

**Islands**

## Introduction

1. This section 32AA evaluation relates to the recommended amendments to Proposed Plan Change 1 – Regional Coastal Plan Kermadec and Subantarctic Islands (**PC1**) and supports the discussion, analysis and recommendations in the section 42A report.
2. A section 32AA evaluation is only required for changes recommended since notification; if there is no change to the notified version, a section 32AA evaluation is not required. The level of detail in this report needs to be at a level of detail that corresponds to the scale and significance of the changes recommended.
3. The section 32AA evaluation has been structured to focus on the three key areas of recommended changes, being:
  - A. Amendments to include a new policy to manage access and anchoring by vessels longer than 125m in the zone 0.16nm (300m) from MHWS in Perseverance Harbour, Campbell Island / Motu Ihupuku (as provided for under proposed Rule 47A), **and** include guidance, in the “Other Matters” section of the Plan, on the navigation safety information expected to be included in coastal permit applications made under proposed Rule 47A, and
  - B. Further amendments recommended to Rule 40 – Ancillary Craft.

Note as they interrelate, A and B above have been considered together as a package of changes.

4. The evaluation does not consider amendments to correct drafting errors or change the Biofouling Record Book (BRB) to **BFRB**. In my view, these amendments do not alter the original intent of the provisions as notified, meaning no further evaluation under section 32AA is required.

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#### **A Insertion of a new Access and Anchoring policy and amendments to include guidance, in the “Other Matters” section of the Plan, on the navigation safety information expected to be included in coastal permit applications made under proposed Rule 47A**

5. No changes are proposed to the objectives of the Operative Plan. Accordingly, the section 32AA evaluation is focused on assessing whether the recommended provisions are the most appropriate way to achieve the existing objectives of the Operative Plan.
6. The Operative Plan seeks to reduce the risk of navigation safety incidents (and therefore the risk of oil spills and other pollutants and associated biosecurity breaches) by controlling access based on vessel length and zones based on distance from MHWS. Vessel length is used as a proxy for the many factors that influence the risk of a navigation safety incident. This is a precautionary approach adopted to give effect to Objectives 1.1, 1.2 and 1.3 of the Plan, given the degree of risk is greatly exacerbated by the remoteness of the islands and the environmental conditions that would hamper any response efforts in the event of an emergency. To give effect to these objectives the access and anchoring policies set the overall framework for providing public access to the coastal marine area of the Islands by vessels while reducing the risk of a navigation safety incident, and therefore an adverse environmental effect from an oil spill or biosecurity breach.
7. PC1 proposes a new rule (Rule 47A) to make access and anchoring for vessels > 125m in length outside the zone 300m from MHWS at Perseverance Harbour, Campbell Island a discretionary rather than prohibited activity. The proposed rule represents a shift in the existing policy framework in that it contemplates there will be situations where it will be appropriate for a larger vessel (vessels longer than 125m) to go as close as 300m from MWHS, to enter Perseverance Harbour, subject to the appropriate information and extent of assessment.
8. Submitters Rodney Russ (submitter 1), Heritage Expeditions (submitter 3), New Zealand Sealion Trust (submitter 6) and the Southland Conservation Board (submitter 7) have raised concerns about the navigation safety risks associated with vessels longer than 125m at this location. Further to those submissions, I consider it is appropriate to include new policy direction to accompany the proposed new rule. To achieve this, I have

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recommended including a new policy in the access and anchoring group of policies under the “Control of surface water activities (access and anchoring)”, as follows:

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“7. To provide for public access to the coastal marine area of the islands, by vessels, in a manner that addresses both the need for navigation safety, thereby reducing the risk of an incident resulting in an oil spill, and the associated risk of a biosecurity breach, by restricting vessel access close in to shore relative to vessel size.

*X. To recognise that it may be appropriate for vessels longer than 125m overall to access and anchor in Perseverance Harbour, Campbell Island/ Motu Ihupuku provided the activity can be undertaken in a manner that minimises the risk of a navigation safety incident, and therefore risk of oil spill and/or biosecurity breach.*

9. As explained in the s42A Report I also recommend including guidance, in the “Other Matters” section of the Plan, on the navigation safety related information expected to be included in coastal permit applications made under proposed Rule 47A. It is anticipated that this guidance will assist applicants to provide the information required to demonstrate that the objectives and policies relating to navigation safety can be met when considering discretionary applications under Rule 47A. This guidance, in its final form for insertion into the Plan is included at Attachment A of Appendix D, in the section 42A Report.

#### **Identification of Options to Achieve the Objectives**

10. The following options have been identified to achieve Objectives 1.1, 1.2 and 1.3:

**Option 1** Retain Operative Plan access and anchoring policies with no additions or changes [the status quo].

**Option 2** Insert a new policy to better give effect to the Objectives of the Plan, provide policy guidance for Rule 47A applications, and direction on information requirements for applications under the new Rule.

#### **Preferred Option**

11. **Option 1** is not preferred as it does not sufficiently account for the change in management of access and anchoring that will occur if proposed Rule 47A proceeds and it will not provide a policy basis to include navigation safety information requirements tailored to Rule 47A applications.

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12. **Option 2** is the preferred option. This option reflects the approach in operative Policy 7 but adapts it specifically to Rule 47A to allow applications for vessels longer than 125m to access and anchor outside the zone 300m from MHWS within Perseverance Harbour. It recognises (1) the threshold of 125m long negotiated during the appeal process for the operative plan, and that vessels longer than 125m may or may not have a greater risk profile than vessels less than 125m, (2) the technological and ship building trends over time, (3) the changes in the management of navigation safety since the Plan became operative. Applications made under Rule 47A for access and anchoring inside the zone 0.16nm (300m) of MHWS, in Perseverance Harbour, Campbell Island/ Motu Ihupuku will enable case by case consideration and require potential applicants to demonstrate how access and anchoring in Perseverance Harbour would be undertaken in a manner that avoids a navigation safety incident and therefore risk of oil spill and/or biosecurity breach. Introduction of the new policy is the most appropriate way to achieve the Objectives of the operative Plan as outlined in the following table:

Evaluation of Preferred Option Against Objective(s)		
	Costs	Benefits
<b>Community and Environmental</b>	<p>Potential environmental costs associated with inserting the new access and anchoring policy are considered <b>low</b>. The policy will require that applications for access and anchoring outside the zone 0.16nm (300m) from MHWS, in Perseverance Harbour, Campbell Island/ Motu Ihupuku demonstrate that access and anchoring will be undertaken in a manner that minimises a navigation safety incident and therefore risk of oil spill and potential biosecurity breach.</p> <p>The effect of proposed policy will be to minimise the risk of adverse effect on the environment.</p>	<p>The proposal will be efficient and effective for the community (domestic and international) and the environment because risk to the environment will be managed by the integrated and complementary approach to management of navigation safety risk under the proposed new policy and navigation safety guidance which is proposed accompany it.</p>

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<p><b>Economic</b></p>	<p>Potential additional “upfront” costs to cruise operators when they are preparing consent applications under Rule 47A, resulting from explicit policy direction and accompanying navigation safety information requirements in the “other matters” section of the Plan.</p> <p>The economic impacts are considered <b>moderate</b>.</p>	<p>Economic benefits associated with clear policy direction and information requirements addressing navigation safety (and therefore impact on the environment) include a reduction in the cost borne by cruise operators when they apply for consent under Rule 47A, and include all of the relevant information rather than having to contend with lengthy requests for further information and longer consent processing timeframes. The changes are also intended to prevent a circumstance where key navigation safety information is not included in an application and it is declined, which would be a significant sunk cost to an applicant. The economic benefits are considered <b>high</b>.</p>
<p><b>Social</b></p>	<p>No identified social costs.</p>	<p>No identified social benefits.</p>
<p><b>Cultural</b></p>	<p>Environmental costs are considered <b>low</b> - meaning the risk to the islands, the coastal marine area and taonga species, and therefore the risk to tangata whenua values and relationships with the coastal marine area is considered <b>low</b>.</p> <p>There could be some costs to tangata whenua if they applied for consent to access Perseverance Harbour with a vessel longer than 125m and had to assess their proposal against the additional policy and navigation safety information requirements. These costs are considered <b>low</b> overall.</p>	<p>The proposal will be efficient and effective because the change will allow efficient consideration of applications from operators with vessels longer than 125m wanting to access Perseverance Harbour. The recommend new policy and guidance on the required navigation safety related information will continue to give effect to Objectives 1.1, 1.2 and 1.3 of the Plan. Managing the navigation safety risk (and therefore impact on the environment) in this coordinated way reduces risk to the islands, the coastal marine area and taonga species, thereby continuing to provide for tangata whenua values and relationships with the coastal marine areas.</p>

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<b>Economic growth provided or reduced</b>	No potential impact on economic growth identified.
<b>Employment opportunities</b>	No specific employment opportunities identified.
<b>Uncertain or insufficient info</b>	The proposed new policy and navigation safety information requirements will certainty of expectations and information requirements for potential coastal permit applicants.
<b>Risk of acting or not acting</b>	Low risk of acting as the recommended new policy is primarily to reflect the original intent of the notified PC1 changes, the Operative objectives, and minimise the risk of a navigation safety incident and therefore environmental impact. Not acting could result in costly application processes without the guidance from the policy and the information expectations for Rule 47A applications and potentially a greater risk of a navigation safety incident and resulting adverse environmental effects.
<b>Effectiveness</b>	
The proposed amendments will be more effective as they provide clearer guidance to potential applicants under Rule 47A. This will make for more effective consent processes for both the applicant and consent authority alike. It will potentially result in reduced risk of a navigation safety incident and consequential adverse environmental effects.	
<b>Efficiency</b>	
The proposed amendments will be more efficient as they provide clearer guidance to potential applicants under Rule 47A. This will make for more efficient consent processes for both the applicant and consent authority alike.	
<b>Summary</b>	
For the reasons set out above, Option 2 is the most efficient and effective option for achieving the relevant objectives in the Operative Plan. As such, Option 2 is the most appropriate option in accordance with section 32AA of the RMA.	

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#### B. Further amendments recommended to Rule 40 – Ancillary Craft

13. The access and anchoring rules operate to reduce the risk of navigation safety incidents and, therefore, the risk of oil spills (and other pollutants) and biosecurity breaches. Rule 40 of the Operative Plan currently provides for unrestricted access by ancillary craft anywhere in the CMA of the Islands as a permitted activity (subject to there being no scientific research being undertaken, and to compliance with Performance Standards 2, 4 and 5 in Table 2). Operative Policy 13 and Rule 40 give effect to section 6(d) of the RMA, which states that *‘the maintenance and enhancement of public access to and along the coastal marine area’* is a matter of national importance.
14. While ancillary crafts can be used in a variety of contexts at both the Subantarctic and Kermadec Islands, a focus of the submissions has been on the use of “zodiacs” associated with cruise ships. Where a cruise ship operator does have the required entry permits for landing passengers at landing sites, ancillary craft are used to transfer passengers from the cruise ship to the landing site. Zodiacs are also used for ‘zodiac cruising’.<sup>1</sup> Recently, there has been increased interest from cruise ship companies wanting to visit the Subantarctic Islands. This has been from both vessels less than 125m long and larger vessels, longer than 125m. Also, the size and passenger capacity of eco-tourism cruise ships have increased. As a result, there has been a tendency for ancillary craft to travel further from these large vessels to get to landing sites and to undertake zodiac cruising. This is because larger cruise ships (longer than 125 m) must either:
  - stay 0.324 nm (600 m) from MHWS (if they have a coastal permit under Rule 48); or
  - stay 0.54 nm (1,000 m) from MHWS (as a permitted activity).
15. The result being that ancillary craft must travel further, in an environment with potential for adverse and changeable weather conditions, to reach their destination and return to the mother ship. The changes that were proposed to address this issue have been outlined in the s32 and s42A Reports.

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<sup>1</sup> As described at page 13 of the proposed Plan (redline version).

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**Identification of Options to Achieve the Objectives**

16. Further to receiving submissions on the proposed changes to Rule 40C<sup>2</sup> and reviewing the navigation safety advice of Mr Dilley at Appendix D, further amendments to Rule 40 and consequential amendments for consistency to Rule 56, are proposed.
17. My recommended amendments seek to enable ancillary craft access within acceptable permitted limits, based on expert navigation safety advice.

**Identification of Options to Achieve the Objectives**

18. The following options have been identified to achieve Objectives 1.1, 1.2 and 1.3:

**Option 1** Retain proposed Rule 40C as notified [status quo].

**Option 2** Amend proposed Rule 40 and make consequential changes, for consistency, to proposed Rule 56 as outlined in the s42A Report, and shown here:

Option 2 is the preferred option, as it enables existing use to continue but within acceptable limits, reducing navigation safety risk and potential impact on the environment.

ACTIVITY	RULE	CONDITIONS	CLASSIFICATION
<i>Ancillary craft</i>			
Access to the coastal marine area of the Subantarctic Islands by ancillary craft, subject to there being no scientific research being undertaken in a particular location which requires isolation at the time the vessel accesses that location and where vessel operators have been notified of these requirements by the relevant Department of Conservation Director	40	<p><b>A.</b> All <u>vessets ancillary craft</u> must comply with Performance Standards 2, 4, 5 and 6 (in Table 2).</p> <p><b>B.</b> <u>Vessets Ancillary craft do not enter Port Ross in the zone shown on Map 2 during the period 1 April to 31 October.</u></p> <p><b>C.</b> <u>Ancillary craft must not be in a position:</u>            (a) <u>more than within 0.54nm (1000m) from where the mother ship is authorised to access in accordance with the Plan without reliance on rule 1; and/or</u>            (b) <u>more than within 3.24nm (6000m) from of the mother ship, at any time.</u></p> <p><b>D.</b> <u>Ancillary craft launched from vessels longer than 125m are exempt from Condition C (a) for the purpose of accessing Lake Hinemoa, Auckland Island</u></p> <p><b>E.</b> <u>Ancillary craft launched from vessels less than 125m long are exempt from Condition C (a) for the purpose of accessing the locations in E(a).</u></p> <p><b>(a) Locations:</b></p> <ul style="list-style-type: none"> <li>i. <u>Lake Hinemoa, Auckland Island</u></li> <li>ii. <u>Erlangen Clearing, Carnley Harbour, Auckland Island</u></li> <li>iii. <u>Southwest Cape, Carnley Harbour, Auckland Island</u></li> <li>iv. <u>Beeman landing point, Perseverance Harbour, Campbell Island</u></li> </ul>	Permitted

<sup>2</sup> Particularly the submission of Mr Rodney Russ (submission 1).

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ACTIVITY	RULE	CONDITIONS	CLASSIFICATION
<i>Ancillary craft</i>			
Access to the coastal marine area of any of the Kermadec Islands by ancillary craft	56	<p><b>A.</b> All <del>vessels ancillary craft</del> must comply with Performance Standards 2, 4, 5 and 6 (in Table 2).</p> <p><b>B.</b> <del>Ancillary craft must not be in a position;</del></p> <p>(a) <del>more than within 0.54nm (1000m) from where the mother ship is authorised to access in accordance with the Plan without reliance on Rule 1; and/or</del></p> <p>(b) <del>more than within 1.61nm (3000m) from of the mother ship, at any time.</del></p>	Permitted

Evaluation of Preferred Option Against Objective(s)		
	Costs	Benefits
<b>Community and Environmental</b>	<p>While the ability to travel up to 6000m rather than 3000m from the mothership may impact support to ancillary craft in the event of an incident, the likelihood of this is anticipated to be low. Should an incident occur with an ancillary craft it's possible that support and response may be slightly delayed compared with if it was closer to the mother ship. This could potentially increase in risk adverse environmental effect such as small oil spill from the ancillary craft. However, application of the 6000m limit and retaining the Condition C(a), in Rule 40 and B(a), with minor wording changes in Rule 56 means the rule is still more stringent than the status quo, which leaves ancillary craft use almost entirely permitted. The environmental costs are considered <b>low</b>.</p>	<p>Cruise operators will have the ability continue to access commonly used landing sites or areas for zodiac cruising as a permitted activity when they launch ancillary craft from a mother ship less than 125m long while remaining within acceptable permitted limits that will minimise the risk of an adverse effect on the environment.</p> <p>Vessel longer than 125m will also benefit from this amendment. While ancillary craft from these vessels cannot be more than 1000m from where the mother ship is authorised to access, the amendment of 3000m to 6000m at any other time allows more flexibility for zodiac cruising.</p>

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<p><b>Economic</b></p>	<p>Potential increase in cost for cruise operators that breach the Rule 40 permitted activity conditions as a result of having to apply for a coastal permit. This cost is minimised by the ability of cruise operators with a mothership less than 125m long will have the ability to access commonly used landing sites as a permitted activity. Noting some of those with a mothership longer than 125m, would also be able to access Lake Hinemoa as a permitted activity.</p>	<p>Cruise operators with a mother ship less than 125m long will have the ability to access commonly used landing sites or areas for zodiac cruising as a permitted activity. Noting operators with a mother ship longer than 125m, who have successfully applied for a coastal permit to access as close as 600m from MHWS, would also be able to access Lake Hinemoa as a permitted activity.</p>
<p><b>Social</b></p>	<p>No identified social costs.</p>	<p>No identified social benefits.</p>
<p><b>Cultural</b></p>	<p>With the ability to travel 6000m rather than 3000m from the mothership there is a small increase in risk of an incident that could result in an adverse environmental effect such as small oil spill from the ancillary craft. However, application of the 6000m limit and retaining the Condition C(a), in Rule 40 and B(a), with minor wording changes in Rule 56 means the rule is still more stringent than the status quo. Minimising navigation safety risks in this way reduces risk to the islands, the coastal marine area and taonga species, thereby continuing to provide for tangata whenua values and relationships with the coastal marine area.</p>	<p>Cruise operators will have the ability to access commonly used landing sites or areas for zodiac cruising as a permitted activity where they launch ancillary craft from a mother ship less than 125m long, or longer than 125m for Lake Hinemoa, while remaining within acceptable permitted limits that will minimise navigation safety risks in a way that reduces risk to the islands, the coastal marine area and taonga species, thereby continuing to provide for tangata whenua values and relationships with the coastal marine area.</p>

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<b>Economic growth provided or reduced</b>	No potential impact on economic growth identified.
<b>Employment opportunities</b>	No specific employment opportunities identified.
<b>Uncertain or insufficient info</b>	The package of amendments to Rule 40 and Rule 56 provides certainty of on-going permitted use of ancillary craft within acceptable limits that will minimise the risk of an adverse effect the islands, the coastal marine area and taonga species.
<b>Risk of acting or not acting</b>	Low risk of acting as the package of amendments provide certainty of on-going use of ancillary craft by cruise operators within acceptable permitted limits. enable on-going use of ancillary craft by cruise operators within acceptable permitted limits that will minimise the risk of an adverse effect on the islands, the coastal marine area and taonga species.
<b>Effectiveness</b>	
The proposed amendments are more effective than the ancillary craft rules as notified as they provide certainty of on-going use of ancillary craft for existing cruise operators within acceptable permitted limits that will minimise adverse effects on the environment.	
<b>Efficiency</b>	
The package of amendments to proposed Rule 40 and Rule 56 provides certainty of on-going permitted use of ancillary craft, reducing the costs and inefficiencies associated with applying for consent, while imposing limits that will minimise the risk of an adverse effect on the islands, the coastal marine area and taonga species.	
<b>Summary</b>	
For the reasons set out above, Option 2 is the most efficient and effective option for giving effect to the proposal objective. As such, Option 2 is the most appropriate option in accordance with section 32AA of the RMA.	