

Section 42A Officer's Final Reply (Topic 7)

Proposed Plan Change 1 — Regional Coastal Plan — Kermadec and Subantarctic Islands

Report prepared by: Jesse Gooding

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Department of
Conservation
Te Papa Atawhai

**Te Kāwanatanga
o Aotearoa**
New Zealand Government

1. Introduction

1. My name is Jesse Quentin Gooding. I prepared the Section 42A Report and Section 42A Summary Statement for Proposed Plan Change 1 to the Regional Coastal Plan: Kermadec and Subantarctic Islands (PC1), and the subsequent Section 42A Reply Report dated 08 July 2026. I have read the submissions, further submissions, submitter evidence, memoranda, and other material relevant to this report. My qualifications and experience are set out in my Section 42A Report, dated 15 May 2026.
2. I reconfirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report.
3. In my s42A report, I divided my consideration of submissions into seven topics. This report provides my final reply in relation to Topic 7, being the proposed vessel hull and niche area biofouling provisions in PC1.
4. The procedural directions relevant to this report have developed following the hearing held on the 9th and 10th June 2026. In accordance with Minutes 2 – 6, I provided my s42A Reply addressing all other topics (Topics 1 – 6) on the 8th July 2026.
5. I have divided this report into two sub-topics. Sub-topic 1 deals with the package of changes I have recommended to the biofouling inspection requirements and associated forms as a result of engagement with submitters, in particular the fishing industry interest group of submitters.¹ Sub-topic 2 addresses the changes to Rule 29 proposed by Heritage Expeditions (2018) Limited (**HEL**).²
6. My report should be read in conjunction with the following appendices:
 - a. Summary of changes from operative plan through to current recommendations;
 - b. Table 1 Performance Standards referred to in Rules 29 to 32;
 - c. Appendix 4 front end;
 - d. Appendix 4 Form 1 tracked;
 - e. Appendix 4 Form 1 Clean;
 - f. Appendix 4 Form 2 tracked;
 - g. Appendix 4 Form 2 Clean;
 - h. Appendix 4A Common Niche Areas;
 - i. Appendix 5 Approved Inspectors;

¹ Sanford Limited (submitter no.5), Seaeagle Fishing Limited (submitter no. 8), Seafood New Zealand / Deepwater Council (submitter no.11).

² Submitters No.3. See the Memorandum of Counsel on behalf of Heritage Expeditions Limited, dated 18 June 2026.

- j. Appendix 6 Forms A and B;
- k. Technical Report Dr Daniel Kluza 30/9/26; and
- l. Feedback from submitters on the recommended changes.

2. **Sub-topic 1: Vessel hull and niche area inspection requirements**

2.1 Engagement with fishing industry submitters following hearing

7. Following the hearing, the Commissioners provided relevant submitters³ with a further opportunity to respond to matters arising from the hearing in relation to this sub-topic and to engage with DOC on the proposed drafting and operation of the PC1 biofouling inspection regime and associated forms. This process was established and refined through Commissioners' Minutes 2 and 4. In accordance with Minute 2, memoranda on proposed procedural steps were filed by Seaeagle Fishing Limited, HEL, and the fishing industry interest submitters⁴ (the **Fishing Industry Interests**) on 18 June 2026. Further memoranda were subsequently filed by Seaeagle Fishing Limited and the Fishing Industry Interests (jointly, the **fishing industry submitters**) in response to Minute 4.
8. In their responses to Minute 4, the fishing industry submitters also outlined their concerns and provided further information on the practical operation and cost of the proposed inspection requirements, including the additional photograph and video requirements, the increased number of inspection areas and associated form length and form complexity, the practical challenges of undertaking dive inspections, and the implications of removing the approved inspector regime.
9. The submitters maintained that the increased evidential requirements would materially increase inspection time, resourcing and cost, and considered that the expertise and certainty provided by the approved inspectors regime should be retained rather than replaced by requirements for more extensive documentary evidence.
10. Consistent with the Commissioners' directions, DOC then engaged with the fishing industry submitters to consider whether the concerns raised could be addressed while retaining an effective biofouling inspection regime.
11. As a result of this engagement, I developed a package of proposed amendments which were provided to the fishing industry submitters for their feedback.
12. Other relevant submitters⁵ were then advised of the proposed changes and were also given an opportunity to provide feedback.

³ As defined in paragraph 1 of Minute 2.

⁴ Sandford Limited and Seafood New Zealand/Deepwater Council.

⁵ New Zealand Defence Force (submitter no. 2), Heritage Expeditions (2018) Limited (submitter no.3), New Zealand Sealion Trust (submitter no. 6) and Southland Conservation Board (submitter no.7).

13. This engagement has informed the final package of amendments addressed in this Reply Report.

2.2 Discussion and recommendations

14. Having discussed the changes to inspection requirements proposed in PC1 with the relevant submitters to understand and address their concerns, I have recommended a suite of changes to the following parts of the Plan:

- a. The Table 1 Performance Standards referred to in Rules 29 and 30;
- b. The ‘front end’ of Appendix 4;
- c. The addition of a new Appendix 4A which lists common niche areas that will likely be inspected on a vessel and recorded in Forms 1 and 2;
- d. Form 1 in Appendix 4;
- e. Form 2 in Appendix 4;
- f. Appendix 5; and
- g. Forms A and B in Appendix 6 which have been amended to mirror the changes made to Forms 1 and 2.

15. The marked-up changes are provided in Appendices b. to j. This includes “clean” copies of Appendix 4 Forms 1 and 2 for ease of reading.

16. Overall, the proposed changes seek to address the concerns raised by the fishing industry submitters by reinstating the role of approved inspectors under the Plan and reducing the administrative burden on vessel operators (and other plan users) by reducing the number of hull areas to be inspected (and, correspondingly, the evidential requirements). As described further below, I consider that the proposed changes strike the right balance between maintaining an effective biofouling inspection regime, with appropriate oversight by the Minister of Conservation, while addressing the concerns raised by submitters about administrative burden on them. I have prepared a table which sets out the proposed changes on an issue-by-issue basis- **Appendix a Summary of changes from operative plan through to current recommendations**. The table compares my recommended changes with the Operative Plan and PC1 and explains my rationale for the changes.

17. The proposed changes include:

- a. Reinstating the requirement for vessel hull and niche area inspections to be undertaken by inspectors approved by the Minister of Conservation, by reinstating Appendix 5 with some amendments, being:
 - i. Removal of Clause 9 (requirement for approved inspectors to be independent of the vessel owner/operator) and removing requirement in Clause 3 for the two references to be independent. These changes are to address the NZDF submission point 2.1, relating to the ability of Navy dive unit HMNZS Matataua to become approved inspectors. This amendment is explained further at paragraphs 33-35 below.

- ii. The addition of Clause 4(c) to Appendix 5 to require approved inspector candidates to confirm they are competent in the use of the Level of Fouling (LOF) ranking system. This change is intended to provide further assurance that approved inspectors will be able to carry out their function in accordance with Appendix 4.
- b. A reduction in the number of hull areas required to be inspected, through the removal of the requirement to inspect the hull in vertical transects, at intervals of 1 m. The revised hull areas to be inspected, as now listed and in Forms 1 and 2, are:
 - i. a continuous horizontal transect for the entire length of each side of the vessel (port and starboard) and the transom to a depth of at least 1m from the water/plimsoll line - divided into stern, amidship and bow (for each side) and port, mid and starboard for the transom.
 - ii. ‘vertical deep’ and “flat bottom” for the stern, amidship and bow on each side of the vessel.
- c. Of note, these changes do not change the spatial extent of the areas to be inspected, but change the *number* of areas, which has the corresponding effect of reducing the evidential requirements (and therefore the administrative burden) as those requirements apply per area. I have proposed including a new Figure (Figure A4) in Appendix 4 to show the location of the relevant hull areas.
- d. No change in the intended approach of PC1 to niche areas. Under PC1, all niche areas on the vessel must be identified and recorded in the forms. Identified niche areas must be inspected unless it is not practicable to do so, in which case the reason must be recorded. Wording changes have been made to Appendix 4 to make the niche area identification, inspection and record-keeping requirements clearer, including the requirement to record the specific reason when a niche area is not inspected. Recording the specific reason for not inspecting a niche area will assist DOC in auditing inspection processes and performance of approved inspectors and will allow dialogue between DOC and inspectors in relation to available inspection measures and advancements in technology. This does not represent a change to the intended approach in PC1. However, there was some ambiguity as to whether PC1 introduced a threshold of ‘validity’ in terms of the recorded reasons for not inspecting a niche area. That is not the case and that has been clarified by the proposed drafting amendments.
- e. Forms 1 and 2 in Appendix 4 have been significantly shortened by:
 - i. reducing the number of hull areas to be inspected (see above at 17 b. and c.), and
 - ii. removing the list of common niche areas from the forms themselves. Instead, common niche areas are listed in proposed Appendix 4A. Appendix 4 has been amended to

require an inspector to add all relevant niche areas from the Appendix 4A list that are present on the vessel to Forms 1 and 2, in addition to any niche areas that are not listed in Appendix 4A but that are present on the vessel being inspected.

- f. A reduced number of photographs is required to be taken. While the requirement to take a minimum of 3 photographs of each hull area and niche area inspected will be retained (except for smaller “miscellaneous” niche areas for which only 1 photograph is required), the reduction in photographs is achieved by:
 - i. reducing the number of hull areas to be inspected; and
 - ii. amendments to Appendix 4 to confirm that where a niche area is identified but not inspected, only one photograph is required.
 - g. Video requirements are retained (one video for each listed area) but the number of video locations is reduced by the reduction in listed hull areas.
 - h. The specific requirements for how the photographs and videos are to be taken that were included in PC1 have largely been retained. However, the drafting has been reviewed and amended to ensure requirements for photographs and videos are clear and certain so plan users can be certain they are complying with requirements. Drafting amendments also clarify that photographs and videos must be representative of what is seen in the area inspected.
 - i. Providing photographs in a PDF report is no longer required, but the requirement to label photographs and cross reference them to Form 2 is required, to assist DOC to identify the photographs relevant to each inspection area.
 - j. PC1 did not specify how long photographs and videos are to be stored by operators. Appendix 4 has been amended to specify a minimum five years storage.
18. The fishing industry submitters support a number of the above amendments developed through the engagement process, including clarification of the inspection requirements for niche areas, simplification of Forms 1 and 2, reinstatement of the approved inspector regime, removal of the requirement to provide photographs in a PDF report, and clarification of the requirements for storage of photographs. In their feedback on the proposed drafting, they nevertheless sought some further changes to the front end of Appendix 4, Form 2 and Table 1 (performance standards). The feedback provided from these submitters, including further proposed drafting changes, was provided via memoranda and is attached as Appendix L.⁶

19. In particular, the fishing industry submitters considered that:

⁶ While this feedback was provided on a without prejudice basis, the submitters confirmed via emails on 28/09/2026 (Seaeagle Fishing Limited) and 29/09/2026 (Fishing Industry Interests) that the memoranda could be attached to this reply.

- a. the requirements for video footage should be removed, as the additional inspection and storage costs associated with requiring video footage cannot be justified with photographs providing the more reliable basis for the LOF assessment required by the forms; and
 - b. a lesser number than three photographs should be permitted to be taken where the approved inspector using their skill and experience considers that fewer photographs are sufficient to be representative of what is seen in the listed area (in short, the obligation should be to ensure representative photos are obtained – not potentially triplicate photos of the same thing).
20. The Fishing Industry Interests also sought retaining clarification that the approved inspector is responsible for providing the completed Forms 1 and 2 to the vessel operator, and that the vessel operator is then responsible for providing those forms to DOC. They further sought removal of the Mode and Range LOF fields from Form 2, while retaining a column for recording the LOF rank cross-referenced to each photograph.
21. I do not recommend accepting the fishing industry submitters request to remove the requirement to take a minimum of three photographs and a video for each listed inspection area. The purpose of retaining these requirements is not to determine whether an individual inspection has passed or failed to meet Performance Standard 1.1, in Table 1 - that will be the task of approved inspectors. Rather, they provide DOC with an evidential record, available on request, against which the performance of approved inspectors can be monitored over time. One photograph, in the professional judgement of an approved inspector, may constitute representativeness of a niche or hull area, however, if additional⁷ photographs and video are stored by the operator and available on request, DOC will be able to test whether the representative standard is being met as appropriate. This would enable DOC to actively monitor the performance of approved inspectors and educate or vet them as appropriate.
22. This is particularly important given the proposed amendments reinstate the approved inspector regime that was proposed to be removed by PC1. PC1 offset the removal of the approved inspectors regime with a requirement to inspect, and record information in relation to, more hull areas than in the operative plan (i.e. the 1 m transect approach described above), which resulted in greater evidential requirements and therefore a greater administrative burden. The updated approach that I am recommending following the engagement with submitters reinstates approved inspectors as the principal assurance mechanism, while proportionately reducing the level of information required for each inspection. However, a base level of information is still required to ensure that the approved inspector regime is operating effectively.
23. Having the additional representative photographs and video available will also support DOC's oversight of compliance with Performance Standard 1.2 in Table 1, which sets the biofouling threshold between inspections. The photographs and video will provide a contemporaneous record of the condition of the inspected areas against which subsequent inspection results and the vessel's

⁷ At least three photographs of each area.

ongoing biofouling condition can be considered. This will enable DOC to identify whether an approved inspector's LOF assessments are being applied consistently and accurately and, where appropriate, whether further scrutiny of an inspection or the vessel's compliance with Performance Standard 1.2 is warranted.

24. I acknowledge the concern of the fishing industry submitters that keeping video will create a storage burden. In my opinion, video remains an appropriate means of capturing the extent of any biofouling within the inspection area, which compliments rather than duplicates the photograph requirements, and that the number of areas have been reduced via the other recommended changes. While video may come at some additional cost to operators, I do not anticipate this would be unduly high, and it would not outweigh the benefits of DOC having access to video to retain oversight of the inspection regime in the manner discussed above.
25. In my view, the appropriate trade-off for the reinstatement of the approved inspector regime is therefore that sufficient photographic and video evidence is available to scrutinise the performance of approved inspectors over time. In addition, the level of photographic and video evidence proposed will support monitoring and compliance with Performance Standard 1.2.
26. I do, however, recommend accepting the Fishing Industry Interests' request to remove the Mode and Range fields from Form 2 while retaining the requirement to record a LOF rank to be cross-referenced to the relevant photographs. I consider this to be a simplification of the form that does not materially reduce DOC's ability to undertake oversight of approved inspectors or undermine the quality of inspections. The LOF rank, together with the required photographic and video record, continues to provide a record of the inspector's assessment. The Mode and Range provide additional information about the distribution of fouling observations within an area but are not required to determine whether an inspection has passed or failed and are not otherwise necessary to enable DOC to review the performance of the inspector. Removing these fields therefore reduces unnecessary reporting complexity while retaining the core information required for inspections.
27. I also agree that a LOF rank does not need to be ascribed to the video taken for each listed area. This was not the intention of PC1. I have updated the drafting in Clause 2.1(f) to remove the reference to 'video'.
28. The Fishing Industry Interests have suggested changes to the front end of Appendix 4 at 1.3 (b) and (c) to clarify that the approved inspector must provide completed inspection forms and photographs to the vessel operator as soon as practicable and that the operator must subsequently provide these to DOC. This wording was used in the operative plan and in PC1, but I had proposed removing it when updating the drafting Appendix 4 to ensure its clarity.
29. In my opinion, it is unnecessary for Appendix 4 to detail how and when the inspection forms are delivered to the operator by the inspector, or who provides the inspections results to DOC, although it is the operator relying on the plan provisions to enter the islands that will need to comply with the plan requirements. The more important point is that after inspection results are obtained in accordance with the relevant Performance Standards and Appendix

4, they reach DOC. By whom they are delivered is immaterial to the effectiveness of the inspection process. That said, I am comfortable with reinstating these words if they will address submitter concerns, given they have no bearing on the overall effectiveness of the inspection regime.

2.3 Feedback from other submitters interested in the biofouling topic

30. As outlined in their memorandum dated 18 June 2026 in response to Minute 2, HEL maintain an interest in working with DOC and the fishing interests' submitters on how the biofouling inspection forms could be improved and rendered more navigable. Nathan Russ, on behalf of HEL attended one meeting with DOC and fishing interest submitters on 6th July to discuss these matters. From that point on HEL have not provided further feedback on the proposed amendments. I understand HEL's position is that regardless of the amendments proposed to the inspection forms and procedures, their primary relief on Topic 7 is to amend Rule 29. I address this in sub-topic 2 below.
31. The New Zealand Defence Force (NZDF)⁸, the New Zealand Sealion Trust (NZSLT)⁹ and the Southland Conservation Board (SCB)¹⁰ made substantive submissions on the PC1 biofouling changes. Accordingly, I invited these submitters to review and comment on the proposed updated provisions.
32. Ponant¹¹ and Barine Developments Limited (BDL)¹² also lodged submissions on the biofouling topic. I understand BDL are directly associated with Seaeagle Fishing Limited, so I have not consulted with them separately. Ponant have one submission point¹³ on the glossary which I have considered under the wider Biofouling topic in my primary s42A Report. That submission point requested changes of the Biofouling Record Book abbreviation from 'BRB' to 'BFRB'. I recommended accepting that submission point in my s42A Report.¹⁴ The updated provisions do not alter the BFRB abbreviation, so Ponant have not been separately consulted on the proposed changes.
33. The NZDF have a submission point¹⁵ in support of PC1 where it proposed deletion of the words "*inspections must be undertaken by a person approved by the Minister of Conservation pursuant to Appendix 5*" from Performance Standard 2.2 in Table 1. Their rationale for supporting that change was that removal of the approved inspector's regime from the Plan will enable the Navy dive unit HMNZS Matataua to undertake biofouling inspections on Navy vessels.
34. Cognisant of this submission point, I have engaged with the NZDF in relation to the proposed reinstatement of the approved inspectors' regime with the result being agreement to make the changes to Clause 9 and Clause 3 in Appendix 5. Specifically, these changes are to:

⁸ Submitter no. 2

⁹ Submitter no. 6

¹⁰ Submitter no. 7

¹¹ Submitter no. 4

¹² Submitter no. 10

¹³ Submission point 4.3

¹⁴ Section 9.1.1, paragraphs 203 and 204, page 49.

¹⁵ Submission point 2.1

- a. delete Clause 9 in Appendix 5, removing the requirement for approved inspectors to be “independent” of the vessel operator, and
- b. delete the word “independent” from Clause 3 in Appendix 5 as follows:

“3. The required application for approval must contain the name, address, contact details (including phone number(s) and email address), relevant qualifications and practical experience of the individual, or in the case of an organisation of its employees, contractors or members, and two ~~independent~~ references as to relevant professional expertise.”

- 35. The effect of these changes is that the NZDF will be able to progress an application to register the relevant Navy divers as approved inspectors in accordance with Appendix 5. Two references will still be required to verify the Navy divers will have the relevant professional expertise, but these will not necessarily have to come from outside of the NZDF, which the NZDF say would have presented a practical difficulty. The NZDF have advised these changes will address their concerns.
- 36. Upon reviewing the proposed changes to the PC1 inspection requirements the NZSLT raised concerns about removing the independence requirement for approved inspectors and suggested that failure to inspect a niche area should result in a failed inspection, regardless of the reasons (see Appendix I).¹⁶
- 37. The Southland Conservation Board (SCB) similarly raised a concern about the requirement for approved inspectors to be independent. The SCB otherwise supported the proposed changes.
- 38. I do not recommend further amendments as a result of this feedback. The Minister retains oversight of approved inspectors and can monitor and, where necessary, revoke an inspector’s approved status. Appendix 5 now requires appropriate qualifications and experience, two references, and that approved inspector candidates confirm their competence in LOF ranking. Appendix 4 retains appropriate evidence-gathering requirements, including a minimum of three photographs and video per area inspected. This means that DOC can scrutinise those who are performing inspections more than in PC1, which removed the approved inspector regime and contained no equivalent DOC oversight or independence requirement.
- 39. In relation to NZSLT’s feedback regarding niche areas that are not inspected, the proposed drafting clarifies rather than changes the intended PC1 approach: all niche areas must be identified and inspected where practicable, with reasons recorded to demonstrate why an inspection could not be undertaken. The intention of PC1 was not to require inspection of all identified niche areas where there may be legitimate reasons not to do so.
- 40. I have attached the feedback received from the Southland Conservation Board and New Zealand Sea Lion Trust at Appendix I.

2.4 Expert review of updated amendments

¹⁶ Email correspondence dated 14 September 2025, from Shaun McConkey, New Zealand Sealion Trust.

41. In recommending these changes I have considered the technical advice of Dr Daniel Kluza, Principal Adviser, Biosecurity Risk Advice at Biosecurity New Zealand, Ministry for Primary Industries (Appendix k). Dr Kluza reviewed the proposed amendments to Appendix 4, Forms 1 and 2, Appendix 4A and the relevant Performance Standards. He concludes that, if the amendments are adopted, the provisions in the Regional Coastal Plan will remain appropriate for managing hull biofouling risk for vessels travelling to the Kermadec and Subantarctic Islands.
42. Dr Kluza concurs with DOC that there is no substantive change to the management of niche areas from the package of changes that were notified in PC1. In particular, Dr Kluza supports that the approved inspector must identify all niche areas, including sea chests, and inspect them unless to do so would be unsafe, risk damage to equipment or is otherwise not practicable to inspect. He understands that requiring the reason for non-inspection to be recorded will assist DOC to audit inspections and inspectors and improve inspection practice and supports the approach. Dr Kluza considers the amendments do not alter the effectiveness of PC1 in managing niche area biofouling risk.
43. In relation to other hull areas, Dr Kluza notes that the PC1 approach of requiring inspection over 1 m transects resulted in a large number of listed inspection areas and corresponding administrative and evidential requirements. He considers the proposed replacement of those transects with broader hull areas, together with retention of a continuous horizontal transect at the water or plimsoll line, remains an appropriate method of inspecting a vessel for the presence of biofouling.
44. Overall, I consider the amendments retain the effectiveness of the PC1 inspection regime while reducing the administrative burden on plan users. This conclusion is supported by Dr Kluza's advice, which confirms that the amended approach remains appropriate for managing vessel biofouling risk and does not alter the effectiveness of PC1 in relation to either niche areas or other hull areas.
45. I recommend the proposed changes in Appendices b to j be adopted for inclusion in the Plan. I therefore recommend 27 submission points from the following submitters be accepted in part:
- a. Southland Conservation Board points 7.3, 7.17 - 7.20 and 7.24 - 7.26
 - b. New Zealand Sea Lion Trust points 6.18 – 6.22 and 6.25 – 6.27
 - c. Seaeagle Fishing Ltd points 8.1, 8.16 and 8.17
 - d. Barine Developments Ltd points 10.2 and 10.17
 - e. Seafood New Zealand/Deep Water Council points 11.2 and 11.7
 - f. Sanford Ltd 5.11
46. I have undertaken a further evaluation of the proposed changes in Appendices b to j in accordance with section 32AA of the RMA. I consider the recommended provisions remain the most appropriate means of achieving the objectives of PC1, having regard to their effectiveness and efficiency, the reasonably practicable alternatives, and their costs and benefits. As discussed above and

in the technical advice of Dr Kluza, the changes reduce administrative and compliance costs while maintaining an effective biofouling risk management framework.

3. Sub-topic 2: Rule 29

3.1 Engagement with HEL following the hearing

47. This sub-topic arises from HEL's submission on the PC1 biofouling changes:

*"The biofouling inspection and standards in the RCP should be replaced with a requirement that vessels comply with MPI's requirements for long-stay vessels in the Craft Risk Management Standard for Vessels 2023. It is inefficient and unnecessary duplication for DOC to be running a separate system when MPI has an established and proven regime. MPI has the resources, expertise and systems already in place. DOC should not be wasting its resource trying to duplicate MPI's role."*¹⁷

48. Following the hearing on 9-10 June 2026, HEL was directed to provide the specific drafting changes they seek to give effect to the above relief.¹⁸ I was directed to consider their proposed changes and make recommendations on them.

49. HEL subsequently provided two iterations of their preferred drafting — an initial version presented via memorandum of counsel dated 18 June 2026 (the **initial version**) and a revised version by email to DOC on 28 August 2026 (the **revised version**). See below at paragraphs 51 and 53 respectively. Both versions seek to introduce a new limb of permitted activity Rule 29.

50. At the outset I note that changes to the permitted activity rules requiring compliance with biofouling performance standards, including permitted activity Rule 29, were not proposed by PC1. Proposed changes in relation to the management of hull biofouling included minor amendments to some of the performance standards in Table 1¹⁹ and changes to Appendix 4 (which outline the detailed requirements for undertaking inspections, including Forms 1 and 2) and consequential changes to the forms in Appendix 6 (relating to risk assessments for the purposes of Rule 31). There were no changes proposed to the biofouling risk management rule framework in the Coastal Plan and how it applies to vessels or individual operators. The proposed changes were limited to how inspections will be undertaken and what evidence needs to be gathered and provided to support compliance with the rules.

51. The only change to Rule 29 itself that has been notified in PC1 is the addition of the letter 'F' to the Biofouling Management Plan abbreviation (change from 'BMP' to 'BMFP') which is consequential to the proposed change to that abbreviation in the glossary. I make further comments on the issue of scope

¹⁷ Submission points 3.7, 3.8, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.18, 3.19.

¹⁸ Hearing Commissioners' Minutes 2 and 3, HEL's memorandum of 18 June 2026.

¹⁹ PC1 proposed minor changes to Performance Standards 1.2, 1.3, 2.1, 2.3, 3.1, 3.2 and the addition of Performance Standard 3.3. No changes to Performance Standard 1.1 which establishes the slime layer and goose barnacle threshold were proposed in PC1.

below at paragraphs 65-68 after commenting more generally on the changes proposed by the HEL drafting.

52. HEL's initial drafting proposed in its 18 June 2026 memorandum to the Panel was as follows:

Heritage Expeditions (2018) Ltd initial version to change to Rule 29 - 18 June 2026

Activity	Rule	Conditions	Classification
Access within 0.54nm (1000m) of MHWS of any of the Kermadec and/or Subantarctic Islands by vessels except yachts	29	C. <u>The following vessels are exempt from Condition A and Condition B, these being vessels:</u> <u>a) that have an anti-fouling system:</u> <u>i. within the manufacturers timeframes for effectiveness; and</u> <u>ii. that is no more than 12 months old; and</u> <u>b) that have received written confirmation from an inspector at a place of first arrival that the vessel meets the Ministry of Primary Industries (MPI) requirements for long-stay vessels in the <i>Craft Risk Management Standard - Vessels 2023</i> and evidence of this written confirmation is provided to the Department of Conservation at least two working days prior to entering within 0.54nm (1000m) of MHWS of any of the islands; and</u> <u>c) that complies with Performance Standard 4 (in Table 1).</u>	Permitted

53. Setting aside the question of scope, DOC consulted with HEL and sought clarification on the following matters:

- a. Whether the proposed drafting was intended to apply to vessels entering New Zealand territorial waters pursuant to Clause 2.2 Craft Risk Management Standard (Vessels) 2023 (**CRMS – Vessels (2023)**)²⁰ or whether it was intended to apply more broadly to vessels approved by MPI for entry to New Zealand by other means (noting that cruise vessels are routinely approved for entry to New Zealand via a Craft Risk Management Plan (CRMP) approved under the s24K of the Biosecurity Act 1993 or a cruise vessel “MPI-approved system” under Clause 2.3 of the CRMS – Vessels (2023));
- b. Whether HEL was proposing a change to the requirements for inspection frequency, noting that HEL's proposed change to the rule would apply up to 12 months from the application of anti-fouling and would remove inspection requirements within that period, thereby extending the current periods provided for in the Plan;²¹
- c. Whether other Performance Standards in Table 1 were intended to apply, noting that the drafting only identified a requirement to comply with Performance Standard 4.

²⁰ [Vessels - Craft Risk Management Standard](#)

²¹ As provided for in Rule 29.

54. HEL subsequently provided revised drafting on 28 August 2026. HEL's revised drafting (compared against the initial drafting) is shown in red underline and ~~striketrough~~ below:

Heritage Expeditions (2018) Ltd revised version to change to Rule 29 – 28 August 2026

Activity	Rule	Conditions	Classification
Access within 0.54nm (1000m) of MHWS of any of the Kermadec and/or Subantarctic Islands by vessels except yachts	29	C. The following vessels are exempt from Condition A and Condition B, these being vessels: a) that have an anti-fouling system <u>that is no more than 8 months old:-</u> i. within the manufacturers timeframes for effectiveness; and ii. that is no more than 12 months old; and b) That <u>at least two working days prior to entering within 0.54nm (1000m) of MHWS of any of the islands provides evidence to the Department of Conservation of:</u> i. have received written confirmation from an inspector at a place of first arrival that the vessel meets the Ministry of Primary Industries (MPI) requirements for long-stay vessels in the <i>Craft Risk Management Standard - Vessels 2023</i> and evidence of this written confirmation is provided to the Department of Conservation at least two working days prior to entering within 0.54nm (1000m) of MHWS of any of the islands; or and ii. <u>the MPI-approved system to manage topside and biofouling risk it operates under to comply with clause 2.3(b) of the <i>Craft Risk Management Standard - Vessels 2023</i>; or</u> b)iii. <u>a craft risk management plan approved under section 24K of the Biosecurity Act 1993; and</u> c) that complies with Performance Standards <u>1.2, 3 and 4</u> (in Table 1).	Permitted

55. In response to the matters raised by DOC, HEL:

- a. broadened the rule to capture vessels entering New Zealand under an MPI-approved system under clause 2.3 of the CRMS-Vessels (2023) and under an approved CRMP under section 24K of the Biosecurity Act 1993;
- b. clarified how Rule 29C interacts with the inspection triggers under Rule 29B(b) by providing that, for Rule 29C to apply, the relevant antifouling system must be no more than eight months old. The effect of this would be that Rule 29C would apply only until the inspection trigger points under Rule 29B(b) are reached. If the eight- month threshold were to be exceeded, an inspection would need to be arranged beforehand to avoid non-compliance with Rule 29B(b) (for example, Rule 29B(b)(iv));
- c. amended the drafting to require compliance with Performance Standards 1.2 and 3, in addition to Performance Standard 4 (Table1).

3.2 Discussion and recommendation

56. Before commenting on the proposed HEL drafting, I make some general comments on the framework under the RCP for the management of biofouling.
57. Issue 1 of the RCP identifies biosecurity breaches as one of the two largest threats to the Islands and their coastal marine area, the other being oil spills. Operative Rule 29 is intended to provide a clear environmental threshold i.e.,

the vessel must satisfy the prescribed biofouling Performance Standard 1.1, being the slime layer and goose barnacle threshold at inspection and the slightly more lenient threshold of Performance Standard 1.2 between inspections. Operative Rule 29 achieves this by allowing operators to comply with one of the following options:

58. Having an appropriate anti-fouling system that is no more than six months old (Rule 29B(a)(i)), or
 - a. Undergoing an inspection to demonstrate compliance with Performance Standard 1.1 (in Table 1) where the vessel's antifouling system is more than 6 months but no more than 12 months old (Rule 29B(a)(ii)), or
 - b. When a vessel's anti-fouling system is older than 12 months, requiring an inspection to meet Performance Standard 1.1 every 3 months (Rule 29B(a)(iii)), or
 - c. Operating pursuant to Rule 29B(b), which requires an anti-fouling system no older than 12 months in combination with a Biofouling Management Plan and Biofouling Record Book that are in accordance with Appendix 7 and that demonstrate compliance with Performance Standard 1. This could be an MPI approved CRMP, that includes a biofouling management plan, but it must demonstrably show how compliance with the applicable Performance Standard 1 thresholds would be achieved (i.e. a lesser standard would not be sufficient) (Rule 29B(b)(ii)). This rule also requires that an inspection is undertaken between 4 – 8 months following the application of anti-fouling. i.e. the maximum period without an inspection is 8 months post anti-fouling system application.
59. All of these options have the common approach of ensuring the Performance Standard 1.1 slime layer/ goose barnacles threshold is met at inspections, and between inspections the Performance Standard 1.2 threshold is met whenever a vessel is within 1000 m of MHWS of any of the islands.
60. This framework represents strict biofouling thresholds, commensurate with the sensitivity of the receiving environment. The framework was developed through the process for the Operative Plan and was the subject of appeals and mediation, the resolution of which was informed by expert evidence and caucusing on behalf of the parties (including HEL).
61. I have discussed both the initial drafting and the revised drafting with MPI. Broadening the application of 29C(b) to include vessels entering New Zealand under Clause 2.3 of the CRMS or under a Biosecurity Act section 24K CRMP is more likely to achieve the outcome sought by HEL (i.e. that MPI approval will result in permitted access to the islands for cruise vessels under the RCP). However, ultimately, the conclusion I have reached is that there is significant uncertainty as to whether or not a rule which relies on MPI approval under these different MPI approval pathways will provide the same or comparable level of management of the risks posed by vessel biofouling as is achieved under the operative plan. There are a number of factors that contribute to this uncertainty, such as:

- a. There is more flexibility in MPI's biofouling regulatory framework and approval processes, which does not necessarily require adherence to the same clear and applicable biofouling thresholds as the RCP rule framework;
 - b. This flexibility is appropriate within MPI's regulatory framework, given that MPI has additional regulatory tools that can be used to manage biofouling risks which are not available to DOC under a permitted activity rule (see report of Greer Whiting, Appendix H to my earlier s42A report, paragraph 17);
 - c. While MPI and DOC work together to ensure alignment where possible between processes (see report of Greer Whiting, Appendix H to my earlier s42A report, paragraph 20), it is not MPI's function to set or enforce acceptable regional biofouling thresholds or frameworks (see my earlier s42A report, paragraph 217). That being the case, it is not surprising that a rule which seeks to rely on MPI's processes may not achieve the same protection as a regionally developed rule for a highly sensitive environment. A rule which proposes to rely on MPI regulatory requirements in place of the regional framework in the Coastal Plan for the Islands approaches the complementary regimes the wrong way around – i.e. MPI seeks to ensure consistency with the RCP regional requirements for vessels that will visit the Islands, not the other way around.
62. I am also of the view that without HEL's proposed amendments, the current rule framework already provides flexibility for cruise operators, including HEL.
63. As discussed above, Operative Rule 29B(b) currently permits access to the islands as a permitted activity without an inspection for a period of up to 8 months so long as a Biofouling Management Plan and Biofouling Record Book is provided in accordance with Appendix 7 that demonstrates compliance with Performance Standard 1 (in Table 1). Given the opportunities for co-ordination between agencies (as described in Ms Whiting's report, paragraph 20) in my opinion operative Rule 29B(b) adequately addresses HEL's concern about duplication between agency function, while providing assurance to the Minister that the biofouling thresholds in the Plan will not be exceeded.
64. In addition, and notwithstanding the existing permitted activity pathways available, cruise operators also have the option of applying for a coastal permit under operative Rule 32 as a discretionary activity. This would be a more appropriate way to seek specific alignment with an individual vessel's operational profile (including any specific measures to minimise risk of introducing marine pests in vessel biofouling) and requirements set out in a CRMP or MPI-approved system) if there is a need to depart from the requirements of the permitted activity rules.
65. In my opinion, either of these options would address the concerns that I understand are driving HEL's proposed amendments, without the uncertainty that introducing the proposed drafting as a new permitted activity rule (and therefore available to all vessels) would present.

66. Finally, on the issue of scope, I have read the legal submissions that were filed on behalf of the Minister of Conservation prior to the hearing.²² In my opinion, and having now considered the proposed drafting from HEL, the proposed amendment is not “on” the Plan Change.²³ I note in particular:

- a. The PC1 amendments primarily focus on the *requirements* for inspections and other minor amendments. There is no proposal to make substantive changes to the rule framework for the management of biofouling;
- b. As I have described above, there is significant uncertainty about what the effect of the proposed changes would be. Any uncertainty would have needed to be resolved, and then should have been the subject of a s32 analysis;

67. As set out above, for the purposes of preparing my recommendations on the proposed changes under Sub-Topic 1, I sought comments from those submitters who had submitted in support of the PC1 biofouling changes (New Zealand Sea Lion Trust and the Southland Conservation Board). Those submitters provided comprehensive comments in response. In my opinion, this is a useful indicator of the perceived importance of the biofouling management regime and shows that there may well be natural justice issues with progressing the proposed amendments at this stage in the plan change process, noting in particular the uncertain effect of the proposed changes. I would be concerned that others (submitters or otherwise) would not have the opportunity to appropriately participate.

68. Concerns regarding whether the proposed changes were on the Plan Change were raised with HEL during engagement. HEL did not provide any further comment on the question of scope.

²² Opening legal submissions on behalf of the Minister of Conservation, 8 June 2026.

²³ See paragraphs 42 – 49 legal submissions.