

Section 42A Report

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

Report prepared by: Jesse Gooding

15 May 2026



Department of
Conservation
Te Papa Atawhai

**Te Kāwanatanga
o Aotearoa**
New Zealand Government

I Submitters addressed in this report

List of submitters and further submitters addressed in this report:

Submission Number	Submitter
1	Rodney Russ
2	New Zealand Defence Force (NZDF)
3	Heritage Expeditions (2018) Limited (HEL)
4	Ponant
5	Sanford Limited (Sanford)
6	New Zealand Sea Lion Trust (NZSLT)
7	Southland Conservation Board (SCB)
8	Seaeagle Fishing Limited (Seaeagle Fishing)
9	Te Ao Marama Incorporated (TAMI)
10	Barine Developments Limited (Barine Developments)
11	Seafood New Zealand / Deepwater Council (SFNZ)
FS1	Rodney Russ
FS2	Heritage Expeditions (2018) Limited

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III Abbreviations used in this report

List of abbreviations used in this report

Abbreviation	Term
The Minister	Minister of Conservation
PC1	Proposed Plan Change 1 to the Regional Coastal Plan: Kermadec and Subantarctic Islands
DOC	Department of Conservation
ECan	Environment Canterbury
IMO	International Maritime Organisation
MHWS	Mean high water springs
CMA	Coastal marine area – as defined in the RMA 1991 section 2
CRMS	Craft Risk Management Standard – Vessels 2023
RMA	Resource Management Act 1991
NZCPS 2010	New Zealand Coastal Policy Statement 2010, as amended in January 2025
SMS	Safety Management System for navigation a the Kermadec and Subantarctic Islands

IV Executive Summary

- i. Proposed Plan Change 1 to the Regional Coastal Plan: Kermadec and Subantarctic Islands (**PC1**) was publicly notified on 24 September 2025. Under section 31A of the Resource Management Act 1991 (**RMA**), the Minister of Conservation (**the Minister**) has the same responsibilities, duties and powers under the RMA that a regional council would have if the coastal marine areas (**CMA**) of those islands were within the region of that regional council.¹ As part of those responsibilities, a former Minister approved the operative Plan in 2017. Department of Conservation (**DOC**) officials are now progressing PC1 on behalf of the Minister.
- ii. The changes proposed in PC1 are narrow in scope and address specific matters. The proposed changes have been developed to address legislative, policy and technology changes that have occurred since the plan was developed in 2010. They also address the risks to people, vessels and the environment that have come to light during implementation of the plan in the intervening period. As outlined below, PC1 is exempt from the changes to the RMA in relation to progressing plan changes introduced by the [Resource Management \(Consenting and Other System Changes\) Amendment Act 2025 | New Zealand Legislation](#) [s80U(2)(g)], otherwise known as the ‘plan stop’ provisions.
- iii. 11 primary submitters and two further submitters made a submissions on PC1. Submitters have requested some amendments to the proposed provisions, ranging from total opposition to PC1 or broad support. The submitters requesting amendments to the PC1 provisions broadly fall into three categories:
 - a. Submitters requested PC1 be withdrawn or to otherwise minimise the effect of the PC1 provisions to maintain the status quo.
 - b. Submitters concerned that the PC1 changes are too enabling and requesting amendments to protect the outstanding and sensitive marine environment at the islands, and
 - c. Submission points that request changes to proposed provisions that would generally be more enabling.
- iv. My recommendations to address submissions on PC1 are summarised as follows:
 - a. Retain the proposed changes to the Issue 1 description – changing ‘significant natural character’ to ‘outstanding natural character’
 - b. Retain proposed Rule 47A — access to Perseverance Harbour as a discretionary activity, with consequential change to the Rule 47 activity description.
 - c. Introduce a new policy and supporting navigation safety guidance for applications made under Rule 47A, to ensure the risk of a navigation safety incident, and resulting adverse environmental effect, is minimised.

¹ Resource Management Act 1991, section 30(1)(d).

- d. Amend proposed Rule 40 — Ancillary Craft, providing increased operational flexibility where appropriate, while maintaining clear, risk-based permitted limits.
- e. Retain the proposed changes to access to Port Ross, Auckland Island, in the winter months, to prevent the risk of navigation safety incidents of vessels and adverse effects on the environment and to tohorā / southern right whales.
- f. Retain, with minor technical amendments, the proposed changes to Performance Standards and inspection requirements, for controlling hull and niche area biofouling to improve management of the risk of introducing harmful aquatic organisms to the marine environment.
- g. Retain the proposed changes to the Glossary.

1. Introduction

1.1 Qualifications and Experience

1. My name is Jesse Quentin Gooding. I am a Senior Resource Management Planner employed by DOC; I am based in Hamilton. I have been asked by DOC to assist with PC1. I have been involved in the development of PC1 since early 2024 and have assisted with the policy development and drafting of a range of the proposed PC1 provisions and the associated section 32 evaluation.
2. I hold a Bachelor of Environmental Planning specialising in Marine and Coastal Environments. I am an intermediate member of the New Zealand Planning Institute.
3. I have over 8 years' experience in resource management and planning with roles in central government, local government and in the private sector. I have worked on a number of proposed plans at various stages of the RMA Schedule 1 process, as well as publicly and limited notified resource consent applications, and have prepared expert planning evidence² for the Department of Conservation, including on coastal management topics.

1.2 Preparation of the report

4. I have prepared this report under section 42A of the RMA. The purpose of this report is to assist the Independent Hearing Commissioners (the **Commissioners**) in hearing and determining submissions made on PC1, and to assist submitters in understanding how their submission is being considered as part of the PC1 process. This report includes my recommendations on matters raised in submissions and recommended amendments to the proposed provisions in PC1 that I consider to be appropriate having considered the decisions requested in submissions and statutory requirements.
5. I am the author of this report, but I am not the author of appendices D – I. The reports in appendices D – I provided technical advice that I sought in preparing this section 42A report. I have read those reports and where I rely on the expert opinions contained therein, I have said so. Otherwise, the data, information, facts, and assumptions I have considered in forming my opinions are set out in this report. Where I have set out opinions in this report, I have given reasons for

² Examples include, but are not limited to:

- Expert planning witness on behalf of the Director General of Conservation (DG) at the hearing for publicly notified consents to extract marine sand offshore at Pākiri and Te Arai beaches, Auckland.
- Expert planning witness for the DG in Waipa Private Plan Change 20 at Council hearing and appeal stages.
- Expert planning witness for the DG on various hearing topics on the proposed New Plymouth District Plan and provided planning advice during mediation of appeals.
- Planning advice to support the DG at mediation of appeals on the indigenous biodiversity and ecosystems topic for the proposed Waikato District Plan.
- Expert Planning witness at various hearing topics on the proposed Waitomo District Plan.
- Prepared planning evidence on behalf of the DG in relation to limited notified consent applications for on-going sand mining at Taharoa, in the Waitomo district by Taharoa Iron Sands Limited.

those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

6. For the avoidance of doubt, it should be emphasised that any conclusions reached or recommendations that I have made in this report are not binding on the Commissioners. It should not therefore be assumed that the Commissioners will reach the same conclusions or decisions having considered all the submissions and evidence from submitters.

1.3 Code of Conduct

7. While this is not an Environment Court Hearing, I confirm 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. Other than when I state that I am relying on the advice of another person, the evidence in this report is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
8. I confirm that I have no real or perceived conflict of interest in relation to PC1.

2. Scope of Report

2.1 Matters addressed by this report

9. The scope of this report is to consider submissions and further submissions on the proposed PC1 provisions and provide recommendations on the decisions requested in those submissions.

2.2 Overview of Plan Change 1

10. The proposed changes comprise the following topics:
 - a. Clarify the natural character status of the coastal marine area of both island groups:
 - i. A technical change to the part of the Plan that describes issues to be managed, which clarifies that all the coastal marine area of both groups of islands is of outstanding natural character. This proposed change does not alter any objective policies or rules.
 - b. Changes to access and anchoring rules that relate to navigation safety with the aim of avoiding any adverse effect on the environment that could result from a navigation safety incident and protection of wildlife and the environment, including:
 - ii. Allowing operators of vessels longer than 125 m to apply for a resource consent (a coastal permit) to access Perseverance Harbour, Campbell Island, as a discretionary activity, which is currently prohibited. There is a landing site located at the head of the harbour that can receive up to 200 people per day (with entry permits as required under Conservation legislation).
 - iii. Restricting ancillary craft (such as zodiacs) from travelling too far from the mother ship as this is a high-risk activity in these environments. (These changes will apply to both groups of islands).

- iv. Tightening restrictions on vessels accessing Port Ross in the Auckland Islands during the winter months when the tohorā/southern right whales are present in large and increasing numbers. This is to reduce risk of collision, pollution of the environment and injury to the whales.
 - v. Providing more safe anchorage options for small vessels, including the Southern Ocean scampi fleet vessels for sheltering from bad weather in Carnley Harbour of Auckland Island.
- c. Changes to the controls on vessel hull and niche area biofouling to:
- i. improve management of the risk of introducing marine pests to the marine environment by improving the information requirements for inspections.
- d. Statutory acknowledgements:
- i. The statutory acknowledgements of both Ngāti Kuri³ and Te Aupōuri will be included in the Plan as part of PC1. Both iwi settled with the Crown in 2015, after the operative Plan had been notified in 2011.
 - ii. The inclusion of statutory acknowledgements is a legal requirement and is not subject to submissions.

³ [Ngāti Kuri Claims Settlement Act 2015](#) and [Te Aupōuri Claims Settlement Act 2015](#)

Table 1. Summary of changes proposed for Regional Coastal Plan: Kermadec and Subantarctic Islands

Section of the Plan	Details of Proposed Plan Change
Issue description	Issue 1 description – change ‘significant natural character’ to ‘outstanding natural character’
Policies	Amend Policy 13 to better manage risk from ancillary craft activities
Rules	<p>Amend the Performance Standards and inspection requirements for controlling hull and niche area fouling to improve management of the risk of introducing harmful aquatic organisms to the marine environment, with specific changes to:</p> <ul style="list-style-type: none"> • Performance Standards 1,2, 2.2 and 2.3 (in Table 1) • Appendix 4 • Appendix 5 • Consequential changes to the Forms of Appendix 6 • Minor change Appendix 7 (“BMP” to “BFMP”)
	<p>Manage the risk of navigation safety incidents with vessels for the purpose of preventing a potential impact on the environment and to tohorā / southern right whales in Port Ross in winter through:</p> <ul style="list-style-type: none"> • adding a new restriction on access to Port Ross during the winter months (1 April to 31 October) to Rules 34, 37, 40–43,46 and 49 • changes to Performance Standard 5 (in Table 2), which result in consequential changes to the Rules in the bullet point above • adding a new Performance Standard 6 (in Table 2) • adding a new note (which will become Note 7) before the Subantarctic Islands access and anchoring rules, warning about increasing numbers of tohorā / southern right whales around all of the Auckland Islands and Campbell Island in winter
	Amend Rules 40 and 56 to add new restrictions on ancillary craft relating to proximity to the mother ship
	Add a new Rule 47A – access to Perseverance Harbour as a discretionary activity, with consequential change to the Rule 47 activity description
Glossary	Add new definitions for ‘algal growth’, BMFP (Biofouling Management Plan), BRB (Biofouling Record Book), ‘goose barnacle’ and ‘mother ship’, and amend the definition of ‘niche areas’.
Appendix 8	Include the Statutory Acknowledgements of Ngāti Kuri and Te Aupōuri

2.3 Statutory Context

2.3.1 Minister of Conservation’s role – section 31A RMA

11. Under section 31A of the Resource Management Act 1991 (the RMA), the Minister of Conservation (the Minister) has the same responsibilities, duties and powers under the RMA that a regional council would have if the coastal marine areas (CMA) of those islands were within the region of that regional council.⁴ As part of those responsibilities, a former Minister approved the operative Plan in 2017.
12. Department of Conservation (DOC) officials are now progressing PC1 on behalf of the Minister. The ordinary process under Schedule 1 of the RMA applies.

2.3.2 Exemption from ‘plan stop’ provisions – Part 5B RMA

13. In August 2025 the [Resource Management \(Consenting and Other System Changes\) Amendment Act 2025](#) came into force. This amendment Act includes what has become known as the “plan stop” provisions - “Certain obligations stopped until 31 December 2027”. New Subpart 5B of the RMA includes:
 - a. Section 80P that stops the notification of local authority draft planning instruments until 31 December 2027; and
 - b. Section 80Q requires withdrawal of certain local authority proposed planning instruments, including plan changes and plan reviews.
 - c. There are some automatic exemptions to the plan stop provisions. The Minister of Conservation is automatically exempt for a proposed planning instrument or draft planning instrument to change or vary the regional coastal plan for the Kermadec and Subantarctic Islands (RMA Subpart 5B [Section 80U\(2\)\(g\)](#)). Accordingly, PC1 is not affected by the plan stop provisions.

2.3.3 Resource Management Reform

14. The Natural Environment Bill and the Planning Bill are the Government’s proposed replacement for the 1991 RMA. Together, the bills are intended to introduce a new framework for managing the natural and built environment, supported by new national direction and a new generation of plans (including Regional Spatial Plans, Natural Environment Plans and Land Use Plans). Both Bills had their first reading in December 2025.
15. The Government is currently proceeding with the Select Committee process, with both bills intended to be passed into law before the 2026 general election. The RMA continues to be in effect until this new replacement legislation is passed. The current Bills provide for existing planning documents prepared under the RMA to remain in effect until new national instruments are prepared and new plans are prepared and notified, although how and when the new system will be implemented will not be known until the new legislation is in place.

⁴ Resource Management Act 1991, section 30(1)(d).

16. Under the current Bills the Minister retains the role of a local authority for the Kermadec and Subantarctic Islands, including as a regional council for their coastal marine areas.
17. The Planning Bill and Natural Environment Bill do not have any legal weight. Further, based on the estimated dates in the transitional provisions of the Bills as they currently stand, the Acts and the new planning documents to be established under the Acts, will not have any impact on either the recommendations in the section 42A reports for PC1 or the decisions on PC1. Submissions on PC1 will be heard under the current RMA provisions. Therefore, this report does not consider the content of the Planning Bill and Natural Environment Bill any further.

2.3.4 RMA National Direction

18. The section 32 evaluation provides an overview of the relevant statutory considerations in Part 2 of the RMA, National Policy Statements, other relevant legislation and other relevant documents.⁵ As such, I do not repeat that detail here.
19. I note that on 18 December 2025, three new RMA national instruments and amendments to seven existing RMA national instruments were gazetted before coming into force on 15 January 2026. One of the amended instruments is the New Zealand Coastal Policy Statement 2010 (NZCPS), which is relevant to PC1, however, the changes themselves are not considered relevant. One change is to Policy 6 of the NZCPS (Activities in the Coastal Environment) which is limited to matters relating to infrastructure planning and the management of effects associated with regionally and nationally significant infrastructure and does not affect the policy direction relevant to the conservation-focused provisions addressed by PC1. The other change is to Policy 8 of the NZCPS (Aquaculture) which relates specifically to providing for aquaculture activities in appropriate locations, and is not relevant to PC1 as the plan change does not provide for, or address, aquaculture activities within the Kermadec and Subantarctic Islands coastal marine area.
20. In addition, I have had regard to other relevant matters. This includes iwi planning and management documents provided by relevant iwi authorities, I have also considered the Conservation Act 1987 and the relevant Conservation Management Strategies and Plans administered by the Department of Conservation, which provide strong direction for the protection and preservation of natural and historic values within the landward boundary of the Kermadec and Subantarctic Islands. Large parts of the coastal marine area are also protected through marine reserve and other marine protection mechanisms, reinforcing the high level of environmental protection anticipated by Operative Plan. The Maritime Transport Act 1994 has been considered insofar as it provides a separate regulatory regime for navigation safety and maritime activities; however, these matters sit largely outside the scope of PC1. I am also aware of the Maritime Transport Amendment Bill currently before Parliament but note it does not materially affect the policy framework or conclusions reached in relation to PC1. Overall, no other matters considered raise issues that would alter the recommendations made in respect of the plan change.

⁵ Section 32 Report, Part 2 pages 10-16.

2.4 Procedural matters

2.4.1 Pre-hearing meetings

21. Pre-hearing meetings have been arranged with the scampi fishing and seafood industry submitters (Sanford, Seagle Fishing, Barine Developments and SFNZ). One pre-hearing meeting was held on 12 May 2026 with representatives of Seaeagle Fishing Ltd and Barine Developments Ltd, to discuss their submissions. That meeting was held on a without-prejudice basis and no minutes were recorded. It is anticipated further meetings with submitters will occur prior to the hearing.

2.4.2 Scope of submissions

22. In providing my recommendations on submissions I have considered issues of scope, in particular whether relief sought through submissions is 'on' the plan change. I have recorded my views in the report at the relevant points.

2.5 Organisation of the Report

23. The key issues identified in this report are addressed by the following topics:

Topic 1: General submissions

Topic 2: Natural Character – changes to Issue 1 description and to control of discharges of contaminants explanation

Topic 3: Access and Anchoring - Ancillary Craft

Topic 4: Access and Anchoring - New Rule 47A and consequential amendment in Rule 47

Topic 5: Access and Anchoring – Port Ross Access

Topic 6: Access and Anchoring - Additional anchorages for small vessels in Carnley Harbour and request for an anchorage at Tucker Point in Port Ross, Auckland Island

Topic 7: Vessel hull and niche area biofouling

2.6 Submissions and further submissions

24. 11 submissions were made on the proposed PC1 provisions. Two further submissions were received. The summary of submissions and further submissions addressed in this section 42A report and my recommendation for each are attached as Appendix A. The original submissions and further submissions can be found on the DOC PC1 consultation [webpage](#).
25. While all submissions have been read and considered in the summary of submissions (Appendix A), responses have not necessarily been written for each individual submission point. To assist the commissioners in achieving clause 10(2) of the First Schedule of the RMA, I have provided reasons for my recommendations to accept or reject submissions and further submissions generally by themes. Responses have been written for individual submissions that raise matters that differ from other submissions within the same thematic group or that request specific amendments to the proposed provisions.

Appendix A, as noted above, provides a summary of all submissions by provision with my recommendation on each submission point. Rather than including my reasons for each recommendation in Appendix A, I have cross referenced to the relevant paragraph(s) in this report for my reasons and explanation.

2.7 Recommended changes

26. Where I have recommended amending provisions as a result of considering the submissions and further submissions, these are contained as tracked changes in Appendix B. Additions are shown as green underlined text, with deletions being ~~struck through~~.

2.8 Section 32AA evaluation report

27. A section 32AA evaluation is only required for changes recommended after notification of PC1; if there is no change to the notified version of proposed provisions, a section 32AA evaluation is not required. The level of detail in the section 32AA evaluation reports needs to be at a level of detail that corresponds to the scale and significance of the changes recommended. Certain amendments have not been subject to s32AA evaluation, where in my view, these amendments do not alter the original intent of the provision notified, meaning no further evaluation under section 32AA is required. To streamline this report, where a change has been recommended to the proposed provisions in PC1, the corresponding section 32AA evaluation is attached in Appendix C.

3. Topic 1: General submissions on PC1

3.1 Introduction

28. This section addresses general submissions on PC1 where either the submitters generally support PC1 or where more general amendments have been requested.

3.2 Analysis

3.2.1 General opposition to PC1

29. Heritage Expeditions (2018) Limited (submitter no.3) (HEL) have requested PC1 be withdrawn on the basis that it is inefficient for the plan change to proceed in light of the impending replacement of the RMA.
30. As discussed above the Natural Environment and Planning Bills are currently before select committee. They carry no legal weight.

3.2.2 Considerations

31. PC1 addresses resource management issues that are unsatisfactorily managed under the Operative Plan. As outlined in the section 32 Report the proposed changes have been assessed as the most effective and efficient option to meet the objectives of the Plan. Specific amendments to the proposed provisions requested by submitters have been considered in this report and where they have been adopted and their scale warrants it, have been assessed in accordance with s32AA of the Act. Subject to any such changes, I consider PC1 remains broadly appropriate to address the resource management issues identified, will be effective and efficient and will meet the sustainable management purpose of the RMA.

32. In addition, Part 5B, section 80U(2)(g) of the RMA contains an automatic exemption which allows PC1 to proceed.
33. I recommend the request to withdraw PC1 be **declined**.

4. Topic 2: Natural Character – changes to Issue 1 description and to control of discharges of contaminants explanation

4.1 Summary of submission points

34. PC1 seeks to give better effect to Policy 13 of the NZCPS 2010. Policy 13 is about preserving the natural character of the coastal environment and protecting it from inappropriate subdivision, use and development.
35. Preserving natural character is, in part, the basis for the Operative Plan, which seeks to preserve the natural character of the CMA of the islands and only enable use that is consistent with preserving that natural character and protecting biological diversity.
36. As described in Issue 1, the starting point for the Operative Plan is that the entire CMA of the Kermadec and Subantarctic Islands has ‘significant natural character’. At the time the Operative Plan was drafted, the terminology ‘significant natural character’ was consistent with the NZCPS 1994.⁶ Policy 13 of NZCPS 2010 uses different language, referring to areas of ‘outstanding’ natural character and a requirement to ‘avoid’ adverse effects on areas of outstanding natural character.
37. To better align the language used in the Plan with Policy 13 of the NZCPS 2010 PC1 proposes to replace the term ‘significant natural character’ with ‘outstanding natural character’ in:
 - a. the Issue 1 description, paragraphs 1, 4 and 5 (refer to the proposed redline changes on page 21 of the Issue 1 description).
 - b. the control of discharges of contaminants explanation, paragraph 5 (refer proposed redline changes on page 28).
 - c. the ‘Monitoring efficiency and effectiveness’ section, paragraph 2 (refer to the proposed redline changes on page 70 of the Plan).
38. The background and drivers for the change are covered in more detail at pages 28 – 30 of the s32 Report.

The New Zealand Sea Lion Trust (submitter no. 6)

39. The New Zealand Sea Lion Trust (NZSLT) support the proposed changes. They seek the proposed amendments relating to outstanding natural character be retained as notified (submission point 6.2).

Te Ao Marama Inc (submitter no.9), Heritage Expeditions (2018) Limited (submitter no.3) further submission point (FS3 – S11)

40. Te Ao Marama Inc (TAMI) neither support nor oppose the proposed changes. They seek further information on the evidential basis for changing the word

⁶ NZCPS 1994 stated that it is a national priority to preserve natural character in the coastal environment to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. It had a hierarchy of avoid, remedy and protect.

‘Significant’ to ‘Outstanding’ and explanation of the practical implications of the proposed change on plan users. They also note that any contribution to the identified ‘landscape’ values of the area would need to include mana whenua values (submission point 9.2).

4.2 Discussion and Recommendations

41. The reasons and evidential basis for the changes are outlined in the s32 Report.⁷ In short, the NZCPS 2010 was gazetted just prior to notification of the Operative Plan in 2011. As a result, the Operative Plan had been prepared under the 1994 NZCPS. The Operative Plan was assessed before notification, and subsequently before seeking the former Minister’s approval of the plan in 2017, for consistency with the 2010 NZCPS. In both instances it was concluded that the Operative Plan gives effect to the 2010 NZCPS, including to Policy 13.
42. Notably, in 2016, the Minister commissioned expert evidence in anticipation of an Environment Court Hearing on appeals.⁸ That evidence included an assessment of the natural character of the Islands and their territorial waters. The evidence concluded the natural character values of the Islands and surrounding waters are outstanding – see Appendix I for the evidence of Landscape Architect, Gavin Lister.⁹
43. The 2017 assessment concluded that while the Plan gave effect to the NZCPS, including Policy 13, a Plan Change was recommended to ensure consistency with the language in the NZCPS (i.e. to alleviate any ambiguity). That is the change that is now being proposed via PC1.
44. In my opinion, the assessments outlined above provide a sufficient evidential basis and rationale for the proposed changes.
45. Regarding TAMI’s request for evidential basis for the change, as noted above evidence was prepared during the appeals stage of the operative plan (see Appendix I. This evidence is referred to in the section 32 report.¹⁰ Regarding TAMI’s request for further information on the practical impact of the proposed changes, I consider they will have limited practical effect as they are made to an issue statement and explanation rather than objectives, policies and rules. Prior to notification of PC1 the Operative Plan had been assessed as delivering the level of protection for natural character required under NZCPS Policy 13 and this status quo is not proposed to change. The changes to the issue statement and explanation are therefore intended to achieve wording consistency with a higher order policy and to assist with plan interpretation, rather than put in place a substantively different resource management regime.
46. Regarding TAMI’s note that any contribution to the identified ‘landscape’ value status of the area would need to include mana whenua values, I note that the Operative Plan does not specifically address natural features and landscapes separately to natural character. The reasons for this approach are described in the section 32 report.¹¹ No changes to the Operative Plan are proposed in that

⁷ Section 32 Report Pgs. 28 – 30.

⁸ Appeals were ultimately resolved by consent before the hearing.

⁹ Appendix I proposed Regional Coastal Plan – 2016 Appeals – Statement of Evidence – Gavin Lister – paragraphs 40, 56 & 60.

¹⁰ Section 32 report, page 29.

¹¹ Section 32, page 30.

regard. I note, however, that the way the Plan addresses natural features and landscape, including a cultural dimension, is a matter that could be considered as part of the full plan review that will follow PC1.

47. I recommend submission point 6.2 by the NZSLT is **accepted**. As TAMI did not request any specific changes but posed questions which I consider I have responded to and clarified, I recommend submission point 9.2 by TAMI is **accepted in part** and that further submission of HEL in support of that submission point is **accepted in part**.

5. Topic 3: Access and Anchoring - Ancillary Craft

5.1 Control of surface water activities – Policy 13

48. No submitter has specifically commented on or sought further changes to those proposed for Policy 13. Instead, submitters that have addressed this topic direct their commentary and relief towards the rule that implements Policy 13, namely the proposed changes Rule 40C.

5.2 Rule 40 new Condition C

49. 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). 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.
50. As outlined further in relation to proposed Rule 47A below, the Operative Plan manages the risk of various incidents by controlling vessel access using vessel length as a proxy for numerous risk factors. When developing the Operative Plan, the use of ancillary craft was not considered a navigation safety or oil spill risk. Accordingly, providing unrestricted access for ancillary craft was considered appropriate.
51. While ancillary craft 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’.¹²
52. Since Covid, there has been increased interest from cruise ship companies wanting to visit the Subantarctic Islands from vessels less than 125m long and vessels more than 125m long (which the Plan consider to be “large vessels”). The passenger capacity and size of eco-tourism cruise ships have increased. The Conservation Management Strategy provides for a landing site at the head of Perseverance Harbour, Campbell Island, that allows up to 200 people per day to land and walk the Col Lyall track from Beeman Base to the top of the ridge line overlooking Northwest Bay.

¹² As described at page 13 of the proposed Plan.

53. The Minister has identified a navigation safety issue that this could encourage larger cruise ships (longer than 125 m) to either:
- a. stay 0.324 nm (600 m) from MHWS (if they have a coastal permit under Rule 48); or
 - b. stay 0.54 nm (1,000 m) from MHWS (as a permitted activity), then offload passengers into ancillary craft that travel a long distance from the mother ship, to either take passengers zodiac cruising or to undertake zodiac transfers to access landing sites (assuming they have entry permits). DOC does not consider long-distance ancillary craft use in the Subantarctic Islands environment to be a low-risk activity. The weather in the Subantarctic Islands can be extreme, and it can change fast. Weather conditions can be un-forecast and localised, including strong winds and large swells, both within and outside the harbours and inlets. DOC notified proposed changes to Rule 40C to the effect that ancillary craft must not be:
 - i. more than 0.54 nm (1,000 m) from where the mother ship is authorised to access (in the absence of reliance on Rule 1)
 - ii. more than 3,000 m from the mother ship at any time.

54. These proposed changes attracted several submissions, as outlined below.

Rodney Russ (submitter no 1, submission point 1.1) Heritage Expeditions (FS3 – S1 full sub)

55. Mr Russ argues there is no evidential, safety, or environmental justification for the proposed change to Rule 40(C), noting that existing professional oversight, audited safety systems, and decades of incident-free expedition operations are working effectively. The submitter points to “penalisation” of existing concessioners, implying their ancillary craft access to Southwest Cape at the Auckland Islands and Camp Cove, Venus Cove, Garden Cove (providing access to Mt Honey), and zodiac cruising to Davis Point from “Beaman Cove” [also known as Beaman Base] will be restricted. Mr Russ points out the same considerations exist at the Kermadec Islands. Mr Russ seeks that the Operative Rule 40 is retained. Instead of management under the Regional Coastal Plan he requests concessionaires’ safety plans are reviewed to ensure they manage ancillary craft use.

Heritage Expeditions (submitter no 3, submission point 3.5)

56. HEL largely adopt the reasons given by Mr Russ in his submission point 1.1. They request deletion of the proposed changes to Rule 40(C). If the proposed changes are progressed they request Rule 40:
- a. Exempt existing operators from the application of the new restrictions.
 - b. Exempt operators that have two ancillary craft operational.
 - c. Exempt operators that have a Fast Rescue Boat.
 - d. Restrict the application of the rule to just Perseverance Harbour.

Ponant (submitter no 4)

57. Ponant supports in part the proposed changes to Rule 40(C) but considers the requirement to be no more than 1000m from where the mother ship is

authorised to access – proposed Rule 40, Condition (C)(a) – could impact their current operations. They suggest ancillary craft may safely operate more than 1000m from where the mother ship is authorised to access but still within 3000m of the mother ship. The submitter requests amendments to Rule 40(C). Ponant also request clarification of the “;...and/or...” within condition C.

New Zealand Sea Lion Trust (submitter no 6)

58. NZSLT opposes restricting ancillary craft (such as zodiacs) to a 1000m proximity from the mother ship on that basis that it could lead to larger vessels entering Perseverance Harbour to meet the permitted activity conditions. They suggest requiring ancillary craft operate in pairs would be a better way to manage navigation safety of ancillary craft. Their relief is to delete the proposed changes.

Southland Conservation Board (submitter no 7)

59. The SCB raise similar concerns to the NSLT. They too suggest ancillary craft operating in pairs would be an appropriate alternative approach. Their relief is to delete the proposed changes.

5.3 Discussion and Recommendation

60. Mr Russ, HEL, the NZSLT and the SCB all oppose, or oppose in part, the proposed changes to Rule 40(C) on the basis that they will be unnecessary, that existing cruise operators’ ancillary craft access to certain landing sites will be limited and that are other measures such as audited safety plans and requiring use of ancillary craft to operate in pairs, that could be used.
61. Mr Russ has suggested that concessionaires be required to develop safety plans for the use of ancillary craft in lieu of any changes to the Rule. In my opinion, concessionaire safety plans sit outside the jurisdiction of the Regional Coastal Plan, as such I do not discuss them further.
62. Mr Russ also points to several landing sites at Auckland and Campbell Islands where he considers access will be unnecessarily restricted by the proposed changes. As outlined in Appendix D, Mr Dilley has considered this issue and confirms that further amendments to proposed Rule 40(C) to enable operators to access certain locations would be appropriate without compromising policy intent of the proposed Rule, which is to provide for the safe use of ancillary craft within appropriate permitted thresholds.
63. Mr Dilley agrees that, as drafted, proposed Rule 40(C) unnecessarily restricts ancillary craft access by vessels <125m to certain locations, including those listed by Mr Russ (see *Jim Dilley- Maritime Navigation Safety Advice, Expert Report, Appendix D, Ancillary Craft Access Rule 40*). These are:
- a. Lake Hinemoa access, Auckland Island
 - b. Erlangen Clearing, Carnley Harbour, Auckland Island
 - c. Southwest Cape, Carnley Harbour, Auckland Island
 - d. Beeman landing point, Perseverance Harbour, Campbell Island
 - e. Camp Cove, Perseverance Harbour, Campbell Island
 - f. Garden Cove, Perseverance Harbour, Campbell Island
 - g. Venus Bay, Perseverance Harbour, Campbell Island

64. In Mr Dilley’s opinion, all of these sites are appropriate to travel to by ancillary craft from a mother ship that is less than 125 m in length overall, which can therefore access up to 300 m from MHWS. Mr Dilley has recommended a maximum distance of 3.24nm (6000m) for ancillary craft to travel from a mother ship less than 125 m in length to gain access to these sites. Mr Dilley’s reasons for this recommendation are further explained in his advice in Appendix D.
65. Ancillary craft access to these locations can be enabled to implement Mr Dilley’s advice and respond to the relevant submission point from Rodney Russ by the amendments to proposed Rule 40 that I have set out below. The key changes are to exempt ancillary craft launched from vessels less than 125m long from the requirement to be within 0.54nm (1000m) from where the mother ship is authorised to access (Condition C(a)) for the purpose of accessing the locations in E(a) (i.e., the locations listed in paragraph 63 a. – g. above).
66. This means on-going access to these locations and ancillary craft touring¹³ from a mother ship (less than 125m long) will be permitted within an acceptable limit of no more than 6000m travel from the mother ship. In other words, all listed sites could be accessed while remaining within 6000m of a mother ship <125m. In my suggested ‘E’ the mother ship is to be less than 125 m long to prevent a scenario where a mother ship greater than 125m long could sit outside 1000m from MHWS, for example, well outside Perseverance or Carnley Harbour, and send ancillary craft into those harbours, which would be an outcome the PC1 changes have been designed to avoid. A mother ship less than 125m long can access up to 300m from MHWS, therefore that mother ship can enter these harbours before launching their ancillary craft, which I understand from Mr Dilley’s advice, is safer from a navigation safety perspective.
67. There is, however, one exemption to this approach, which I have provided for in my suggested ‘D’. This is to enable access to Lake Hinemoa landing site, at Musgrave inlet by ancillary craft from a vessels longer than 125m but with a coastal permit to access as close as 600m from MHWS (under Rule 48) while remaining within the 6000m limit. I understand this is acceptable from a navigation safety point of view as explained by Mr Dilley in Appendix D because the mother ship remains within the 6000m distance from ancillary craft and that Musgrave inlet is relatively accessible and sheltered in the event an emergency response was required. This change provides for an existing use of this area. If the mother ship does not have a coastal permit to access the 600m – 1000m from MHWS zone, ancillary craft access to the Lake Hinemoa landing would not be permitted, due to breach of the 6000m limit.
68. As Mr Dilley explains in Appendix D, the overall, the amendments to proposed Rule 40 that I have recommended will enable:
- a. ancillary craft launched from a mother ship greater than 125m in length overall, to be exempt from the 1000m requirement and allows them to access the Lake Hinemoa landing site area; and
 - b. For ancillary craft launched from a mother ship less than 125m length overall, an exemption from the 1000m requirement for access to the sites identified by submitters, and

¹³ Scenic cruising in ancillary craft such as Zodiacs.

- c. Ancillary craft generally to travel up to 6000m from the mother ship provided it also remains within 1000m of where the mother ship may access (proposed changes to Rule 40C(a) and (b) respectively).
69. The last bullet point, ancillary craft generally being permitted within 1000m of the where the mother ship is authorised to access in accordance with the Plan, and within 6000m of the mother ship, at any time has been recommended by Mr Dilley for the landing site access reasons explained above, but also because, in Mr Dilley’s opinion, a 6000m limit will ensure navigation safety is not compromised.
70. Figure 1 below shows where ancillary craft would be launched from when accessing Lake Hinemoa, from a mother ship longer than 125m (proposed Rule 40D):

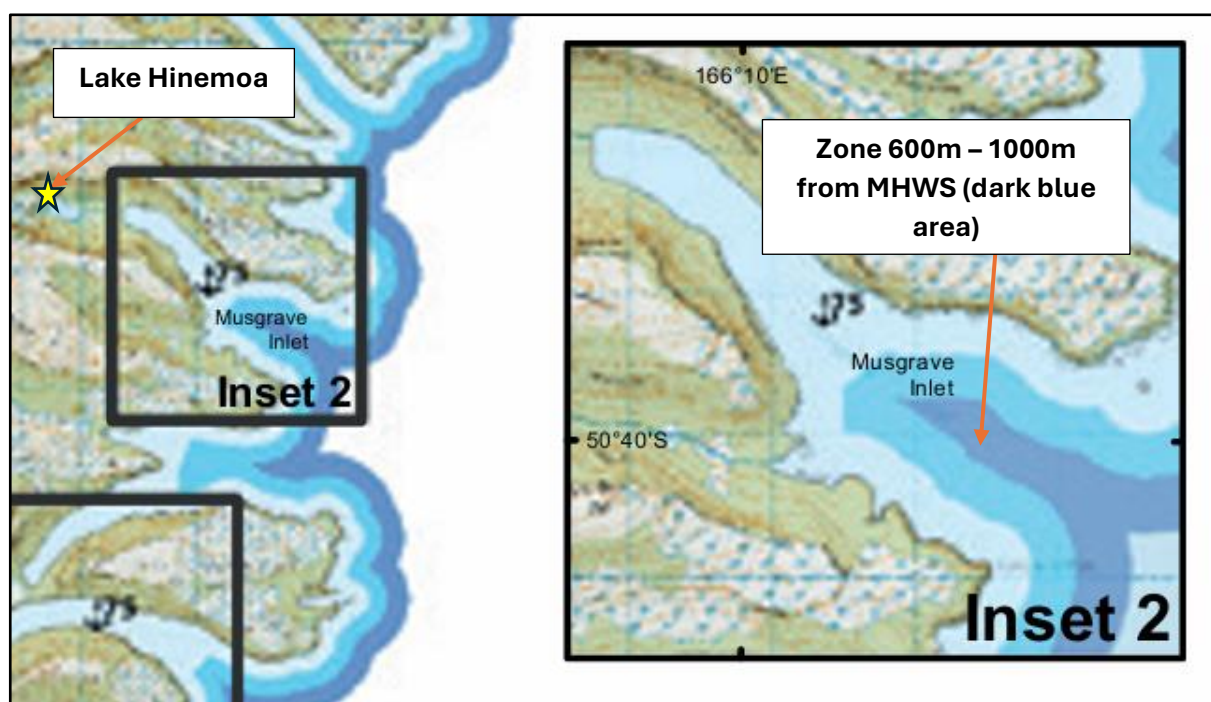


Figure 1 – RCP Map 1 Excerpt showing Musgrave Inlet, Lake Hinemoa and the 300m, 600m and 1000m from MWHS zones.

71. My recommended drafting changes to proposed Rule 40, in response to submissions and the navigation safety advice of Mr Dilley are:

40	<p>A. All <u>vessels ancillary craft</u> must comply with Performance Standards 2, 4, 5 and 6 (in Table 2).</p> <p>B. <u>Vessels 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>C. <u>Ancillary craft must not be in a position:</u></p> <p style="margin-left: 20px;">(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></p> <p style="margin-left: 20px;">(b) <u>more than within 3.24nm (36000m) from of the mother ship, at any time.</u></p> <p>D. <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>E. <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>(a) Locations:</p> <ul style="list-style-type: none"> i. <u>Lake Hinemoa, Auckland Island</u> ii. <u>Erlangen Clearing, Carnley Harbour, Auckland Island</u> iii. <u>Southwest Cape, Carnley Harbour, Auckland Island</u> iv. <u>Beeman landing point, Perseverance Harbour, Campbell Island</u> v. <u>Camp Cove, Perseverance Harbour, Campbell Island</u> vi. <u>Garden Cove, Perseverance Harbour, Campbell Island</u> vii. <u>Venus Bay, Perseverance Harbour, Campbell Island</u> 	Permitted
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72. Only one submitter raises the applicability of the proposed changes to Rule 56 (the equivalent Rule for ancillary craft at the Kermadec Islands) (Rodeney Russ submission point 1.1) where Mr Russ has said “*the same rationale and concerns apply directly to the Kermadec Islands, where similar operational and environmental conditions exist.*” Mr Dilley has addressed this at 113 in Appendix D, where he does **not** recommend changing the permitted activity thresholds in Rule 56, as in his opinion, the operating environment at the Kermadec Islands is different from the Subantarctic Islands. Mr Dilley explains that differing environmental conditions, and particularly lack of sheltered landing sites means the proposed permitted activity thresholds for Rule 56 remain appropriate. However, I recommend minor wording changes to Rule 56 to achieve a level of wording consistency with my changes to Rule 40. These are:

56	<p>A. All <u>vessels ancillary craft</u> must comply with Performance Standards 2, 4, 5 and 6 (in Table 2).</p> <p>B. <u>Ancillary craft must not be in a position:</u></p> <p style="margin-left: 20px;">(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></p> <p style="margin-left: 20px;">(b) <u>more than within 1.61nm (3000m) from of the mother ship, at any time.</u></p>	Permitted
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73. These changes are fully recorded in Appendix B to this report and have an accompanying section 32AA evaluation in Appendix C. Rodney Russ and Heritage Expeditions and Ponant have generally opposed the proposed changes but also sought changes to the proposed Rule in the event the changes remained. I recommend their submission points be **accepted in part**.
74. For completeness, I note the NZSLT and Southland Conservation Board (submission points 6.8 and 7.8 respectively) have simply requested deletion of the proposed changes to Rule 40. On this basis, I recommend their submission points be **declined**.

6. Topic 4: New Rule 47A and minor change to Rule 47

6.1 Summary of submission points

75. The Operative Plan uses vessel length as a proxy for a vessel's level of risk of navigation safety incidents - and, therefore, the risk of oil spills (and other pollutants) and biosecurity breaches. The Operative Plan has zones of access relative to vessel length that are either permitted (no coastal permit required), discretionary (a coastal permit must be applied for and assessed case-by-case) or prohibited (no access allowed).
76. The zone inside 0.16nm (300 m) from MHWS, as the closest to shore, is the zone of highest risk because reduced navigation space and complex nearshore conditions significantly increase the likelihood and consequences of grounding, collision, and shoreline contamination in the event of an oil spill or biosecurity breach. The context for this approach is set out in detail at page 31 of the section 32 report and in the 'maintenance of biodiversity and biosecurity' section of the Operative Plan. The main reason for using vessel length is to simplify provisions that would otherwise need to incorporate an extensive list of factors that can be broadly accounted for by length. The use of zones is also to provide an acceptable level of risk for existing use as a permitted activity where possible.
77. Access to the internal waters of Perseverance Harbour at Campbell Island by vessels longer than 125 m has been identified as an issue during the implementation of the Plan. The Col Lyall track landing site at the head of the harbour can have up to 200 visitors per day – a limit set in the 2016 Southland Murihiku Conservation Management Strategy (CMS).¹⁴ Rule 47 of the Operative Plan prohibits access closer than 0.32nm (600 m) from shore for vessels longer than 125 m. This effectively excludes vessels longer than 125 m from accessing Perseverance Harbour, given the width of the harbour is approximately 700m wide at the harbour entrance at Davis Point (the narrowest part of the entrance).
78. The section 32 report records that through implementation of the Operative Plan since notification in 2011, the Minister has reached the view (based on advice from DOC and the Environment Canterbury Harbour Master) that prohibiting access to Perseverance Harbour at Campbell Island, by vessels longer than 125m, is blunt and unnecessarily restrictive, and that access for vessels longer than 125m could be provided for, subject to case-by-case assessments with the provision of expert maritime and other relevant effects assessments.

¹⁴ [Southland Murihiku Conservation Management Strategy: Conservation management strategies](#) – see Table 2.9 page 131.

Accordingly, PC1 introduces a new Rule 47A, to make access by vessels longer than 125m a discretionary activity, along with a consequential change to Rule 47.

79. Rodney Russ (submitter no 1) opposes the Rule 47A and seeks its deletion (submission point 1.2). Mr Russ advances several reasons for his opposition namely:
- a. inadequate justification,
 - b. lack of precaution,
 - c. Campbell Island’s extreme remoteness and limited emergency support,
 - d. flawed assumption about vessel design and operation,
 - e. Historical incidents prove anchorage is unsafe,
 - f. Anchoring feasibility is not adequately addressed,
 - g. Lack of pilotage, and no capacity for oversight,
 - h. Commercial motivations behind the rule change.
80. Mr Russ lodged a further submission on his primary submission (FS1 – S1.2) to amend his discussion on ratio of anchor chain length to water depth, referred to as ‘scope’. Mr Russ amended his point, stating his original view that scope of 4:1 (anchor chain length equal to four times the depth of water) would not be rigorous enough. Mr Russ suggests 7:1 would be required for anchoring in Carnley Harbour.
81. HEL (submitter no 3) lodged a further submission (FS3 – S1 full sub)) on the primary submission of Mr Russ, supporting it in its entirety.
82. HEL lodged a primary submission (submission point 3.6) seeking Rule 47A and the consequential changes to Rule 47 be deleted. HEL provide similar reasons to Mr Russ, raising the appropriateness of the existing Rule 47, issues of navigation safety, the 2017 L’Austral incident, unsafe anchoring conditions in Perseverance Harbour for large vessels, and insufficient change in vessel technology to justify the rule change and manage risk.
83. The NZSLT (submitter no 6) oppose Rule 47A and the consequential amendments to Rule 47 and seek they be deleted in their entirety (submission point 6.14). Their reasons are that Perseverance Harbour is a difficult harbour to navigate due to the reefs present. Larger vessels visiting more frequently will increase the risk of accidents and oil spills. Large vessels will require more space to anchor, presenting increased impacts on the sea floor due to the larger size of anchors and amount of anchor chain required. NZSLT cite the risk large vessels being moved by wind (otherwise known as windage - large vessels catching wind and moving), steering difficulties and the 2017 L’Austral incident which is discussed at page 31 of the section 32 report. NZSLT cite disturbance of wildlife due to lighting and disturbance of the Perseverance Harbour New Zealand sea lion population. Rules related to vessels accessing Macquarie Island and heading to Antarctica under IAATO- International Association of Antarctic Tour Operators are referred to as a regulatory approach preferred by the submitter.
84. The SCB (submitter no 7) oppose Rule 47A and the consequential changes to Rule 47 and seek they be deleted (submission point 7.13). The submitter gives similar reasons to the NZSLT.

85. Ponant (submitter no 4) support in part Rule 47A and the consequential changes to Rule 47 (submission point 4.2). In the same point, they seek amendments to the rule to include Carnley Harbour at Auckland Island. HEL have lodged a further submission (FS3 – S4.2) opposing Ponant’s submission point 4.2 for the reasons outlined in their primary submission.

6.2 Discussion and Recommendations

6.2.1 Rodney Russ submission point 1.2

86. Mr Russ refers to the work that led to creation of operative Rule 47 (Rule 45 when the plan was notified in 2011). He refers to the “significant research, negotiation, and consensus among experts” during the RMA Schedule 1 process for the Operative Plan which established Rule 47 as appropriate to manage the navigation safety risks associated with large vessels accessing Perseverance Harbour.
87. As Mr Dilley points out in Appendix D vessel length as a proxy for navigation safety is a coarse tool and has been acknowledged as such. It is a proxy for:
- a. vessel size and propulsion system,
 - b. number, type and location of propellers and rudders,
 - c. presence and power of bow and/or stern thrusters,
 - d. windage of the vessel relative to its power,
 - e. age of vessel,
 - f. fuel type and volume,
 - g. duration of access.
88. A consequence of the current approach is that a combination of greater vessel length and closer proximity to MHWS results in increasing restrictions, to the point that vessels greater than 125 m are currently outright prohibited from entering internal harbours at the Auckland and Campbell Islands. I acknowledge that Rule 47 took an appropriate precautionary approach at the time the Operative Plan was developed. Put simply, without large vessels in an internal water such as Perseverance Harbour the risk of a navigation safety incident is minimised. When a vessel is introduced then there is a potential for an incident.
89. Since the Plan became operative in 2017 there were several factors that distinguished the operating environment for navigation safety from the current situation, which justified the greater level of caution inherent in operative Rule 47.
90. Firstly, DOC has since contracted the Harbourmaster’s Office of Environment Canterbury (ECan) to manage the safety of navigation of the Subantarctic and Kermadec Islands. On the advice of ECan and Maritime New Zealand they have developed and continue to implement a safety management system for navigation at the islands that applies the New Zealand Port and Harbour Marine Safety Code.¹⁵ The Code provides guidance on the safe management of

¹⁵ <https://www.maritimenz.govt.nz/media/d55gj0tp/nz-port-harbour-marine-safety-code.pdf>

navigation within waters around New Zealand and has been adopted by all regional councils and port companies in the country. It provides for a collaborative approach that uses skills and competencies across Maritime New Zealand, regional councils and port companies, and, in this case, relevant stakeholders with experience of operating in the waters of the two groups of islands.

91. In parallel, DOC is working with the Ministry of Transport on a legislative change to the Maritime Transport Act 1994 that would allow the Minister of Conservation to appoint a Harbourmaster under Part 3A and to apply other powers available under that part of the Act. The intention is that the contract with ECan will be replaced with a harbourmaster once the Minister can legally appoint one. I understand an Amendment Bill with the necessary changes for the Minister has had its second reading in Parliament on 23 April 2026 and is anticipated to be enacted by the end of this year, at which point the Minister will be able to appoint a Harbourmaster who will have access to all the powers of Part 3A, including the ability to create bylaws, under the MTA to regulate navigation safety at the Islands. In the meantime, I acknowledge this amendment is not in force and the Regional Coastal Plan remains the only regulatory tool for the Minister to manage marine navigation safety at the Islands.
92. As another distinction from the 2011 - 2017 period, I understand ship building is trending towards larger ships with improved manoeuvring capabilities. Mr Dilley notes that current technology available to potential applicants (and the Minister as the regulator), to model and assess how vessels will interact with wind, swell, currents and train personnel, and bathymetric survey has improved in some areas. I rely on the advice of Mr Dilley at appendix D where he explains these factors in detail. For example, Mr Dilley advises there are new vessel builds completed and underway. Mr Dilley's opinion differs to that of Mr Russ, who considers there has been little change in technology for larger vessels since 2017 and that there may not be a trend towards larger shipbuilding or improved manoeuvring capability. I consider further information on these points from the relevant submitters would assist the commissioners in resolving these differences of view.
93. Mr Dilley sets out the nature of technical assessments that would be required and matters that would need to be addressed by consent conditions under s108 and 108AA of the RMA, should any permit for entry into Perseverance Harbour be applied for. These requirements would be extensive.
94. As an application under Rule 47A would be for a discretionary activity, the Minister would be required to assess the proposal in accordance with section 104 and 104B of the RMA, enabling a full assessment of the activity on its merits with all actual and potential effects assessed and all relevant resource management issues in the Plan considered. This includes consideration of the age and manoeuvring capabilities of the vessel. The Minister would retain full discretion to decline a permit in circumstances where these matters were not adequately addressed.
95. Mr Dilley sets out the nature of technical assessments that would be required and matters that would need to be addressed by consent conditions under s108 and 108AA of the RMA, should any permit for entry into Perseverance Harbour be applied for. These requirements would be extensive.

96. Regarding Mr Russ' view that Campbell Island's extreme remoteness and limited emergency support militates against removal of the prohibited activity status, Mr Dilley advises that in April 2025 Maritime New Zealand contracted the ocean tug MMA Vision to provide ocean towing services for New Zealand waters. The vessel has been involved in the towage of the Tanker MV Golden Mind from SW of Stewart Island.
97. Mr Dilley has acknowledged that response to any incident would take time and would not easily be undertaken. While granting of a coastal permit under the Rule would be on the basis that the risk of a navigation safety incident occurring would be rigorously assessed and managed by the application of conditions, it is likely an applicant would also need to demonstrate they could address such an event in the worst case.
98. In Mr Dilley's opinion, it is therefore important that vessels visiting the islands have suitable redundancy in all critical systems to help avoid a possible incident and are of a construction that will minimise any damage in an incident. Mr Dilley advises coupling this with proper assessment and planning, crew who are trained well in excess of the minimum standard, masters and bridge crew are familiar with the environment and robust procedures are important for safe navigation. I understand these matters are capable of being appropriately addressed through the discretionary consent application process.
99. In Appendix D, Mr Dilley outlines the navigation safety information potential applicants would be expected to provide when applying for a coastal permit under proposed Rule 47A. In Attachment 2 to his report Mr Dilley has produced these matters in an itemised list of navigation safety information that he considers should be provided with proposed Rule 47A applications. I understand the basis for this is the guidance Mr Dilley currently provides to operators applying for coastal permits under operative Rule 48 to access and anchor in the zone from 0.32nm (600m) from MHWS at the Subantarctic Islands by vessels longer than 125m, but that it has been specifically updated for vessels seeking to access Perseverance Harbour.
100. Taking account of the importance of navigation safety matters being adequately addressed to prevent adverse environmental effects, the extensive factors that are accounted for by the "proxy" of vessel length under the Plan, and that Rule 47A is for a discretionary activity, it is my opinion that additional guidance should be included in the Plan to inform potential applicants of the type and degree of information required in any such application. There should also be additional policy guidance to assist in determination of Rule 47A applications.
101. In my opinion, inclusion of a new policy in tandem with Mr Dilley's information in Attachment 2 to his Appendix D is an appropriate way of achieving this. I have recommended a new policy for inclusion under the *Control of surface water activities (access and anchoring)* explanation, after operative Policy 7 which is currently the policy that establishes the "vessel access close in to shore relative to vessel size" framework that is implemented by the access and anchoring rules for permitted activity access. This operative policy "*provides 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.*"

102. My proposed new policy reflects this approach but adapts it specifically to Rule 47A applications that seek to access and anchor outside the zone 300m from MHWS within Perseverance Harbour, Campbell Island / Motu Ihupuku. It recognises that it may be appropriate for vessels longer than 125m overall to access and anchor in Perseverance Harbour provided that activity can be undertaken in a way that minimises the risk of a navigation safety incident, and therefore risk of oil spill and/or biosecurity breach. My suggested policy (in green underline):

POLICIES

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.*

103. The second limb of my recommended framework of changes is to include Mr Dilley's Attachment 2 in the Plan. The operative Plan includes an "other matters" section (pgs. 66 – 70 of the PC1 redline plan). At the end of this section there is a heading – **Information to be submitted with a coastal permit application**. Currently this section refers applicants to section 88 and Schedule 4 of the RMA, links a resource consent application form, and where to send applications. It also advises what must be included in an application under Rule 31 (Access to the coastal marine area inside 0.54nm (1000 m) from MHWS for vessels with hull and niche area fouling – controlled activity) which is a risk assessment in accordance with Appendix 6 of the Plan to meet the AEE requirements for the purposes of Schedule 4.
104. In my opinion, this section is the appropriate place to include Mr Dilley's Attachment 2 – Guidance on information to be submitted with a coastal permit application. To streamline this report it is attached to Mr Dilley's Appendix D (Attachment 2 to that document) and has been fully incorporated into my Appendix B: recommended amendments to proposed plan change 1.
105. Regarding Mr Russ' discussion on historical incidents at Perseverance Harbour Mr Dilley addresses these in Appendix D.
106. To the extent Mr Russ suggests there may be a commercial motivation for proposed Rule 47A and the consequential changes to Rule 47, the rationale for the proposed changes has been outlined above.
107. I acknowledge Mr Russ's views have been informed by many years of firsthand experience. Having carefully considered the above matters, informed by the expert advice of Mr Dilley, I consider providing vessels longer than 125m with the ability to apply for a discretionary permit for access and anchoring within Perseverance Harbour to be the most effective and efficient way of meeting the

Plan’s objectives and addressing the issues discussed in the s32 report, subject to the new access and anchoring policy and guidance to be incorporated into the “other matters” section of the Plan. While some changes are proposed in response to Mr Russ’ submission, his primary relief that the proposed Rule be deleted is not recommended to be accepted. I recommend his submission point (3.6) be **declined in part**.

6.2.2 Heritage Expeditions (2018) Limited

108. As Heritage Expeditions adopt the same reasoning as Rodney Russ and seek proposed Rule 47A and consequential changes to Rule 47 be **deleted I recommend their submission is declined in part**. The rationale for that recommendation on their submission is explained above in relation to Mr Russ’ submission.

6.2.3 New Zealand Sea Lion Trust

109. The NZSLT refer to the difficulty of navigating Perseverance Harbour due to the presence of reefs. I have considered this concern with reference to advice from Mr Dilley. That advice is that Perseverance Harbour would not generally be classified as difficult to navigate, provided navigation is undertaken with appropriate planning, in suitable conditions, and by a vessel and master with the requisite experience and local knowledge.
110. Mr Dilley acknowledges that Terror Shoal restricts the available width of navigable water and requires a course alteration at a narrow point, and that the anchorage off Beeman Base, in Perseverance Harbour presents issues relating to holding and wind effects under certain conditions. These factors introduce navigational risk, however Mr Dilley advises such risks are capable of being managed, rather than eliminated, through conservative operating limits, weather and forecast criteria, vessel suitability, and consent conditions.
111. The discretionary coastal permit framework allows detailed assessments (such as vessel capability and crew experience and local knowledge) and provides the ability to impose specific and robust conditions, including restrictions on navigation past Terror Shoal and limits on operating conditions where appropriate.
112. Likewise, Mr Dilley has addressed the windage issue raised. I understand effects of windage are countered by several factors including the shape and area of the vessel below the waterline (length, depth, and profile) and the vessels manoeuvring equipment (propulsion, steering and thrusters). These factors would be part of any simulation and assessment of an application for access by a vessel greater than 125 m in length.
113. Regarding potential lighting effects the Minister would have discretion under Rule 47A to impose conditions that could prohibit vessels from being in Perseverance Harbour during the hours of darkness. The Minister’s discretion would extend to assessing all actual and potential effects on wildlife from lighting and any other issues. While the outcome of such an assessment cannot be pre-determined at this plan change stage, I note Mr Dilley’s advice at paragraph 92 of Appendix D where, from a navigation safety perspective, he “sees little justification for a vessel operator seeking approval under proposed Rule 47A to enter, depart, or remain within Perseverance Harbour during the

- hours of darkness.” In my opinion the assessment required before approving a Rule 47A application would be sufficiently robust to address the submitter’s concerns.
114. The NZSLT have raised the importance of Perseverance Harbour for New Zealand sea lions. Ms Manno has prepared a memorandum on NZ sealions at the Subantarctic Islands (see Appendix F). She records that there are two breeding colonies of NZ sea lion in Perseverance Harbour, one located at Davis Point and the other at Shoal Point. There are approximately 450 breeding females in the harbour, split between the two colonies, and an unknown number of animals of other age and sex classes. In Ms Manno’s opinion,¹⁶ the occasional vessels moving slowly through Perseverance Harbour and anchoring for a short period of time may not have an impact on New Zealand sea lions. Ms Manno does raise some potential effects in relation to risk of propellor strike from ancillary craft, discharge of marine pollutants such as oil spill and various forms of human disturbance.
115. I note all seals, sea lions, dolphins and whales are protected under the Marine Mammals Protection Act 1978. It is an offence to harass, disturb, injure or kill marine mammals. The Marine Mammals Protection Regulations 1992¹⁷ list the conditions governing behaviour around marine mammals.
116. I note the ECan harbour master (Mr Dilley) has published the *NZ Subantarctic Islands - Vessel Operating Guidelines – November 2023 version 2.0*.¹⁸ Pages 20 – 22 of this document outline guidance on meeting the regulations. This guidance includes specific discussion on sealions and use of ancillary craft.
117. In my opinion, potential adverse effects on sealions can be appropriately managed by a combination of full effects assessment and appropriate consent conditions imposed on a discretionary coastal permit and by the existing legal requirement to comply with the Marine Mammals Protection Act 1978 and The Marine Mammals Protection Regulations 1992.
118. The NZSLT seek alignment with the access controls applied at Macquarie Island and under International Association of Antarctic Tour Operators (IAATO), including limits on passenger numbers and landings. However, those controls operate under fundamentally different legal and governance regimes, including reserve management regimes where access is restricted by default and requires specific authorisation under Australian conservation and parks legislation, Macquarie Island Nature Reserve and World Heritage Area Management Plan and the Antarctic Treaty System, rather than an effects-based regional coastal plan prepared under the RMA. In contrast, the discretionary activity framework provided for under Rule 47A enables case-by-case consideration of vessel characteristics, passenger management, and site-specific effects, providing a proportionate, effects-based approach, consistent with the scheme of the NZCPS 2010 and the RMA.
119. Accordingly, the request to delete Rule 47A and the proposed changes to Rule 47 are not accepted.

¹⁶ Appendix F – para 20.

¹⁷ [Marine Mammals Protection Regulations 1992](#)

¹⁸ [NZ Subantarctic Islands - Vessel Operating Guidelines – November 2023 version 2.0](#)

6.2.4 Southland Conservation Board

120. The SCB submission point on Rule 47A cites many of the same reasons for their submission as the NZSLT submission, where I have addressed those reasons I do not repeat them here.
121. A matter raised by the SCB is ‘tourism management and impacts on the Conservation Management Strategy.’ The submitter argues larger vessels entering the area have the potential for larger visitor numbers putting pressure on the Conservation Management Strategy and its permit allocation system. This implies larger vessels carrying more visitors into Perseverance Harbour may be inconsistent with the CMS. However, the CMS has established a landing site, for the Col Lyall track at the head of the Perseverance Harbour for up to 200 people per day, and similarly a landing site at Enderby Island that allows up to 200 people per day. Within limits, increased visitor numbers are anticipated. Vessel numbers and demand for entry permit allocation (for landings) varies from season to season. Further, it does not necessarily follow that fewer passengers will always equate to reduction in risk of adverse effect. Carrying fewer passengers on a cruise ship could mean more vessels are required to enter Perseverance Harbour over time meaning there could be greater potential for cumulative effects than in a scenarios under Rule 47A where they may be fewer trips by larger vessels. This submission point goes to integrated management, which I acknowledge is an important consideration. The coastal plan recognises the importance of integrated management in the “Other matters” section of the plan (pages 67-68 of the PC1 Redline version), and in the Issue description of Issue 1 (pages 23 - 24 of the PC1 Redline version) specifically acknowledging the importance of the land-sea interface. In my opinion, it is ultimately for the Conservation Act and Southland Murihiku Conservation Management Strategy to manage visitor numbers and land sites on the Islands themselves. In my opinion, this sits outside the Regional Coastal Plan, as its jurisdiction stops at MHWS.
122. Accordingly, I recommend the request by the SCB to delete Rule 47A is **not accepted**.

6.2.5 Ponant (submission point 4.2)

123. While Ponant support retaining Rule 47A and the consequential amendments to Rule 47 they seek inclusion of Carnley Harbour in the Rule. That is, Ponant request the ability to apply for a discretionary coastal permit by vessels longer than 125m to Carnley Harbour also. This requested change to the rule would be significant. The s32 report is very clear that Carnley Harbour is not included in PC1, and there is no s32 analysis to support inclusion of that location¹⁹. The addition would add the entire harbour, a large waterbody, rather than a discrete location and it would introduce a new management regime for a resource (Carnley Harbour) that is not proposed in PC1.
124. My preliminary conclusion is that the request to include Carnley Harbour is not “in the scope of the plan change”. Should the commissioners determine the

¹⁹ Noting some preliminary technical advice on the suitability of Carnley was sought from the ECAN Harbourmaster prior to preparation of the s32 Report. See pg.34, footnote 52, of the s32 Report.

submission point is “within scope” of PC1 I have assessed the requested change on its merits below.

125. Having regard to the advice of Mr Dilley at appendix D I understand that Carnley Harbour presents a greater navigation safety risk for large vessels than Perseverance Harbour due to multi-directional wind funnelling, obscured areas, the highest vessel traffic density in the Subantarctic Islands, significant anchoring depths, and loss of visual contact with the entrance channel (limiting the ability to monitor the only navigable departure route). Mr Dilley explains why Carnley Harbour presents a different environment for navigation and ship operations to that of Perseverance Harbour.
126. In addition, landing sites within Carnley Harbour are dispersed and have very low daily/annual limits, which would likely constrain operations and reduce the ability to safely and rapidly recover passengers and crew in deteriorating conditions, potentially delaying a safe departure. For example, the maximum landing numbers for each location are small, with a maximum daily limit of 50 people being the highest, and the maximum total annual limit at each site is 150.
127. In my opinion, there is a strong effects basis for the continued prohibition of access and anchoring by vessels longer than 125m in Carnley Harbour.
128. When these factors are considered together with the scale of the change, the overall risk is disproportionate to the limited benefit of access and anchoring by large vessels. I **recommend declining** the request to include Carnley Harbour in Rule 47A.

7. Topic 5: Access and Anchoring – Port Ross Access

7.1 Summary of submission points

7.1.1 Access and Anchoring - Note 7 changes

129. Sanford (submission point 5.1): Seek ‘Access to Port Ross is restricted to research and management vessels, and those vessels seeking shelter during that period’.
130. Seaeagle Fishing Limited (submission point 8.2): seek to retain the existing provisions that manage winter access to Port Ross, with the addition of a requirement to use chain/wire anchor cables and speed restrictions. They have not provided any specific wording changes to Note 7 or the applicable rules or performance standards.
131. Barine Developments Limited (submitter no. 10, submission points 10.3, 10.4, 10.6, 10.7 and 10.11) ask for the same relief as Seaeagle Fishing Limited in relation Note 7 and the applicable rules and performance standards. They have not offered any specific wording changes to these provisions.
132. Seafood New Zealand / Deepwater Council (submitter no.11, submission point 11.3):ask for the same relief as Seaeagle Fishing Limited in relation Note 7 and the applicable rules and performance standards. They have not offered any specific wording changes to these provisions.

133. The New Zealand Sea Lion Trust (submitter no.6, submission point 6.4) and the Southland Conservation Board (submitter no.7, submission point 7.4): both support the proposed amendments to Note 7 and the applicable rules and performance standards and request they be retained as notified.

7.1.2 Access and Anchoring - New Condition B in Rules 34, 37, 40, 41, 42, 43, 46

134. Sanford seek a new permitted activity condition be added to Rules 40, 41, 42, 43, 46 which reads “Only research, management vessels and vessels seeking shelter may enter Port Ross in the zone shown on Map 2 during the period 1 April to 31 October.” As an alternative to this relief Sanford seek a change to the title for the research and management rules section so that it read “Research, management and sheltering vessels”. In combination with that request Sanford also seek a change to the chapeau for Rule 38 so that it reads ‘Access and anchoring within the coastal marine area of any of the Subantarctic Islands by vessels involved in management activities and/or research for the Department of Conservation, including vessels of the New Zealand Navy, or sheltering vessels.
135. The fishing and seafood industry submitters seek the same relief for these rules as described in paragraphs 130 - 132 above.
136. The New Zealand Sea Lion Trust (submitter no.6) and the Southland Conservation Board (submitter no.7) seek the proposed changes be retained as notified.

7.1.3 Access and Anchoring - Rule 38 Performance Standards 5 and 6

137. Sanford has requested the changes outlined in paragraphs 129 and 134 above. Other fishing and seafood industry submitters have the same relief described in paragraphs 130 - 132 above.
138. The New Zealand Sea Lion Trust (submitter no.6) and the Southland Conservation Board (submitter no.7) seek the proposed changes be retained as notified.

7.1.4 Access and Anchoring - Rule 39

139. Sanford have not requested any changes to Rule 39. Other fishing and seafood industry submitters have the same relief described in paragraphs 130 - 132 above.
140. The New Zealand Sea Lion Trust (submitter no.6) and the Southland Conservation Board (submitter no.7) seek the proposed changes be retained as notified.

7.1.5 Table 2 Performance Standard 5

141. Te Ao Marama Inc. (submitter no.9) have sought amendments to Performance Standard 5 intended to clarify that research and management work specifically includes Ngāi Tahu exercising their rights and interests to tino rangatiratanga, kaitiakitanga through the implementation of Mātauranga Māori. The submitter also requests an effective exemption from Performance Standard 5(a), no transiting at night, by requesting an additional performance standard which reads – ‘g) Vessels owned and/or operated by Ngāi Tahu must meet the requirements of (b) – (f) only (submission point no.9.4).

142. Heritage Expeditions Limited (submitter no.3) have further submitted in support of the Te Ao Marama Inc. submission in its entirety, including submission point 9.4 (FS3 – S11 full sub).

7.1.6 Table 2 Performance Standard 6

143. Te Ao Marama Inc. (submitter no.9) have sought amendments to Performance Standard 5 intended to clarify that research and management work specifically includes Ngāi Tahu exercising their rights and interests to tino rangatiratanga, kaitiakitanga through the implementation of Mātauranga Māori. The submitter also requests an effective exemption from performance standard 6(a), where practicable, no transiting at night, by requesting an additional performance standard which reads ‘(d) Vessels owned and/or operated by Ngāi Tahu must meet the requirements of (b) – (c) only’ (submission point 9.5).
144. Heritage Expeditions Limited (submitter no.3) have further submitted in support of the Te Ao Marama Inc. submission in its entirety, including submission point 9.5 (FS3 – S11 full sub).

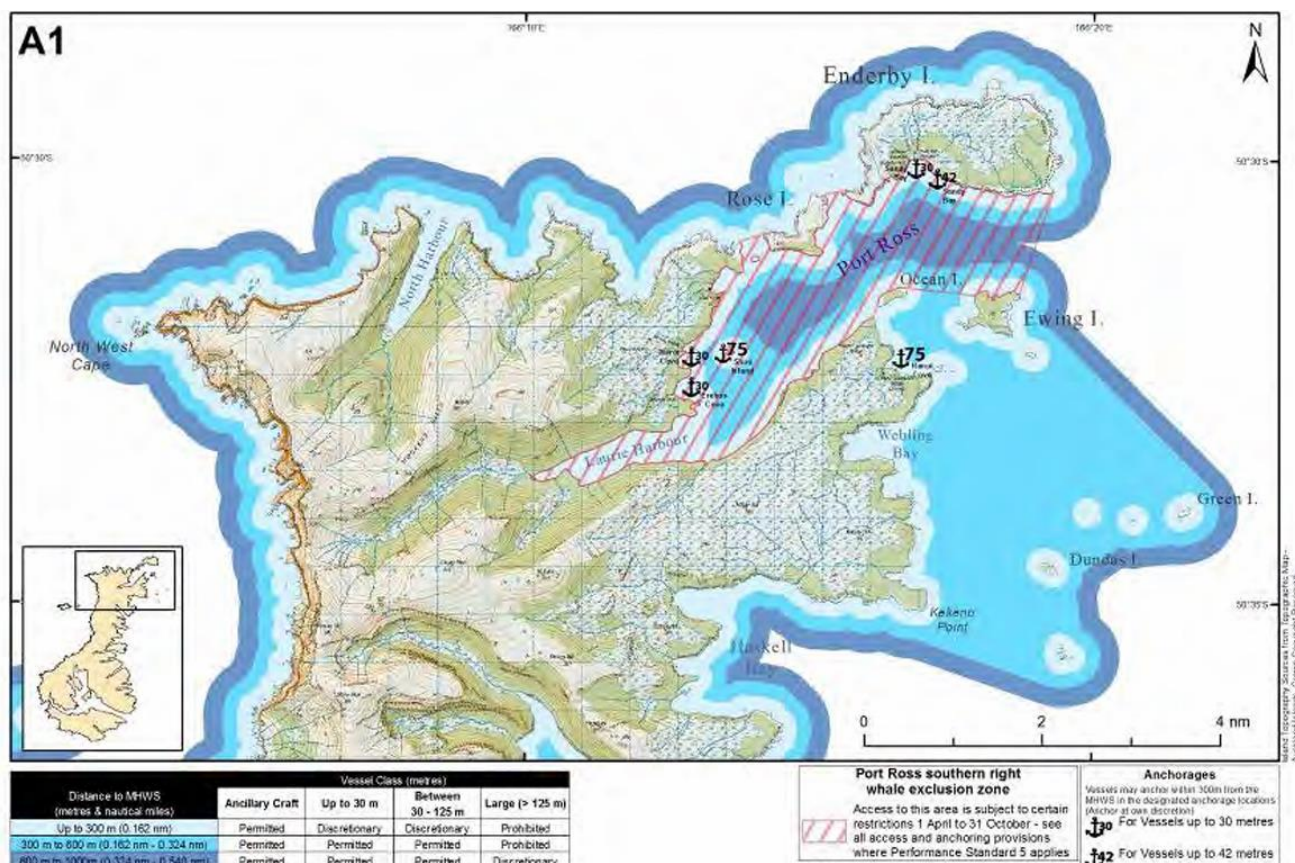
7.2 Discussion and Recommendations

7.2.1 Sandford – Changes to Note 7, the addition of ‘vessels seeking shelter’ or ‘sheltering vessels’ to Rules 40, 41, 42, 43, 46 or to the rules section titled “Research and management”

145. Sanford’s relief (submission points 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 5.8) seeks to maintain the status quo which permits access by vessels up to a total length of 75m to Port Ross in winter (subject to conditions).
146. The Operative Plan sets some restrictions on vessel access to Port Ross in winter. Only vessels up to 75m in length may enter during winter (as a permitted activity) and only subject to conditions such as a bow watch. Vessels undertaking research and management work (as provided for in Rules 38 and 39) are not captured by these restrictions.
147. The reasons for the proposed PC1 changes to manage access to Port Ross in winter have been outlined on pages 35 – 39 of the s32 report. I will not repeat the detail of that analysis here, but to summarise, the amendments are intended to minimise adverse effects on vessels/humans and marine mammals, that could result from anchor chain entanglement and vessels striking Tohorā, a ‘Threatened, Nationally Increasing’²⁰ whale species which favors the Port Ross inlet in winter. The technical reasons for identifying these risks and the need to manage them are outlined in Appendices D (Mr Dilley) and E (Ms Corne).
148. In my opinion, the relief sought and reasons given by Sanford would not adequately address the issues PC1 seeks to manage as their changes would have the same effect as the operative provisions – to maintain on-going access by vessels into Port Ross when Tohorā are at their greatest numbers in the area.
149. As Ms Corne explains in Appendix E the spatial and temporal overlap of vessels with Tohorā at Port Ross, in winter, poses risks of vessel strike and injury to Tohorā due to:

²⁰ Under the New Zealand Threat Classification System.

- a. The increasing Tohorā population
 - b. High densities of whales per km²
 - c. Behaviours affecting detection (e.g., logging at the surface, preferences for top 3.5m of water column)
 - d. Habitat preferences (shallow nearshore habitat that overlaps with anchorages)
 - e. The presence of vulnerable cow-calf pairs, noting the increased vulnerability of these pairs to disturbance, and that right whale calves and juveniles are naive and have higher rates of lethal or sub-lethal injuries.
150. Simply put, the more vessels present, the greater the risk of vessel strikes and/or entanglements occurring. The risk is already present and will increase with time as the population continues to grow.
151. The overarching purpose of the Port Ross access amendments is to manage the risks associated with increasing numbers of Tohorā at the Subantarctic Islands over the winter months by:
- a. limiting the categories of vessels that can enter Port Ross (more specifically, the red hashed area shown on Figure 2 below) over the winter months as a permitted activity to vessels undertaking DOC management or research activities (as provided for in Rules 38 and 39), and
 - b. enhancing the applicable performance standards for those vessels entering Port Ross during the winter months under Rules 38 and 39 (Performance Standard 5), and all vessels accessing Auckland Island and Campbell Island generally in winter (i.e. other than Port Ross) under the applicable permitted activity rules (new Performance Standard 6).



152. I do not agree that the concerns raised by the submitters mean these changes should not be progressed.
153. First, I note operative Rule 1 provides exemption from any rule within the Regional Coastal Plan to enable access and anchoring for refuge in the case of emergency, distress, force majeure, or where, **in the reasonable judgement of the master, action is required to avoid serious risk to life or health**, or to repair or prevent serious damage to the vessel [my emphasis in **bold**]. Where those circumstances exist, access to Port Ross is provided for as a permitted activity at any time.
154. Secondly, as outlined by Mr Dilley in Appendix D,²¹ unrestricted access to Port Ross in winter also involves navigation safety risks due to potential whale strike and anchor chain entanglement. Imposing restrictions on vessel use of Port Ross between 1 April and 31 October is unlikely to create any additional navigation safety issue for the scampi fishing vessels, as alternative anchorages are available adjacent to Port Ross and further south.²²
155. Thirdly, these changes only affect the permitted activity rules. Applications for access as a discretionary activity under Rule 50 could be made to approve entry by any vessel for shelter including:

²¹ Appendix D, paragraphs 40-42.

²² Appendix D, paragraph 43.

- a. vessels involved in research and management work (Rules 38 and 39) that cannot comply with the conditions of the proposed new Performance Standard 5
 - b. any other vessels that want to access Port Ross between 1 April and 31 October
 - c. any vessel that wishes to access within 0.54 nm (1,000 m) of MHWS of the Auckland Islands and Campbell Island between 1 April and 31 October that cannot comply with the conditions of proposed new Performance Standard 6.
156. Overall, while I acknowledge the concerns raised by the submitter regarding the need for vessels to shelter in severe weather conditions I consider PC1 and the Operative Plan adequately address this issue as sufficient alternative anchorages are provided in proximity to Port Ross, and the plan does not preclude a master taking other measures when sea and weather conditions are adverse, such as delaying passage until weather conditions improve, or sheltering at any location greater than 300m from MHWS, whether at anchor or slow steaming, as suggested by Mr Dilley in appendix D.²³
157. All of these measures are ‘backstopped’ by Rule 1 which allows vessels to shelter anywhere in proximity to the shoreline, including in Port Ross, where the terms of the Rule are met and its use is deemed necessary by the master. While the Plan seeks to discourage use of Rule 1, except where necessary, it remains an important safeguard.
158. Accordingly, **I do not recommend** any amendments to the PC1 addition of Note 7 or the proposed amendments to Rules 38, 40, 41, 42, 43, 46 or to the rules section titled “Research and management”.
159. The submitter’s proposal of allowing fishing vessels access with requirements to use chain/wire anchor cables and speed restrictions does not remove or sufficiently mitigate the risk posed by greater vessel presence. I note, the use of steel anchor cable and speed restrictions are in any case required under proposed performance standards 5(e) – chain anchor lines, 5(g) – 4 knot speed restriction and 6(c) – chain anchor lines.
- 7.2.2 BDL, SFL and Seafood New Zealand/Deepwater Council - retain the existing provisions that manage winter access to Port Ross, with the addition of a requirement to use chain/wire anchor cables and speed restrictions (submission point 8.2) NZSFL (6.4) and Southland Conservation Board (7.4)
160. For the reasons outlined above I **recommend declining** the request to ‘retain the existing provisions that manage winter access to Port Ross’.
161. Regarding inclusion of a requirement to use chain/wire anchor cables and speed restrictions I note research and management vessels entering Port Ross in winter (under Rules 38 and 39) must use a chain anchor line and must not exceed a speed of 4 knots under the proposed Performance Standards in Table 2, 5(e) and 5(g) respectively. All vessels accessing Auckland and Campbell

²³ Appendix D, paragraph 37.

Islands in the winter months must use a chain anchor line in accordance with Performance Standard 6(c).

162. As these requirements are already proposed under the PC1 **no additional changes are recommended.**
163. Therefore, the submission points from the NZSLT (6.4) and Southland Conservation Board (7.4) seeking the proposed changes to manage winter access to Port Ross are recommended to be **accepted.**

7.2.3 TAMI – Changes to Table 2 Performance Standard 5 & 6 in Table 2

164. The submission seeks amendments to Performance Standards 5 (submission point 9.4) and 6 (submission point 9.5) in Table 2 of PC1. The proposed amendments are sought in two limbs. The first change sought is to amend the chapeau of Performance Standard 5 to *‘make it clear that research and management work should specifically include Ngāi Tahu exercising their rights and interests to tino rangatiratanga, kaitiakitanga through the implementation of Mātauranga Māori.’*
165. Having carefully considered this submission point I note the only vessels that can enter Port Ross in the winter months 1 April to 31 October (under PC1) are research and management vessels. In other words, Performance Standard 5 in Table 2 is only applicable to vessels exercising Rules 38 or 39, included here along with the proposed changes from PC1:

<i>Research and management</i>			
Access and anchoring within the coastal marine area of any of the Subantarctic Islands by vessels involved in management activities and/or research for the Department of Conservation, including vessels of the New Zealand Navy	38	All vessels must comply with Performance Standards 1, 2, and 4 , 5 and 6 (in Table 2).	Permitted
Access and anchoring within the coastal marine area of any of the Subantarctic Islands by vessels involved in research not commissioned by the Department of Conservation	39	<p>A. All vessels must comply with Performance Standards 1, 2, and 4, 5 and 6 (in Table 2).</p> <p>B. The research must be consistent with the current New Zealand Subantarctic Islands Research Strategy.</p> <p>C. Any permits that are required under other legislation and/or regulations, including the Reserves Act 1977 and Marine Reserves Act 1971, must be obtained.</p>	Permitted

166. This raises two questions - will plan users “exercising their rights and interests to tino rangatiratanga, kaitiakitanga through the implementation of Mātauranga Māori” meet rules 38 and/or 39? If so, is any amendment necessary, as Mātauranga based activities may be provided for already?
167. Rule 38 governs access and anchoring of vessels, including vessels of the New Zealand Navy, involved in management activities and/or research *for DOC*. Rule 39 applies to vessels involved in research *not* commissioned by DOC. Based on the current formulation of Rule 39, should Ngāi Tahu wish to undertake research independent of the Crown they would need to assess their activity for compliance with Rule 39, including Condition B, which requires research to be consistent with the current *New Zealand Subantarctic Islands Research Strategy* (research strategy).²⁴
168. I understand the “current” research strategy was published in 2003 (last updated in 2005). The strategy is described as fulfilling two purposes. The first is as a

²⁴ [Subantarctic Islands Research Strategy: New Zealand's offshore islands](#)

guide to researchers to indicate the types of research that DOC considers will be useful for *‘wise and effective management of the Subantarctic islands’*. The second is as *‘a tool for DOC managers, to assist them to discriminate more easily among the many applications for research that are received each year.’*

169. The research strategy lists three criteria for acceptable research permits to meet in order of priority:
- a. The proposed research can only be done on the New Zealand Subantarctic islands and will be of significant benefit to conservation management of those islands.
 - b. The research could be done elsewhere but the benefits to conservation management are greater if done on the New Zealand Subantarctic islands.
 - c. The research can only be done on the New Zealand Subantarctic islands but the benefits to conservation management are limited.
170. The research strategy does not use the terms ‘Mātauranga Māori’, however it does refer to section 2.6 of the relevant CMS which requires science activities to be carried out in such a manner that they have regard for tikanga Māori, and they do not conflict with essential management operations.
171. Taking account of the above matters, an assessment of whether Ngāi Tahu Mātauranga Māori activities will meet the operative Rules 38 or 39 will be fact specific, depending on the activities Ngāi Tahu wish to carry out when they are assessing compliance with the Plan. In many instances Ngāi Tahu activities may comply with Rule 39, meaning their vessels would have access to Port Ross in winter, subject to Performance Standard 5. However I acknowledge there is no explicit provision for this. I also acknowledge that the 2005 research strategy is now some 21 years old, and was already 15 years of age when the Plan was made operative in 2017.
172. I acknowledge that TAMI’s request for amendments to Performance Standard 5 is made ‘to reflect the request outlined in paragraph 17’ of their submission. That paragraph states that Ngāi Tahu seeks: *‘...the same access and opportunities to the Subantarctic Islands, as afforded by the Crown. This is considered appropriate to reflect an authentic partnership relationship between iwi and the Crown.’* While I acknowledge the request made by TAMI, I consider that the change they are seeking would require a more substantive change to the current scope of Rule 39. I note that Rule 39 applies to research activities at the Subantarctic Islands generally, whereas the proposed changes relate to Port Ross only, and seek to further restrict access from that currently provided under the Operative plan, as such, I do not consider that the changes sought would be ‘on’ the Plan change. I do consider, however, that the broader changes to address the exercise of rangatiratanga, kaitiakitanga and mātauranga can and should be explored in the full plan review.. At a minimum, that would likely need to consider the current scope of Rules 38 and 39 and the appropriateness of the current research strategy from an iwi perspective. I note pre-notification consultation with TAMI on this topic is summarised in Appendices 1 and 2 of the Section 32 Report.

173. I consider further information on this point from TAMI would assist the commissioners in ensuring that the relief sought is properly understood and for resolving any differences of view.
174. For the purpose of PC1, my recommendation is that the requested amendment to Performance Standard 5 is **not accepted**. The second change TAMI request is to add Performance Standards 5(e) and 6(d). These changes would exempt vessels owned and/or operated by Ngāi Tahu from meeting 5(a) which prohibits vessels from transiting Port Ross at night, and 6(a) which requires avoidance, as far as practicable, of transiting Auckland Islands and Campbell Island generally at night or in reduced visibility. No rationale has been provided for these requested amendments. They would be contrary to navigation safety advice from Mr Dilley²⁵ and the advice of Chloe Corne.²⁶
175. In my opinion, providing a blanket exemption from specific performance standards for vessels owned and/or operated by a specific resource user could undermine the risk-management purpose of those standards, which are directed at avoiding effects on marine mammals, the environment generally (should an encounter result in a fuel spill) and vessel safety. The standards are intended to apply consistently based on the nature of the activity (research and management) and receiving environment (extremely important area for tohorā). The technical reasons for restricting transiting at night and in poor visibility and for the Port Ross speed restriction of 4 knots are outlined in Appendices D and E by Mr Dilley and Ms Corne respectively.
176. While sections 6(e) and 8 of the RMA require recognition of the relationship of Māori with their ancestral waters and the principles of the Treaty of Waitangi, and the NZCPS 2010 requires particular regard be had to tangata whenua values and interests, these matters are more appropriately addressed through objectives, policies, and appropriate rules rather than exemptions from performance standards designed to apply consistently to avoid or minimise adverse effects on taonga species and values. In my opinion, these changes would be more appropriately explored as part of a full plan review. Having evaluated the TAMI submission, **I do not recommend** any changes to the Table 2, performance standards 5 and 6. I am, of course, open to reviewing any additional evidence/information provided by the submitter at the hearing, and as appropriate, altering that recommendation.

8. Topic 6: Access and Anchoring - Additional anchorages for small vessels in Carnley Harbour and request for an anchorage at Tucker Point in Port Ross, Auckland Island

8.1 Summary of submissions points

177. As outlined at page 40 of the s32 Report PC1 proposes to increase available anchorage space in Carnley Harbour, Auckland Island for small vessels. To that end PC1 provides, as a permitted activity, additional anchorage options by adding anchorages for vessels up to 42 m long at Round Point and Crab Bay in Carnley Harbour. PC1 does so by amending Rule 42 and depicting the new

²⁵ Appendix D, paragraph 42.

²⁶ Appendix D, paragraph 1.

anchorages on Map 3 in Appendix 1 and adding two new chartlets into the Plan: 9A – Round Point and 9B Crab Bay.

178. The proposed changes have attracted submissions from fishing and seafood industry representatives and the NZSLT. Fishing and seafood submitters support the addition of the two anchorages but seek additional locations be provided. In particular, they seek a permitted anchorage at Tucker Point²⁷, in Port Ross, as shown below:

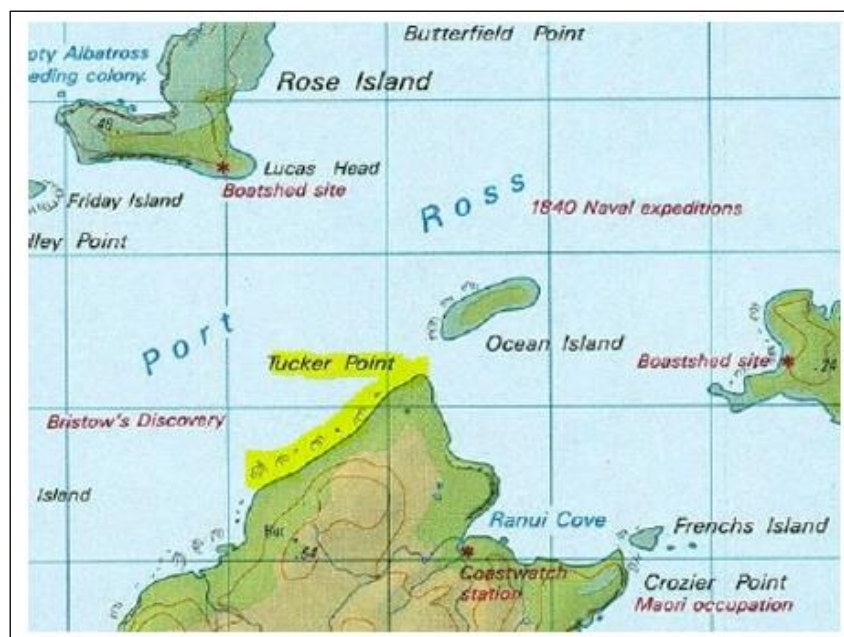


Figure 3. Location of requested anchorage at Tucker Point as requested by the submitters, Port Ross.

179. Sanford (submission point 5.6) welcome the addition of new anchorages at Round Bay and Crab Point but seek consideration of Lookout Point²⁸ as a permitted anchorage location.
180. Seaeagle Fishing (submission point 8.10) support in part the changes. They too support the two new proposed anchorage locations but also request permitted anchoring in the “North Arm” in Carnley Harbour under conditions such as the master determining no alternatives are suitable, and the vessels remaining outside of 300m from shore [MHWS]. Seaeagle Fishing also seek an additional anchorage at Tucker Point, Port Ross (submission point 8.11).
181. Barine Developments (submission points 10.11 and 10.12) seek the same relief as outlined in Seaeagle fishing’s submission point 8.10 & 8.11.
182. The NZSLT (submission point 6.11) support the proposed new anchorage in part but seek Rule 42 Condition C is amended to require that their use is limited to sheltering from adverse weather and that anchoring is not permitted in the area surrounding Figure of Eight Island.

²⁷ Note that Tucker Point is also known to some as Lookout Point

²⁸ See Footnote above – Lookout Point and Tucker Point are the same location.

183. SFNZ (submission point 11.11) seek additional anchorage options in Carnley Harbour to address south-westerly conditions and congestion during adverse weather, particularly in the North Arm area. SFNZ also seek inclusion of Lookout Point, Port Ross in Rule 42, Condition C and an accompanying chartlet in Appendix 3 (submission point 11.12).

8.2 Discussion and Recommendations

184. As outlined in the s32 Report the Operative Plan provides permitted anchorage locations that were established in consultation with resource users, particularly those with smaller vessels that rely on internal waters for sheltered anchorage. This consultation included companies that regularly have scampi fishing vessels in the fishery adjacent to the Auckland Islands. I understand the scampi fishing vessels are typically less than 45 m long, and most are less than 25m..
185. During initial consultation with fishing industry representatives in August 2020, they identified a need for further anchorages. At that time, the scampi fleet advised that since the Plan became operative in 2017, the number of vessels in the scampi fleet had increased, so the anchorages provided in Carnley Harbour would not be sufficient if all the fleet were to seek to shelter in Carnley Harbour at the same time.

8.2.1 Sanford, Seaeagle Fishing, Barine Developments, SFNZ – Request to include Tucker Point

186. As stated in the s32 Report fishing stakeholders did not provide any specific rationale for requesting the Tucker Point²⁹ anchorage during consultation on PC1. Tucker Point was not included in the package of changes notified under PC1. Given that the additional anchorages proposed in PC1 are all in Carnley Harbour, at the opposite end of Auckland Island, here is a question as to whether this request is “on” the Plan change and therefore “within scope” of PC1. For the purpose, of this report, however, I am treating these submissions as “within scope” and assess them on their merits below.
187. The issue PC1 addresses in respect of anchorage locations is the need for sheltering at Carnley Harbour, Auckland Island, closest to the Southern Ocean scampi fleet fishing ground. Port Ross is at the northern end of Auckland Island, further from this fishing ground. While I acknowledge there may be situations where sheltering would be preferred at Port Ross, I understand that Carnley Harbour is the more frequently used and therefore more important location for sheltering.
188. The relevant submitters appear to be seeking an anchorage at Port Ross to provide a safe refuge in bad weather.
189. As outlined above and on pages 35 - 39 of the s32 Report, Port Ross is proposed to be effectively closed to most vessels³⁰ in the winter months 1 April – October 31. The technical reasons for this proposal from a navigation safety and marine mammal perspective have been explained in Appendices D (Mr Dilley) and E (Ms Corne).

²⁹ Tucker Point is referred to as Lookout Point by some submitters

³⁰ With the exception of Research and Management vessels that can comply with Rules 38 or 39.

190. Similar navigation safety and marine mammal concerns apply to the requested Tucker Point anchorage which would be within Port Ross. Scampi fleet sheltering is more likely to occur in the winter months when tohorā are in Port Ross at their greatest numbers. This elevates the risk of harm and/or mortality to tohorā as well to vessels and their crews through potential anchor entanglement, vessel strike and increased disturbance.
191. I note that where emergency or force majeure conditions apply, or in the reasonable judgement of the captain of the vessel it is required to avoid serious risk to life or death, or to repair or prevent serious damage to the vessel, the scampi fleet and other vessels are permitted to access and anchor in Port Ross at any time, in reliance on Rule 1 (overriding other Rules in the Plan).
192. Notwithstanding the above factors, Mr Dilleys' navigation safety advice is that the requested anchorage would not provide the desired shelter in south-easterly wind conditions, that there are ample alternative options already available outside Port Ross, and that if Port Ross was used as an anchorage for shelter, the submitter would get far more utility out of relying on Rule 1 to anchor in much more sheltered areas of Port Ross such as Laurie Harbour.
193. Due to the risks to tohorā, vessels and people outweighing the limited benefit of anchoring at the requested location (Tucker Point) **I recommend declining** the request to include Tucker Point in Rule 42, Condition C as a permitted anchorage location.

8.2.2 Seaeagle Fishing, Barine Developments, SFNZ – Request for additional anchorages in Carnley Harbour

194. 134. These submitters all support the proposed Crab Bay and Round Point anchorages. However, they suggest additional anchorage capacity in Carnley Harbour is required, particularly in the North Arm to address south-westerly conditions and congestion during adverse weather. Seaeagle Fishing and Barine Developments have requested that access to the additional anchorages be permitted only where the master has decided there is nowhere suitable and vessels remain **outside of 0.16nm (300m) from shore**.
195. My understanding is that scampi fleet vessels are generally no longer than 45 m and usually shorter than 25 m. Rule 42 permits vessels that are up to 42 m in length to access and anchor within 0.16nm (300m) of MHWS at specified locations. More importantly, scampi fleet vessels (as vessels less than 125m long) are permitted to access and anchor anywhere outside of the 0.16nm (300m) from MHWS zone under Rule 46³¹, including within Carnley Harbour and parts of the North Arm. The relief sought by Barine Developments and Seagle Fishing could result in a more stringent framework than the status quo with vessels being required to meet an additional condition (requirement to have no suitable alternative to anchoring) in water outside of the 300m zone. Such a change appears contrary to the intent of those submissions and is not proposed under PC1. **I recommend the relief is declined**.

³¹ Subject to the relevant permitted activity conditions any other applicable rules in the Operative Plan.

196. I acknowledge the valid health and safety concerns raised by the submitters who wish to ensure they have ample anchorage options in adverse weather conditions.
197. Regarding the relief from SFNZ seeking additional anchorages in Carnley Harbour generally, as well as up North Arm, provides no indication of where in Carnley Harbour they would seek additional permitted anchorages, and therefore no rationale or justification for any specific location. As a result, I consider there is no additional information for me to recommend any changes in response to their submission point and my response to Barine Developments and Seaeagle Fishing outlined above stands. **I recommend the relief is declined.**

8.2.3 New Zealand Sealion Trust (submitter no.6)

198. The NZSLT support providing anchorage options for small vessels, however they request additional conditions – that the anchorages are only available for shelter in bad weather conditions and that no anchoring occurs surround Figure of Eight of Island, in Carnley Harbour.
199. The submitter has not provided any specific wording changes to Rule 42. The anchorages listed in the Rule have been selected after a process involving consultation with those directly affected (e.g., the Southern Ocean scampi fleet) and rigorous analysis of the navigation and marine mammal safety implications of using each area, as outlined in the s32 Report.
200. What would constitute ‘bad weather’ is unclear such that using those words in the rule would make its application unclear to the plan user. Where the circumstances referred to in Rule 1 are met a vessel may access and anchor where necessary to ensure its safety, so dangerous/emergency situations are already accounted for under the Operative Plan.
201. Excluding anchoring in proximity to Figure of Eight Island is an understandable request given the Island is home to an important New Zealand sealion colony (see the advice of Kat Manno Appendix F). The submitter has not stated how far from the Island an anchorage exclusion should apply but I note that under the Operative Plan anchoring is not permitted within 0.16nm (300m) of Figure of Eight Island’s MHWS. Nothing proposed in PC1 seeks to change this status quo restriction on anchoring within 300m of the Figure of Eight Island MHWS. The closest permitted anchorage within 300m of MWHS, “in proximity” to Figure of Eight Island is the proposed Round Point Anchorage. For completeness, I confirm this does not encroach into the Figure of Eight Island 300m zone.
202. The 300m zone as it applies around the Island is not shown on any of the Operative Plan maps or chartlets. For the benefit of submitters and the Hearings commissioners I have included it below. Vessels cannot access and anchor in the blue hashed areas around Figure of Eight Island as a permitted activity. That clarification aside I recommend the NZSLT relief on the Rule be **declined**.

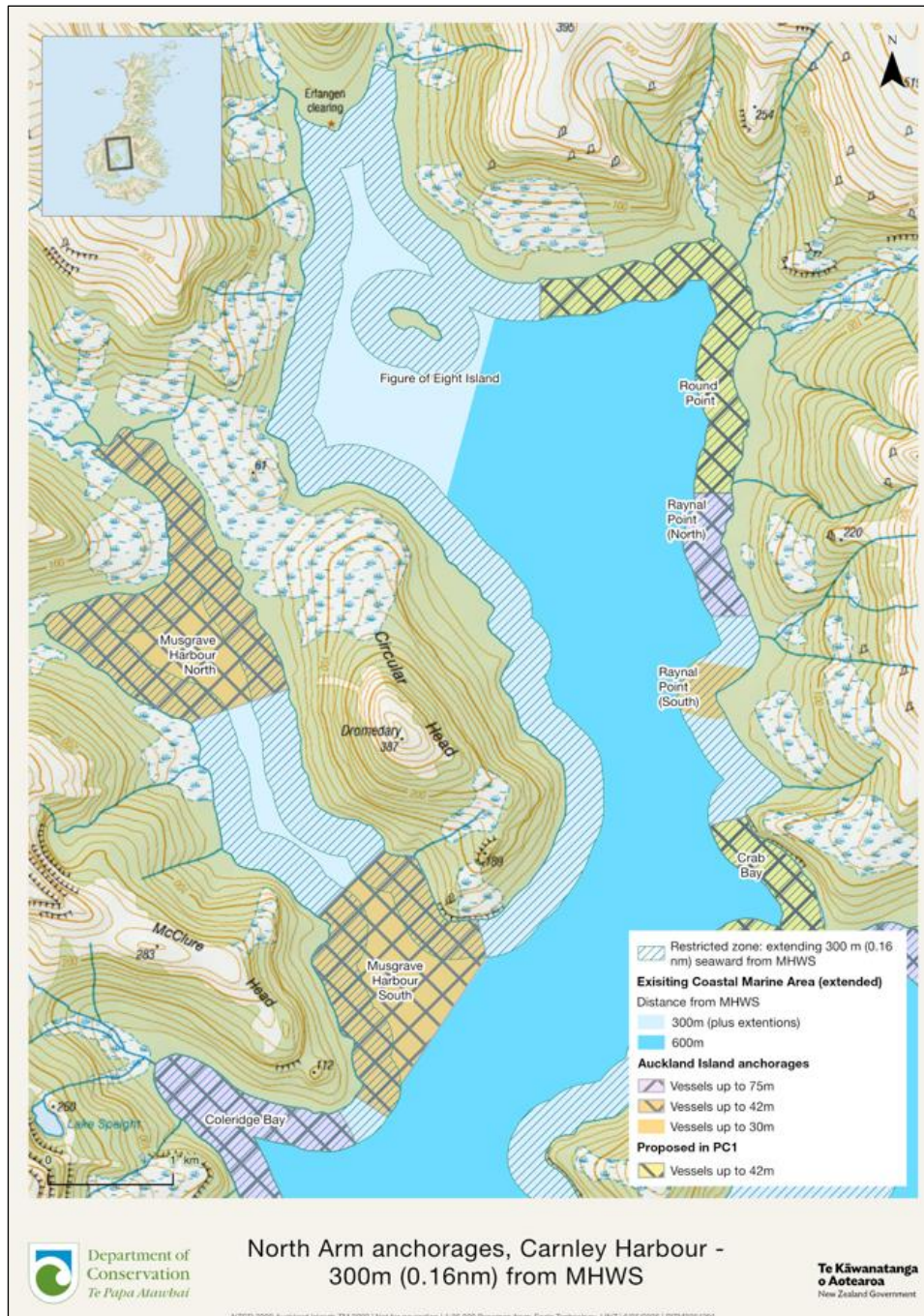


Figure 5. Figure of Eight Island 300m from MHWS Permitted Activity Exclusion Area

9. Topic 7: Vessel hull and niche area biofouling

9.1 Summary of submission points

9.1.1 Glossary terms – BFMP, BRB Goose barnacle

203. HEL (submission no. 3, paragraphs 13-16) oppose all of the proposed changes to the vessel hull and niche area biofouling provisions. They seek the biofouling inspection requirements in the Plan be replaced with a requirement that vessels comply with the MPI's regulation for long stay vessels in the Craft Risk Management Standard for Vessels 2023.
204. Ponant (submitter 4, point 4.3) requests the abbreviation 'BRB' is replaced with 'BRFB' to be consistent with International Maritime Organization (IMO) official wording.

9.1.2 Appendix 4 – Vessel hull and niche area inspection requirements

205. The NZDF (submission no.2, point 2.2) oppose in part the current wording of Forms 1 and 2 as it is not explicitly clear that only one of the representative photos needs to be provided with the report. The NZDF say this could add onerous reporting requirements. Changing the wording would also be in line with MPI Craft Risk Management Standard (CRMS) requirements. They seek the following wording changes:

A PDF report containing a representative photo/s of each area is to be sent to coastalplan@doc.govt.nz at the same time as Forms 1 and 2. Further photographs and videos are to be provided on request.

206. HEL have sought the same relief on all of the proposed biofouling provision changes as outlined at above.
207. Sanford (submission point 5.11) oppose all of the proposed changes to the vessel hull and niche area fouling provisions. They seek the PC1 changes to biofouling provisions are not applied to domestic fishing vessels.
208. Seaeagle fishing (submission point no. 8.16) oppose in part all of the proposed changes to the vessel hull and niche area fouling provisions. They request the PC1 changes to biofouling provisions are not applied to domestic fishing vessels.
209. Barine Developments (submission no.10.17) oppose in part all of the proposed changes to the vessel hull and niche area fouling provisions. They request the PC1 changes to biofouling provisions are not applied to domestic fishing vessels.
210. SFNZ (submission no.11.7) oppose in part all of the proposed changes to the vessel hull and niche area fouling provisions. They request the PC1 changes to biofouling provisions are not applied to domestic fishing vessels.
211. The NZSLT support all of the proposed amendments to the vessel hull and niche area fouling provisions (submission point no 8.17). They request the changes be retained as notified.

212. The SCB support all of the proposed amendments to the vessel hull and niche area fouling provisions (submission point no 8.17). They request the changes be retained as notified.

9.1.3 Appendix 5 – remove approval of inspectors

213. Seaeagle Fishing (submission no.8.17), Barine Developments (submission no.10.18) and SFNZ (submission no.11.18) oppose the proposed changes to Appendix 5. They wish to retain the requirement to use Minister approved inspectors. HEL have further submitted in support of these submission points (FS3: S8.17, S10.18, S11.18).

9.1.4 Appendix 6 – Independent risk assessment Forms A and B and Appendix 6 – Independent risk assessment Forms A and B

214. HEL (submission point 3.19) have repeated their opposition and relief on these changes. The NZSLT and SCB have support these changes and seek they be retained.

9.2 Discussion and Recommendations

9.2.1 HEL submission points (paragraphs 13-16) opposing the biofouling vessel and niche area provision amendments.

215. HEL oppose the proposed amendments on the basis they will result in inefficient and unnecessary duplication of MPI's framework for addressing biofouling. HEL say that MPI has the resources, expertise and systems already in place. DOC should not be *"wasting its resource trying to duplicate MPI's role."*

216. Having considered the reasons for HEL's opposition, my response is that in accordance with section 67(3) of the RMA the Minister is required to 'give effect' to Policy 12 of the NZCPS 2010 – which includes managing the effects of activities that could cause the release or spread of harmful aquatic organisms.

217. As outlined at appendices G and H by Dr Kluza and Ms Whiting respectively the CRMS - Vessels 2023 was developed under the Biosecurity Act 1993 by MPI. It is implemented and enforced by MPI in accordance with the provisions of the Biosecurity Act. It is effectively MPI's border control tool to reduce the risk of vessels introducing marine pests into NZ waters. MPI do not regulate hull biofouling of vessels once they have entered NZ waters in compliance with the CRMS. That is the role of regional and unitary councils. In the case of the Subantarctic and Kermadec Islands, it is the role of the Minister, acting as a regional council.

218. The Plan has been developed under the RMA and is subject to the provisions of the RMA. Operative Rule 29 applies to all vessels except recreational yachts. It is a permitted activity subject to the conditions of Rule 29 being met, including the inspection requirements. Permitted activity rules must be complete – as in self-contained within the Plan – and provide certainty to enable compliance to be objectively assessed. This is different to the available processes and tools under the Biosecurity Act, for example, MPI has access to tools such as a Notice of Direction, allowing a degree of discretion and flexibility in determining compliance with the CRMS.³²

³² Appendix H, paragraphs 17 & 18

219. It is inefficient to refer to another agency’s tool, which is promulgated under another statute (the Biosecurity Act 1993) within a permitted activity in a regional coastal plan. While other tools/documents can be incorporated by reference, if that document is changed or replaced, the coastal plan would need to be changed. This means as soon as MPI were to make any amendment to the CRMS – Vessels long stay threshold requirements, the provisions in the regional coastal plan would be out of date and could only be updated by a plan change. Regardless, as noted, the coastal plan rules need to be standalone and enforceable.
220. From reviewing Ms Whiting’s advice in Appendix H I understand all vessels arriving to NZ from outside NZ waters must comply with MPIs CRMS – Vessels. Depending on how long they intend to stay and where they intend to go will dictate whether they must comply with the long stay or short stay thresholds. Domestic vessels, including NZ fishing vessels, that operate within NZs territorial sea are not captured by the CRMS – Vessels.
221. All the different types of vessels, domestic and international, that visit the Subantarctic and Kermadec Islands present marine biosecurity risk and, in my opinion, should be managed consistently.
222. The proposed changes to the biofouling inspections do two things:
- a. Seek to achieve a degree of consistency with MPI’s requirements to minimise duplication of two agencies for international vessels arriving to New Zealand,
 - b. Seek to require better biofouling inspection information for all vessels but particularly larger vessels.
223. With respect to (b), I understand a larger vessel will have more niche areas and more extensive hull surfaces than a 25m long scampi fishing vessel. The Forms 1 and 2 in Appendix 4 as amended by PC1, allow for as little or as much information as is necessary to obtain an adequate level of information in an inspection relative to the size of the vessel. For all of the above reasons I recommend the relief sought in the HEL submission points on the proposed vessel hull biofouling and niche area provisions **be declined**.

9.2.2 Ponant (submission point 3.15) - glossary terms

224. The CRMS – Vessels 2023 incorporates the IMO Guidelines 2023³³ by reference. As such it makes sense to change BRB to BFRB, which would also be consistent with the change of BMP to BFMP as proposed in PC1, and consistent with both MPI’s CRMS and the IMO’s Guidelines. I recommend this minor amendment be **accepted** in accordance with submission point 3.15.

9.2.3 NZDF (submission point 2.2) – Appendix 4, forms 1 and 2

225. I agree with the issue raised by NZDF and the relief sought. The change sought should be made to the second paragraph at the beginning of Form 1 and the first paragraph under the title “Purpose” at the beginning of Form 2. I understand DOC anticipates that this PDF report containing representative photos of each area can be the same as that provided to MPI Biosecurity for vessels coming into

³³ 2023 Guidelines for the Control and Management of Ships’ Biofouling to Minimize the Transfer of Invasive Aquatic Species

NZ waters and therefore required to comply with the CRMS - Vessels 2023. I recommend the submission point 2.2 is **accepted**.

9.2.4 Sanford (submission point 5.11)

226. A key driver for the proposed changes to the biofouling inspection provisions is to address vessel niche areas more effectively than under the current requirements in the Operative Plan. The current provisions were developed with the support of NIWA and were drafted in 2010 – 16 years ago. In reference to Appendices G and H, I understand there is now clear evidence in a large amount of research that niche areas are more prone to biofouling and therefore the highest risk areas for biofouling that may have marine pests.
227. I understand the Minister is seeking consistency with the IMO Guidelines and MPIs CRMS – Vessels 2023. As outlined in appendices G and H, I understand the PC1 proposed changes are aimed at replicating good practice and drawing on the experience and expertise of others to manage the risk. This applies equally to domestic vessels and those arriving from outside NZs waters.
228. The two groups of islands the Plan manages are unique and of exceptionally high value to New Zealand and internationally, in terms of conservation. Accordingly, I am informed that the Minister is striving to manage the marine biosecurity to a high standard of risk management. The proposed changes strengthen the existing provisions in the Plan in accordance with this aim.
229. The Operative rules and proposed changes to appendices and the glossary seek to reduce marine biosecurity risk as much as possible and to do so as a permitted activity while attempting to minimise cost to operators - i.e., the rules and inspection process are designed so that provided the hull and niche areas are clean (slime layer and goose barnacles only), expensive scientific or taxonomic expertise isn't required.
230. Sanford's submission states that 'The biosecurity risk from domestic vessels is considerably lower than international vessels' but in the case of the Kermadec and Subantarctic Islands, the consequence of a marine biosecurity breach is much greater than other areas visited by the domestic fleet. Regardless of the risk profile, the RMA defines "effect" in section 3, as follows:
- "In this Act, unless the context otherwise requires, the term effect includes—*
- (a) any positive or adverse effect; and*
 - (b) any temporary or permanent effect; and*
 - (c) any past, present, or future effect; and*
 - (d) any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect, and also includes -*
 - (e) any potential effect of high probability; and*
 - (f) any potential effect of low probability which has a high potential impact" [my emphasis in **bold**].*
231. The proposed changes are intended to address the full range of effects but clause (f) is particularly relevant. Notwithstanding its probability, any incursion

of marine pest species within the coastal marine area at the islands would have a very high potential impact, noting the pristine natural values in the receiving environment. Regardless of whether vessels have travelled from a domestic or foreign port, the severity of that potential impact would not be lessened. My view is supported by the technical advice from MPI in Appendices G³⁴ and H³⁵, both advisors do not agree that the biosecurity risk from domestic vessels is lower than international vessels and they elaborate why in their advice.

232. As outlined in the s32 Report I understand the 2023 IMO Guidelines recommended approach is to make continual improvements, constantly look for better options to monitor and manage biofouling, and include reviews of the performance of coatings and systems.
233. Given the remoteness of the islands and the challenging environmental conditions, management needs to be precautionary, consistent with Policy 3 of the NZCPS 2010. The proposed changes seek consistency with Policy 3, as marine biofouling incursions are uncertain in likelihood but potentially significant and irreversible in effect, as effective eradication options are limited. A precautionary, preventative approach is therefore required rather than reliance on reactive management following an incursion.
234. I understand from Appendices G³⁶ and H³⁷ pest eradications in the marine environment are difficult, very costly, and rarely successful. The approach to their management should be precautionary as opposed to reactive after an incursion.
235. The remoteness of the islands and the challenging environmental conditions also make monitoring challenging – a further reason the approach has to be precautionary.
236. The inspection process in Appendix 4 in the Operative Plan already requires photos – refer Appendix 4, section 2 Inspection Process, 2.1 General provisions, paragraph d) – which outlines how photos are to be collected.
237. I acknowledge there may be an increase in cost, however, scampi vessels are small compared to tourist vessels or Navy ships. The different size of vessels will have a scale change for the amount of data to be collected. The cost for international cruise vessels or other larger vessels such as Navy vessels will be considerably more than for a scampi vessel. In other words, the Appendix 4 inspection requirements are designed to be proportionate to vessel size, to ensure sufficient information is collected for assessment of the risk posed by hull and niche area biofouling.
238. I understand from Appendix G that marine biosecurity risk is influenced by a number of factors, including but not limited to operational profile such as:

³⁴ Appendix G, paragraph 15

³⁵ Appendix H, paragraph 19

³⁶ Appendix G, paragraph 17

³⁷ Appendix H, paragraph 24

- a. how long a vessel may stay in any one place – i.e., the cruise ships generally do not stay longer than 12 hours in any location at the Islands vs the scampi vessels could shelter for multiple days and in some instances weeks,
 - b. Frequency of haul out and re-anti-fouling,
 - c. Length of time at ports.
239. Note also domestic vessels are not just scampi fishing vessels. Permitted activity rules in the Plan have to cover all vessel types.
240. Sanford’s comparison between the frequency of inspections scampi vessels are required to do under the plan because they access the waters of the Islands year-round with cruise ships that may only need to comply once at the beginning of the summer season doesn’t necessarily imply those smaller vessels incur the same cost. I understand there is a significant cost associated with large vessels having to drydock and re-antifoul.
241. For all of the reasons outlined above I recommend the submission points in 5.11 from Sanford are **rejected**.
- 9.2.5 Seaeagle Fishing Limited (submission point 8.16)
242. For the reasons outlined above in response to Sanford I recommend the Seaeagle Fishing submission point 8.16 be **rejected**.
- 9.2.6 Barine Developments (submission point 10.2 and 10.17)
243. For the reasons outlined above in response to Sanford I recommend the Barine Developments submission point 10.17 be **rejected**. Heritage Expeditions lodged a further submission on Barine Developments submission point 10.2. (FS3 – S10.2). As the Barine Developments submission has been declined, the further submission from HEL seeking their submission point be disallowed in part has been **accepted in part**.
- 9.2.7 Seafood New Zealand / Deepwater Council (submission point 11.7)
244. For the reasons outlined above in response to Sanford I recommend the SFNZ submission point 11.7 be **rejected**.
- 9.2.8 Seaeagle Fishing Limited (submission point 8.17), Barine Developments Limited (submission point 10.18), Seafood New Zealand / Deepwater Council (submission point 11.18) and Heritage Expeditions Limited further submission (FS3: S8.17, S10.18, S11.18)
245. The removal of the requirement to use a Minister approved inspector does not preclude the scampi fleet from using the inspectors they have built trusted relationships with. The scampi fleet and any other plan user can undertake their own due diligence on any potential new inspectors they may wish to use.
246. The rationale for requiring approved inspectors under the Operative Plan was so that DOC, as the regulator, could be confident they were receiving sufficient information to assess the biofouling risk of a vessel. Now that there are updated information requirements, the removal of approved inspectors for biofouling inspections can be justified due to the increase in the quantity and quality of evidence DOC will now be receiving from operators when they demonstrate compliance with the permitted activity rules.

247. I recommend the SFL, BDL, SFNZ submission points and the HEL further submission on Appendix 5 and the proposed removal of the requirement to have approved inspectors be **declined**.

9.2.9 New Zealand Sea Lion Trust (submission points 6.25 and 6.28) and Southland Conservation Board (submission points 7.24 and 7.27)

248. These submissions support the proposed changes. As I recommend the proposed biofouling and vessel hull niche area changes be retained these submission points are **accepted**.