

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 Seaeagle Fishing Limited

2 July 2026

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May it please the Panel

- 1 This memorandum of Counsel is filed on behalf of Seaeagle Fishing Limited (**Seaeagle**) in response to Minute 4 of the Hearing Commissioners (**Commissioners**) dated 25 June 2026.
- 2 As per the direction at paragraph 5.1 of Minute 4, Seaeagle provides its response below as to the new matters raised by Ms Hucker in evidence on day 2 of the hearing.

Additional matters covered in Ms Hucker's evidence

- 3 In addition to the layout of the Appendix 4 biofouling forms, Ms Hucker's additional evidence also addressed the following matters:
 - (a) the practical implementation of dive inspections against the requirements of the form, including:
 - (i) threshold inspections and the matters an inspector would assess;
 - (ii) the collection and subject matter of photographs and videos;
 - (iii) the conduct of inspections, including when sea chests and niche areas may be excluded; and
 - (iv) the scaling of inspections to reflect the relevant vessel;
 - (b) Appendix 2 to Darryn John Shaw's evidence, which records evidence from an approved diver contractor/inspector regarding the additional workload and resulting cost increases associated with the proposed dive inspection standards and reporting requirements;
 - (c) the proposed deletion of Appendix 5 and the resulting removal of the requirement for inspections to be undertaken by an Approved Person;
 - (d) consistency between the MPI Craft Risk Management Standard and the requirements of the form; and
 - (e) the potential preparation of vessel-specific forms.
- 4 Had Seaeagle been aware that DOC intended to present additional evidence and been present for that part of the hearing, it would have addressed these matters then. They are addressed below.

Practical implementation of the dive inspections against the forms

- 5 Seaeagle considers that the proposed changes are illustrative of the insufficient consultation that has been undertaken with operators and dive inspectors, this having the practical effect that many of the amendments are not workable, an issue that would have become apparent had DOC consulted adequately so that DOC understood the practical realities of dive inspections.
- 6 In particular, the proposed changes will impose extensive additional requirements, giving rise to significant cost and resourcing concerns, including by requiring:
 - (a) additional information to be provided before inspection, including vessel schematics and associated new record-keeping obligations;
 - (b) inspection of a broader range of areas;
 - (c) three photographs for each area, rather than one, with extensive video footage also now required;
 - (d) additional photographs and footage in low-light conditions, without specifying when that requirement is triggered or the extent of the additional material this is required;
 - (e) all photographs and videos to be labelled;
 - (f) justification in the forms for any areas not inspected;
 - (g) a significant shift in responsibility to operators, resulting from the proposed deletion of Appendix 5 and the associated removal of the Approved Person requirements; and
 - (h) continuing to require a Level of Fouling rank but deleting the associated note in Form 2 that DOC will provide training on how to undertake that ranking process, again further shifting the responsibility to operators.
- 7 By way of context, Mr Penwarden estimates that, for one of Seaeagle's scampi vessels, the proposed forms would require photographs of approximately 155 to 160 locations, producing about 465 to 480 photographs and approximately 3 GB of data, based on 6.5 MB per photograph. They would also require 1.2 to 1.5 hours of video footage, equating to approximately 25 GB.
- 8 By comparison, his most recent inspection under the existing provisions covered 88 locations, with only one photograph required per location, and no video requirements.

- 9 The proposed requirements therefore materially increase both the scope of the dive inspection and the associated reporting burden, without evidence that this would improve biosecurity outcomes. Given the already significant number of inspections required, DOC has not adequately accounted for the additional costs arising from the increased inspection and reporting requirements.
- 10 In terms of resourcing, it has been suggested that the deletion of Appendix 5, and the associated removal of the Approved Person requirement, would address any concerns as the effect of this is that inspections could instead be undertaken by any commercial dive company or by Seaeagle itself.
- 11 This is an incorrect assumption. The number of suitably qualified commercial divers in New Zealand is limited, and the proposed digital documentation requirements are likely to create a substantial resourcing burden that the available operators may struggle to meet. Further, many of those requirements fall outside a commercial diver's usual expertise and are likely to require support from an IT contractor, a further additional cost.
- 12 Further, the suggestion by DOC that an operator such as Seaeagle could simply undertake the inspections itself is incorrect. At a minimum, undertaking such inspections would require:
 - (a) appropriately qualified personnel, of which Seaeagle does not currently have access to, in possession of:
 - (i) occupational diving certificates for the relevant individuals, likely supported by current dive medicals;
 - (ii) a Certificate of Competence from WorkSafe New Zealand; and
 - (iii) commercial-grade equipment, including lighting, underwater cameras and housings, and specialised scuba equipment capable of operating for extended periods in challenging conditions, together with the associated servicing and maintenance requirements; and
 - (b) substantial additional time and resources, with an inspection of nature proposed likely to take at least two days for an individual operator, with significant personal risk and liability incurred.

Appendix 2 of Darryn John Shaw's evidence

- 13 In relation to the increased costs arising from the amended forms and associated inspection requirements, Seaeagle was surprised by DOC's dismissive treatment of Appendix 2 to Darryn Shaw's evidence for Sanford

Limited. That appendix included an email from Mr Rob Feist of Divepro Limited, dated 2 June 2026, which provided an initial assessment of the additional costs likely to result from the proposed amendments to the Appendix 4 forms and the biofouling provisions more generally.

- 14 DOC appeared to suggest that Divepro may not have understood the current standards. Seaeagle does not accept that suggestion. Divepro undertakes the majority of dives for the scampi fleet and is listed on DOC's published register of Approved Hull and Niche Area inspectors. DOC should therefore have been aware of Divepro's relevant experience.
- 15 In those circumstances, Seaeagle considers that the Commissioners may have been misled by the implication that Mr Feist lacked an understanding of the current standards and submits that his evidence should be given appropriate weight.

Proposed deletion of Appendix 5 – Approved Persons

- 16 Seaeagle is concerned that there has been insufficient discussion and evidence regarding the effectiveness of the proposed approach, particularly as to:
 - (a) the removal of the requirement for inspections to be conducted by an Approved Person, meaning they may instead be carried out by individuals without appropriate qualifications or relevant practical experience; and
 - (b) that this absence of qualification and experience requirements for inspectors, places significant reliance on a DOC staff member's desktop assessment (which will only occur if requested) of a large volume of material, without clear guidance on the training that will be provided to undertake that assessment.
- 17 In Seaeagle's experience and particularly given the significant volume of evidential material required by the amended forms, this material will be difficult to interpret, including because it may be unclear what a photograph is intended to show. Although the requirement to label all photographs and videos may assist, that process is itself highly burdensome given the amount of material required.
- 18 The existing process, under which inspections are undertaken by an Approved Person with whom operators have established relationships, who are familiar with the vessels, and who will have full situational awareness of what is being inspected (i.e., as they themselves will be physically

undertaking the inspection), is considered materially preferable to the proposed approach.

- 19 In effect DOC is proposing to base its reliance and confidence that biofouling measures are being applied and followed upon additional photos and video footage, possibly both undertaken by, and then interpreted by, individuals, without adequate qualifications and training, rather than on the knowledge and experience of an Approved Persons.
- 20 In addition, if DOC does not review the information provided in near real time, this could create significant practical issues. For example, if Seaeagle submits photographs and video from an inspection and DOC does not review that material for 48 hours, Seaeagle may not be notified of any concern until the vessel is a significant distance away and without access to the necessary cleaning / inspection equipment.

Consistency between the CRMS-2023 and the requirements of the amended forms

- 21 DOC appears to rely on alignment with MPI requirements as a rationale for reducing its own oversight responsibilities. While the question of whether MPI maintains an Approved Persons regime was addressed at the hearing, the more fundamental question is why MPI does not do itself have this requirement was not considered.
- 22 In short, MPI deals with a very large number of international vessels, and inspections are often undertaken by divers in overseas locations before arrival in New Zealand. In those circumstances, an approved diver regime would be difficult to administer and regulate.
- 23 DOC does not face the same practical constraints in relation to vessels travelling to the Subantarctic Islands. Those vessels comprise a small number of operators, departing from specific New Zealand ports, and the administration of an Approved Persons regime is therefore both practicable and manageable.
- 24 Importantly, although the CRMS for Vessels 2023 is referenced in the Section 32 Report as a benchmark, it is directed at international vessels entering New Zealand's territorial waters. It is not intended to apply to domestic vessels operating solely within New Zealand, including the domestic scampi fleet. Applying the same level of documentation and inspection detail to those vessels is disproportionate to the risk they pose and as discussed imposes significant, unnecessary compliance costs that are likely to be difficult to meet in practice, particularly from a resourcing perspective.

- 25 In any event, in Seaeagle's view, the current biofouling and hull cleaning regime is already fully aligned with the International Maritime Organization (IMO) 2023 Biofouling Guidelines and, by extension, the CRMS-2023. Further amendments, particularly those affecting Seaeagle's two domestic vessels, are therefore unnecessary and risk imposing disproportionate compliance costs without delivering any additional biosecurity benefit.

Preparation of vessel-specific forms

- 26 Seaeagle is concerned that, during Ms Hucker's presentation of additional evidence, references were made to the positions of Mr Penwarden, Seaeagle, and the fishing industry generally on matters addressed in that evidence. In particular, Seaeagle is concerned by any implication that Mr Penwarden considered vessel-specific forms would resolve the outstanding issues.
- 27 Mr Penwarden accepts that the forms could be improved and considers that one possible improvement would be to provide for vessel-specific forms identifying the particular niche areas requiring inspection, to be renewed at each slipping cycle. However, that would not resolve the fundamental issues associated with PC1 and the proposed amendments to the biofouling provisions. At most, it may improve their workability to a limited extent.
- 28 Seaeagle maintains that the Commissioners should recommend declining the notified changes to the forms and the proposed removal of approved inspectors and should otherwise recommend granting the relief sought in Seaeagle's submission.
- 29 On that basis, and without prejudice to the position set out above, Seaeagle will, in accordance with the directions in Minute 4, 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.

Dated this 2nd day of July 2026



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