

Before the Independent Hearings Panel
At Department of Conservation

Under the Resource Management Act 1991 (**RMA** or **Act**)

In the matter of Proposed Plan Change 1 to the Regional Coastal Plan:
Kermadec and Subantarctic Islands

Legal Submissions on behalf of Sanford Limited and Seafood New Zealand Limited (Deepwater Council)

8 June 2026

Submitter's solicitors:

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**anderson
lloyd.**

May it please the Panel

Introduction

- 1 These legal submissions are presented on behalf of Sanford Limited and Seafood New Zealand Limited (Deepwater Council) (together **Fishing Industry Interests**) in relation to Plan Change 1 (**PC1**) to the Regional Coastal Plan: Kermadec and Subantarctic Islands (**RCP**).

Summary of Sanford's position

- 2 Although PC1 recognises the importance of protecting the values associated with the Kermadec and Subantarctic Islands, the Fishing Industry Interests are concerned that the plan change is attempting to mitigate risks that have not been proven or appropriately justified by the Department of Conservation (**DOC**).
- 3 Especially when regard is had to the RMA's upcoming reform, progressing PC1 is an inefficient use of resources and would be better progressed once there is a level of certainty as to the broader planning framework that is to apply.
- 4 In short, as set out in its submission, the Fishing Industry Interests are seeking that:
 - (a) that a vessel seeking safe shelter be permitted to enter Port Ross during the period 1 April to 31 October. This being subject to compliance with the measures specified within Table 2 of the RCP, including the proposed measures at performance standards 5 and 6. Specifically, the Fishing Industry Interests supports the general intent of performance standards 5 and 6 and their application to its vessels during the tohorā breeding season (i.e., 1 April to 31 October). However, consider that standards 5(f) and 6(d) duplicate requirements already set out elsewhere within the standards. Importantly, DOC considers these appropriately mitigate the risk for research and management vessels, and it is the Fishing Industry Interest position that it would also do so for vessels that are seeking safe shelter;
 - (b) an additional permitted anchorage be provided at Tucker Point on the southern side of Port Ross (**Tucker Point Anchorage**); and
 - (c) that domestic vessels be exempted from the new biofouling requirements. The proposed amendments provide unnecessary additional work and cost for domestic vessels, such as Sanford (and

members of Seafood New Zealand), without being appropriately justified with evidence of the risk that is being mitigated.

Lack of justification as to PC1

- 5 The Fishing Industry Interests (through its predecessor organisation in the case of Seafood New Zealand) were heavily involved in the original development of the Regional Plan. The provisions were carefully developed and reflected the considered input from all parties. The provisions have been working effectively and in the Fishing Industry Interests' view, the evidence provided by DOC in support of PC1 does not justify the proposed amendments.
- 6 Of particular concern, there is no reliable evidence to justify:
 - (a) the new restrictions on the ability for a vessel seeking safe shelter to enter Port Ross during the winter, particularly as they apply to an operator such as Sanford, who has an extended track record of being able to enter Port Ross, without incident, and operates with industry best-practice safety measures;
 - (b) the decision to decline the addition of a permitted anchorage at Lookout/Tucker Point. This appears to be for similar reasons as to the proposed closure of Port Ross during winter (i.e., navigational safety concerns and concerns as to vessel- tohorā interactions), concerns that we do not consider justify the proposed amendments; and
 - (c) the need for the additional biofouling requirements, in particular what improved environmental and biosecurity outcomes they would deliver, if applied to domestic vessels so as to justify the significant additional costs arising from the proposed changes.

Access to Port Ross to provide safe shelter

- 7 The Fishing Industry Interests are unclear as to the perceived risk these amendments are addressing. There is no evidence to suggest that the current measures, are not effective. The Fishing Industry Interests are not aware of any interactions of concern with our vessels and tohorā during the winter period and as set out in evidence. This supports a view that the current measures are indeed effective for reducing and avoiding whale-vessel incidents.
- 8 Port Ross is a critical sheltering location for the safety of fishing vessels and crew whilst transiting to and from the FMA 6 fishing grounds, it is one of the few safe anchorages in the Subantarctic Islands. As set out in Kim

O'Brien's evidence in addition to providing this essential shelter it also has a superior holding to various anchorages in the area.

- 9 Importantly the location serves as a critical staging point for smaller vessels, such as Sanfords and other similar Fishing Industry Interests vessels, to wait for short periods of fair conditions, which are required for a safe transit back to Bluff Port.
- 10 If a vessel Master must second guess their legal ability to access the usually available designated anchorages in Port Ross due to the proposed winter period closure, then it is the view of the Fishing Industry Interests that lives may potentially be put at risk due to a decision being made to seek shelter in other designated anchorages further away.
- 11 Rule 1 should not be left to solely mitigate these serious risks. It is an important rule, in its own right for use at a time of specific need and should be left for that purpose only. The nature of operating in these conditions is that a Master needs to be able to confidently make safety decisions, including those that are preventative in nature, such as being able to access pre-defined and permitted anchorages. Some of these decisions, while essential to ensuring the crew is not placed in an unsafe situation, including those related to managing fatigue and avoiding ongoing travel in larger swells, which even if technically possible for Sanford and other Fishing Industry Interests member vessels, is not advisable, and is not captured by either limb of Rule 1.
- 12 For completeness, having the ability to apply for a costal permit does not address these concerns, as aside from being a significant cost and additional resource to obtain, it also does not address concerns as to the risk it may place upon a vessel, that would otherwise have made the appropriate safety decision, that for whatever reason has not obtained the proposed consent, and is therefore unable to make a decision to enter Port Ross for the purposes of seeking safe shelter.
- 13 There is also a concern that the consenting pathway and the certainty of obtaining consent remains very unclear. Rightly or wrongly, the assumption of the Fishing Industry Interests is that consent will be declined unless truly exceptional grounds can be made out.

Appropriate use of the precautionary approach

- 14 A primary feature of the application of the precautionary approach under the RMA is that it should apply where there is the potential for serious or irreversible harm if adequate steps are not pre-emptively taken¹, particularly where there is scientific uncertainty.
- 15 This approach may also be applied in relation to people and their health.²
- 16 The Supreme Court in *Sustain Our Sounds*³ has provided useful guidance as to how to approach uncertainties about the future when setting rules in plans or consent conditions (albeit with a particular focus on adaptive management regimes).
- 17 The approach is to “sufficiently” reduce uncertainty and “adequately” manage any remaining risk.⁴ It is not, it is submitted to immediately assume a position of avoidance. The Environment Court has since noted that (applying *Sustain Our Sounds*) the RMA’s proportionate approach to risk involves identifying both the probability of an adverse effect and the cost of its consequences.⁵
- 18 In this instance it is submitted that outright exclusion is not a proportionate response. There is useful information to understand the extent of risk and every indication that the existing regime is effective and working well. The precautionary approach cannot be used as a ‘blanket’ means to justify total exclusion from Port Ross and the decline of the Lookout/Tucker Point anchorage as proposed. Equally the existing biofouling regime provides a proportionate response to managing the risk.

Proposed mitigation measures

- 19 DOC has proposed several mitigation measures that are to apply to proposed to apply research and management vessels when entering Port Ross. These are set out in Table 2 of the proposed RCP and are considered by DOC to adequately mitigate the risk arising from vessels of this nature accessing and anchoring in Port Ross.
- 20 If applied during the winter period, the Fishing Industry Interests considers these measures would also adequately mitigate the perceived risks of its

¹ *Pierau v Auckland Council* [2017] NZEnvC 90 at [241]

² *McIntyre v Christchurch CC* (1996) 2 ELRNZ 84, [1996] NZRMA 289

³ *Sustain Our Sounds v New Zealand King Salmon* [2014] 1 NZLR 673

⁴ At [125]

⁵ *Aubade NZ Ltd v Marlborough District Council* [2015] NZEnvC 154 at [35]

vessels entering Port Ross and should give comfort that domestic scampi vessels can, like research and management vessels, safely enter Port Ross in order to seek shelter.

Additional Tucker Point Anchorage

- 21 It seems the predominate reasons for DOC not adopting the Tucker Point Anchorage as a permitted anchorage are consistent with the general reasoning for the proposed closure of Port Ross. This being matters of navigational safety and marine mammal concerns, specifically the risk of harm and/or mortality to tohorā as well as to vessels and their crews.
- 1 For the reasons, we have outlined above, and as set out in detail in the evidence of Darryn Shaw and Aaron Irving, the Fishing Industry Interests do not consider these reasons justify a closure of Port Ross, and therefore a basis for declining the Tucker Point Anchorage.
- 2 Without restating the reasons set out in evidence, the Tucker Point Anchorage, in short:
- (a) provides the desired shelter in certain southeasterly/easterly wind condition. We understand this is accepted by Mr Dilley on DOC's behalf;
 - (b) assists with risk mitigation for southern right whales as this area is outside of DOC's identified high whale activity areas; and
 - (c) it would meet a critical need by providing a safe anchorage for transiting vessels on the northern end of Auckland Island that appropriately meets the prevailing weather system. We understand alternative anchorages are predominantly located on the southern end of the Auckland Islands.
- 3 For completeness, a question of scope has been raised in the Section 42A report⁶. As you are aware, a plan change's scope under the RMA is determined by the content of the notified plan change and what is reasonably and fairly raised in submissions.
- 4 The proposed inclusion of the Tucker Point Anchorage is clearly within PC1's scope. The amendment was proposed by the scampi fleet through written feedback to DOC as part of PC1's pre-consultation process⁷. In addition, the proposed anchorage directly relates to an amendment to a

⁶ Section 42A Report at [186]

⁷ Section 32 Report at page 41.

provision that was notified as part of PC1 (Rule 42C) and is a matter that has been directly submitted on by Sanford, as well as other submitters.

Amendments to biofouling provisions

- 5 The current inspection regime has been sufficient to prevent biosecurity risks from domestic fishing vessels anchoring in the Subantarctic Islands. No evidence has been provided to the contrary.
- 6 Overall, the changes proposed will significantly expand inspection requirements and materially increase the time and cost of compliance, specifically due to the additional photo and video footage requirements, without any clear additional biosecurity benefit over the current regime.
- 7 This concern is heightened by the proposed deletion of Appendix 5, which would remove the requirement for an inspection by an Approved Person. Requiring additional photos and videos while removing the requirement that the inspection be undertaken by a suitably experienced Approved Person, imposes significant extra costs on operators such as Sanford and in our view, may increase biosecurity risk because the review (of the photos and videos) presumably would not occur in real time, or be guaranteed to be undertaken by a suitably qualified person able to interpret the material.
- 8 In short, these further amendments to the biosecurity provisions are unnecessary and risk imposing disproportionate compliance costs without delivering proven additional biosecurity benefits, particularly as they relate to domestic vessels.

Conclusion

- 9 For the reasons set out above, the Fishing Industry Interests consider that:
 - (a) a vessel seeking safe shelter should be permitted to enter Port Ross during the winter period, subject to compliance with the measures in Table 2 of the RCP, although, as noted, the Fishing Industry Interests considers some subcomponents of the standards duplicate requirements already contained elsewhere within the standards;
 - (b) an additional permitted anchorage be provided at Tucker Point on the southern side of Port Ross (**Tucker Point Anchorage**); and
 - (c) the proposed amendments to the biofouling provisions provide unnecessary work and cost for domestic vessels, without being appropriately justified with evidence of the risk it is intended to mitigate (with removing the requirement that an inspection be

undertaken by Approved Persons potentially, if anything, increasing the biosecurity risk).

Dated 8 June 2026

A handwritten signature in black ink, appearing to read 'Ben Williams' followed by a long horizontal flourish.

Ben Williams / Conor Meredith
(Presented by Maree Baker-Galloway)
Counsel for the Appellant