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IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE

CIV-2024-485-367

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UNDER THE the Judicial Review Procedure Act 2016;  
Part 30 of the High Court Rules; the  
Declaratory Judgments Act 1908; and the  
Common Law

IN THE MATTER OF an application for judicial review and/or  
declaratory judgments

BETWEEN OTAGO ROCK LOBSTER INDUSTRY  
ASSOCIATION INCORPORATED

Applicant

AND THE MINISTER OF CONSERVATION

First respondent

AND THE MINISTER OF TRANSPORT

Second respondent

THE MINISTER FOR OCEANS AND FISHERIES

Third respondent

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STATEMENT OF DEFENCE

30 July 2024

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The first, second, and third respondents by their solicitor say in response to the statement of claim dated 21 June 2024, they:

**The parties**

1. Admit paragraph 1.
2. In relation to paragraph 2:
  - 2.1 admit subparagraphs 2.1 and 2.2 and rely on paragraph [2] of the Otago Rock Lobster Industry Association Inc (**ORLIA**) Constitution in its entirety; and
  - 2.2 have insufficient knowledge of and therefore deny the allegations in subparagraph 2.3.
3. In relation to paragraph 3:
  - 3.1 admit the Ministers each exercise statutory powers under s 5 of the Marine Reserves Act 1971 (the **Act**), which sets out the procedure for declaring a marine reserve;
  - 3.2 otherwise deny paragraph 3;
  - 3.3 say further that s 5(9) of the Act sets out the circumstances in which the Minister of Conservation “shall, if the Ministers of Transport and Fisheries concur, recommend to the Governor-General the making of an Order in Council” declaring an area to be a marine reserve, either unconditionally or subject to conditions; and
  - 3.4 rely on s 5 of the Act in its entirety.

**Statutory Framework**

4. Admit paragraph 4 and rely on the long title and s 3 of the Act in their entirety.
5. Admit paragraph 5 and rely on s 5 of the Act in its entirety.
6. Admit paragraph 6 and rely on ss 4(1) and 5(9) of the Act in their entirety.
7. Admit paragraph 7 and rely on ss 3(4) and 5(9) of the Act in their entirety.

## Establishing Marine Reserves

8. In relation to paragraph 8:
  - 8.1 admit that in April 2014 the then-Ministers of Conservation and Primary Industries appointed members of Te Roopu Manaaki ki te Toka / South-East Marine Protection Forum (the **Forum**) to consider and recommend marine protection options for the southeast region of the South Island;
  - 8.2 say further the Forum was:
    - 8.2.1 tasked with providing recommendations on marine protection for the marine coastal area from Timaru in South Canterbury to Waipapa Point in Southland;
    - 8.2.2 required by its Terms of Reference to carry out its task consistent with the Marine Protected Areas Policy and Implementation Plan and the Marine Protected Areas Classification, Protection Standard and Implementation Guidelines; and
  - 8.3 rely on the Forum's Terms of Reference, in their entirety.
9. Admit paragraph 9 and say further:
  - 9.1 the report entitled *Recommendations to the Minister of Conservation and the Minister of Fisheries* (the **Forum Report**) presents the Forum's recommendations to the Minister of Conservation and then Minister of Fisheries; and
  - 9.2 they rely on the Forum Report in its entirety.
10. Admit paragraph 10 and say further:
  - 10.1 in addition to the five 'Type 2' marine protected areas (**MPAs**) Network 1 also included a proposed 'kelp protection area' to be established under the Fisheries Act 1996, which did not qualify as a 'Type 2' MPA;
  - 10.2 the Forum Report noted that proponents of Site D1 recommended

the site “to represent deep reef habitat, and to ensure connectivity between deep reef and sand habitats” unlike the original Site D; and

10.3 the Forum Report also noted that proponents of Site D1 considered it necessary because the location of the original Site D would only protect sedentary and less mobile species and species lower in the food chain, whereas Site D1 would be more likely to protect more components of the local ecosystem; and

10.4 they rely on the Forum Report in its entirety.

11. Admit paragraph 11.

12. Admit paragraph 12 and say further:

12.1 in May 2019, the then Ministers of Conservation and Fisheries jointly announced their agreement to consult on a network of MPAs consistent with the Forum’s Network 1;

12.2 the Ministers decided consultation would proceed concurrently under the Act and Fisheries Act 1996;

12.3 the Ministers’ decision included making minor changes to the Forum’s Network 1, including an amendment to the boundary of the proposed D1 site to include the entirety of the Pleasant River Estuary, in accordance with the intent of the Forum; and

12.4 on 3 June 2020, the Director-General of Conservation formally notified an application under the Act for Orders in Council (**the Application**) to declare six areas of sea and foreshore as marine reserves.

13. Admit paragraph 13 and say further that public consultation under the Act was conducted on the basis of the Application.

14. Admit paragraph 14 and say further:
  - 14.1 Table 3 in the consultation document entitled *Proposed southeast marine protected areas – Consultation Document* (the **Consultation Document**) details the activities that would be prohibited in the proposed Te Umu Koau Marine Reserve (Site D1), including commercial fishing;
  - 14.2 the 2017 values referred to at subparagraph 14.3 of the statement of claim were used for the Consultation Document, but additional data provided by Te Tini a Tongaroa / Fisheries New Zealand was used for the analysis undertaken in the *Report to the Minister of Conservation on the southeast marine reserve application: Assessment of application and analysis of views received* (the **DOC Report**);
  - 14.3 because additional data was used there are some differences between the Consultation Document and the DOC report; and
  - 14.4 they rely on the Consultation Document and the DOC Report in their entirety.
15. Admit paragraph 15.
16. Admit paragraph 16 and rely on the applicant’s submission in its entirety.
17. In relation to paragraph 17:
  - 17.1 admit paragraph 17 contains quotes from the applicant’s submission;
  - 17.2 say further the applicant’s submission states “In order to prevent these significant effects on ORLIA fishers the proposed reserve at Te Umu Koau (D1) must be removed from the application” (at 18.5); and
  - 17.3 rely on the applicant’s submission in its entirety.

18. In relation to paragraph 18:
  - 18.1 admit that submissions were received from 4,056 individuals or organisations through the statutory public submission process from 3 June 2020 to 3 August 2020;
  - 18.2 otherwise deny paragraph 18; and
  - 18.3 say further the DOC Report included as an appendix, a report by PublicVoice which themed, but did not summarise, all submissions; and
  - 18.4 rely on the DOC report in its entirety.
19. In relation to paragraph 19:
  - 19.1 deny subparagraphs 19.1 – 19.3; and
  - 19.2 say further:
    - 19.2.1 section 6.3.6.4 of the DOC Report discusses a description of measures put forward by Kāi Tahu in relation to the Site D1 Boundary and a summary of DOC's advice on the views of Kāi Tahu on the proposed boundary amendments for Site D1 that are described as Sites D1-A, D1-B, and D1-C;
    - 19.2.2 the first proposal (Site D1-A) was put forward by Kāi Tahu at a hui on 29 July 2020;
    - 19.2.3 section 8.6.4.2 of the DOC Report is the advice that considers the objections related to the commercial kōura fishery;
    - 19.2.4 section 8.3.1 contains DOC's substantive advice on the boundary amendment request by Kāi Tahu and assessed whether the Crown's Treaty of Waitangi obligations meant a larger boundary amendment than recommended in 8.6.4.2 would be appropriate;
  - 19.3 admit subparagraphs 19.4 – 19.7; and

- 19.4 say further:
- 19.4.1 the passage quoted at subparagraph 19.5 was made in the context of a suggestion for an alternative site, not an amended site;
  - 19.4.2 subparagraph 19.7 quotes section 8.6.4.2 which is DOC's advice that recommends the Site D1-A boundary amendment.
20. In relation to paragraph 20:
- 20.1 have insufficient knowledge of and therefore deny paragraph 20; and
  - 20.2 say further that they did not apprehend Kāi Tahu purported to speak for ORLIA or its membership in its engagement with the Crown.
21. Admit the applicant was not consulted on the recommended boundary amendment that was proposed for Site D1.
22. Apprehend paragraph 22 contains allegations of law and submissions to which they are not required to plead, but to the extent it contains allegations of fact, they:
- 22.1 admit the applicant was not consulted on the recommended boundary amendment that was proposed for Site D1;
  - 22.2 otherwise deny paragraph 22; and
  - 22.3 say further that:
    - 22.3.1 the location of relevant reef structures was mapped through multibeam surveying; and
    - 22.3.2 the recommendation of Site D1-A was informed by an assessment of commercial fishing data estimating fishing event locations and landed catch.
23. Admit paragraph 23.

24. In relation to paragraph 24:
  - 24.1 admit the DOC Report did not give consideration to a condition of the kind described in paragraph 24; and
  - 24.2 otherwise apprehend that paragraph 24 contains allegations of law and submissions to which they are not required to plead.
25. Apprehend paragraph 25 contains allegations of law and submissions to which they are not required to plead.
26. Admit paragraph 26 and rely on the report entitled *Briefing: Decision to approve six marine reserves in the southeast of the South Island (DOC's Briefing Paper)* that was provided to the Minister of Conservation on 10 July 2023 and signed on 16 August 2023 in its entirety.
27. In relation to paragraph 27:
  - 27.1 admit subparagraph 27.1;
  - 27.2 admit the Minister of Conservation did not give consideration to a condition of the kind described in subparagraph 27.2; and
  - 27.3 otherwise apprehend that subparagraph 27.2 contains allegations of law and submissions to which they are not required to plead.
28. Admit paragraph 28 and say further the Minister of Transport's concurrence decision was sent to the Minister of Conservation on 31 August 2023 and the Minister of Oceans and Fisheries' concurrence decision was sent to the Minister of Conservation on 15 September 2023.
29. In relation to paragraph 29:
  - 29.1 admit subparagraph 29.1;
  - 29.2 admit the Ministers of Transport and Fisheries did not give consideration to a condition of the kind described in paragraph 29.2; and
  - 29.3 otherwise apprehend that paragraph 29.2 contains allegations of law and submissions to which they are not required to plead.



**Decisions amenable to review**

30. Admit paragraph 30.

**Grounds of review**

31. In relation to paragraph 31:

31.1 apprehend that paragraph 31 contains allegations of law and submissions to which they are not required to plead; and

31.2 to the extent paragraph 31 contains allegations of fact, deny those allegations insofar as they are not expressly admitted above.

**Relief**

32. Are not required to plead to the relief sought in paragraph 32.