 39(1)

- (iii) how inspections should occur, including when sea chests and niche areas can be excluded; and
    - (iv) how inspections should be scaled to reflect the relevant vessel; and
  - (b) Appendix 2 of Darryn John Shaw's evidence, this providing evidence from an approved diver contractor/inspector as to the significant additional workload and resulting cost increases from the proposed dive inspection standards and associated reporting requirements;
  - (c) the proposed deletion of Appendix 5, and therefore removal of the requirement that inspections be undertaken by an Approved Person;
  - (d) consistency as between the MPI Craft Risk Management Standard and the requirements of the form; and
  - (e) the possible preparation of vessel-specific forms.
- 7 Seaeagle was particularly concerned that during the discussion references were made to Samuel Penwarden, Seaeagle and the fishing industry generally as to its positions on various matters raised in Ms Hucker's additional evidence.
- 8 Particularly, concerning was the implication that Mr Samuel Penwarden was of the view that:
  - (a) development of vessel-specific forms would resolve several of the outstanding issues; and
  - (b) that during the pre-hearing meeting with the fishing industry, Mr Penwarden had not taken significant exception to the proposed amendments to the biofouling provisions.
- 9 For the record, at the pre-hearing meeting Mr Penwarden **did** take significant exception to the biofouling amendments. And as an experienced diver, he is deeply concerned that the presentation and discussion that took place on the 2<sup>nd</sup> day of the hearing severally misrepresented or misunderstood the complexity and logistics associated with dive inspections, and there is a real risk this is being significantly underestimated and not understood.
- 10 Seaeagle should have been provided an opportunity to clarify these matters, as well as the other matters directly relevant to Seaeagle as raised by Ms Hucker.

- 11 As to the view that appears to have arisen following the presentation of DOC's additional evidence, and as referred to at paragraph 2.1 of Minute 2, Seaeagle remains confident that they have **not** misunderstood the degree to which the proposed changes are more onerous than PC1's current provisions. Seaeagle would have directly responded to this at hearing if it had fairly been given an opportunity.

*Scope of response to Minute 2*

- 12 So that it can provide context as to Ms Hucker's additional evidence, Seaeagle wishes to ensure that the Commissioner's final directions allow for it to provide some further information as to the matters covered in the forms, including as to the inspection regime's broader operation (i.e., such as the costs and resources associated with these increased dive inspections).
- 13 In this regard, Seaeagle is concerned that the scope of the proposed process set out at paragraphs 6.2 and 6.3 of Minute 2 may be too narrow and limited, considering that the matters raised by Ms Hucker clearly extended beyond the relevant form's layout.

*Seaeagle's proposed process*

- 14 Seaeagle considers that in the interests of natural justice, this being a matter that the Commissioners have also raised is of concern in relation to DOC's presentation of additional evidence, that it should be given a substantive opportunity to respond.
- 15 On this basis, Seaeagle:
- (a) proposes that relevant submitters be given an opportunity to respond to the matters raised in Ms Hucker's additional evidence, which could be undertaken with:
    - (i) a written response; and / or
    - (ii) a limited reconvening of the hearing to allow these matters to be addressed fairly and to ensure all participants have the opportunity to ask questions to properly understand the operational implications of the PC1 changes; and
  - (b) confirms it is willing to engage further with DOC to see if an agreed position can be reached (it considers this can be done without the provision of separate additional specific directions).

- 16 For completeness, if the Commissioners determine that adequate scope should not be provided to enable a substantive respond to the matters raised, DOC's further evidence should be disregarded in its entirety, and the Commissioners recommend the changes to the forms and dive inspection requirements, and removal of approved inspectors be refused.

Dated this 18th day of June 2026



Maree Baker-Galloway  
Maree Baker-Galloway / Conor Meredith  
Counsel for Seaeagle Fishing Limited