

Kermadec and Subantarctic Islands: regional coastal plan: Plan Change 1 – Minute No. 4 of Hearing Commissioners

1. This Minute is issued following the receipt of memoranda of counsel from several submitters relating to some process issues, some of which we had already foreshadowed.
2. In particular, Seaeagle Fishing Limited (“Seaeagle”) considered they had been shortchanged in any ability to respond to the s.42A reply evidence for submissions presented after Seaeagle had already presented their submissions and had addressed the matters raised in the DoC initial presentation. Minute No.3 was at least in part intended to address such issues.
3. However, the memorandum of counsel for Seaeagle seeks to go further than that and, after listing various matters as set out in paragraph 6 of that memorandum that were in addition to the layout of the forms, raised a concern both that it had not had the opportunity to respond, but in particular the position of Mr Penwarden on the complexity and logistics associated with the forms was different from what had been assumed, and any view that Seaeagle may have misunderstood the degree to which PC1 would be more onerous than the current provisions was incorrect.
4. We agree that Seaeagle and other submitters concerned with biofouling have been shortchanged in a process sense. We also agree that the current scope of Minute No. 3 maybe too narrow to properly meet the resulting natural justice concerns. We therefore accept that the relevant submitters should be given a substantive opportunity to respond.
5. The Minister filed a memorandum of counsel in response dated 22 June 2026. While providing a cogent explanation for what had happened, the Minister helpfully and sensibly suggested some further directions to address this, and we have largely adopted those. Accordingly we direct:
 - 5.1. The relevant submitters (see paragraph 1 of Minute No. 2) may provide a written response to new matters raised by Ms Hucker in evidence on day 2 of the hearing and must do so by 5pm one week from the date of this Minute.
 - 5.2. In accordance with paragraphs 6.3 of Minute No.2 DoC is to initiate discussions with the relevant submitters in relation to possible amendments on the biofouling inspection forms proposed in PC 1.

- 5.3. The s.42A report writer must provide his s.42A reply in relation to the submissions on the biofouling inspection forms by 5pm Thursday 16 July 2026.
- 5.4. Following conclusion of the discussions in para 5.2 above, any submitter who wishes to provide alternative forms may do so by providing those forms to the Panel by 5pm Thursday 8 July 2026.
6. The Minister's memorandum also sought that the scope of the s.42A reply be extended to cover any reply matters relating to submissions on the biofouling provisions – i.e. topic 7 in Mr Gooding's s.42A report – and we are happy to accede to that and Minutes 2 and 3 can be treated as varied accordingly. For the avoidance of doubt, it is recorded that Mr Gooding's reply will consider HEL's proposed drafting of Rules 40 and 56 as part of his s.42A reply due on 8 July 2026.

Dated: 25 June 2026



.....
R.J.B. Fowler KC
Chairperson