

**BEFORE THE PANEL OF INDEPENDENT HEARINGS COMMISSIONERS  
AT WAIKATO**

**IN THE MATTER**      of the Resource Management Act 1991 (**Act**)

**IN THE MATTER**      of the Proposed Waikato Regional Council Coastal Plan  
(**Proposed Plan**)

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**LEGAL SUBMISSIONS ON BEHALF OF THE ENVIRONMENTAL DEFENCE SOCIETY INC**

**24 APRIL 2025**

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## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

- 1.1 These legal submissions are filed on behalf of the Environmental Defence Society Incorporated (**EDS**) in accordance with Direction 10 from the Hearing Panel, dated 20 March 2025.<sup>1</sup>
- 1.2 These submissions will summarise EDS's position regarding:
  - (a) Its relief that appropriate fishing controls should be included in the Proposed Plan;
  - (b) Rationale for EDS's proposed provisions;
  - (c) The Council's ability to grant the relief sought by EDS; and
  - (d) Other matters raised during hearings on the Proposed Plan.
- 1.3 These submissions are intended to be read in conjunction with EDS's opening legal submissions dated 11 February 2025<sup>2</sup> and EDS's supplementary legal submissions (as relevant to the legal tests for scope) dated 14 March 2025.<sup>3</sup>

### 2. SUMMARY OF EDS'S POSITION

- 2.1 The Proposed Plan does not include any fishing controls.
- 2.2 EDS is seeking the inclusion of rules (and associated provisions) to protect indigenous biodiversity and ecosystems in the Waikato coastal marine area (**CMA**) from the adverse effects of fishing.
- 2.3 The provisions sought by EDS include:
  - (a) A rule to prohibit fishing activities involving bottom trawling, dredging and Danish seining within the east coast Waikato CMA, except in benthic access areas. This rule aims to protect significant indigenous biodiversity as well as biogenic habitats and taxa that are vulnerable to adverse effects of mobile bottom contact fishing methods.
  - (b) A rule to prohibit the taking, catching or harvesting of plants and animals in ten locations with significant indigenous biodiversity (i.e. SIBA-As). This rule aims to protect rocky reefs with high values from adverse effects of fishing, which include kina barrens, and to provide for recovery in degraded areas.
- 2.4 The evidence before the Hearing Panel shows that activities involving fishing have and continue to result in significant adverse effects on indigenous biodiversity and ecosystems in parts of the Waikato CMA.<sup>4</sup>

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<sup>1</sup> Direction (10) from the Hearing Panel (20 March 2025) "*Hearing in relation to controls on fishing methods in relation to potential adverse effects on ecosystems and biodiversity*" at [4], [5] and [12].

<sup>2</sup> Legal submissions on behalf of EDS dated 11 February 2025, [here](#) [EDS's opening legal submissions].

<sup>3</sup> Legal submissions on behalf of EDS dated 14 March 2025, [here](#).

<sup>4</sup> Proposed Waikato Regional Coastal Plan – JWS Fishing Controls (19 March 2025) [**JWS Fishing Controls**], [4.1.2]-[4.1.7].

- 2.5 Mobile bottom contact fishing methods have caused widespread damage to biogenic habitats in the east coast Waikato CMA. Dr Kelly in his evidence states:<sup>5</sup>

In my opinion, fishing has had a transformative impact on ecosystems and indigenous biodiversity in the Waikato CMA. For instance, extensive areas of indigenous biogenic habitat, including green-lipped mussel beds, have been lost.

- 2.6 Shellfish beds destroyed by historic bottom contact fishing methods have not recovered despite intensive restoration efforts.<sup>6</sup> This highlights the irreversible habitat damage that these fishing methods can cause.
- 2.7 Trawling and Danish seining continue to be allowed in areas with ecologically important values. Available information suggests modern technology may exacerbate the risks for indigenous biodiversity. For example, the Sea Change Marine Spatial Plan for the Hauraki Gulf states: *“Recent advances in technology, such as electronic net monitoring and 3-D bottom scanning technology) have put more foul territory at risk of disturbance, as they enable trawl gear to be towed into foul ground”*.<sup>7</sup>
- 2.8 The impacts are cumulative and persistent. As stated in the Sea Change Marine Spatial Plan, *“With the reduction of these habitats, a number of species may now face ‘habitat bottlenecks’, where the overall production of juveniles is constrained by a lack of sufficient habitat to support them”*.<sup>8</sup>
- 2.9 Fishing down of reef predators, including large rock lobster and snapper, has significant implications for the health of rocky reef ecosystems with negative flow-on effects for marine biodiversity.
- 2.10 Available information suggests rock lobsters have been lost from shallow reefs on the east coast of the Waikato CMA.<sup>9</sup> Snapper biomass is sitting above historic levels but fish are exhibiting signs of poor health (i.e. milky flesh).<sup>10</sup> These changes have been accompanied by an expansion of kina barrens and loss of kelp forest habitat in shallow coastal areas, including offshore islands.<sup>11</sup>
- 2.11 In this context, EDS submits that its proposed controls are necessary and appropriate to protect indigenous biodiversity in accordance with the higher order planning documents, including Policy 11 of the New Zealand Coastal Policy Statement (NZCPS).
- 2.12 EDS’s proposed provisions will assist the Council with fulfilling its statutory functions, including by maintaining indigenous biodiversity. The provisions will better recognise that the Hauraki Gulf Marine Park is a place of national significance with important values that warrant protection.<sup>12</sup>

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<sup>5</sup> Supplementary statement of evidence of Dr Shane Kelly on behalf of EDS dated 17 April 2025 at [2.2].

<sup>6</sup> Statement of evidence of Dr Shane Kelly on behalf of EDS dated 8 November 2024 at [5.28].

<sup>7</sup> Sea Change Stakeholder Working Group (2017) *“Sea Change Tai timu Tai Pari Hauraki Gulf Marine Spatial Plan”*, Environment Waikato, Hamilton, at 62.

<sup>8</sup> Ibid.

<sup>9</sup> Hon Shane Jones *“Changes to fisheries sustainability measures for rock lobster stocks as part of the 2025 April sustainability round”* attached to Dr Kelly’s supplementary statement of evidence on behalf of EDS dated 17 April 2025.

<sup>10</sup> Statement of evidence of Jacob Hore on behalf of MPI dated 17 April 2025 at [29].

<sup>11</sup> JWS Fishing Controls at [4.1.6]-[4.1.7].

<sup>12</sup> Hauraki Gulf Marine Park Act 2000, s 7.

### 3. EDS'S RELIEF SOUGHT

#### *EDS's original submission*

- 3.1 EDS's original submission on the Proposed Plan sought a suite of changes to provide for adequate protection of ecosystems and indigenous biodiversity, including significant biodiversity, in the Waikato CMA.
- 3.2 As part of its relief, EDS sought the inclusion of fishing controls.<sup>13</sup>
- 3.3 Relevant relief was captured in the Council's Summary of Decisions Requested as follows:<sup>14</sup>

- (a) Submission point #95.16: *"AMEND the Plan to provide greater regulation of seabed disturbance activities"*.

The summary states *"the submitter considers that the impacts of bottom-contact mobile fishing (e.g., trawling, seining and dredging) ... are likely to be most damaging within SIBAs, but they can also have significant adverse effects on benthic indigenous biodiversity outside of SIBAs."*

- (b) Submission point #95.19: *"AMEND the Plan to provide regulation of fishing methods and activities that have the potential to adversely affect ecosystems and indigenous biodiversity"*.

The summary states *"the submitter considers that the lack of regulation of fishing methods that have the potential to adversely affect ecosystems and indigenous biodiversity is an abrogation of the Council's functions under s 30 of the RMA, which enables the Council to manage the effects of fishing activities to maintain indigenous biological diversity"*.

- 3.4 A number of other submitters sought fishing controls, including through establishment of marine protected areas, and several submitters expressed support for the Council's position not to include such controls. A list of relevant submission points is included in **Attachment A**.

- 3.5 EDS notes that the Royal Forest and Bird Protection Society of New Zealand (**Forest & Bird**) sought a number of relevant amendments, including:

- (a) Submission point #99.003: *"AMEND the Plan to implement stricter guidelines to help protect biodiversity such as a ban on bottom trawling and set netting in the Hauraki Gulf."*

- (b) Submission point #99.149: *"AMEND ECO Chapter to insert new policies and rules to control the effects of fishing on the values of significant ecological areas, including significant benthic ecological areas and in particular to exclude mobile bottom contact fishing methods. This*

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<sup>13</sup> EDS's original submission on the Proposed Plan dated 14 November 2023 at [24].

<sup>14</sup> WRC (27 March 2024) *"Summary of Decisions Requested (By Submitter): Proposed Waikato Regional Coastal Plan"* (Waikato Regional Council Policy Series: 2024/06), [here](#).

*should be defined to include bottom trawling, Danish seining and dredging but not to include hand gathering or potting.*

- 3.6 Forest & Bird lodged a further submission in support of EDS's relief.<sup>15</sup>
- 3.7 STET lodged an original submission seeking a range of additional protections, including:
- (a) Submission point 11.08: *"INSERT a Map layer of "Marine Protected Areas" and include a representative 30% of the CMA, including consideration of the following areas: 1) the Mercury Islands Group, 2) the deeper areas of the CMA in the Hauraki Gulf Marine Park, 3) Alderman Island gap, 4) Motukawao Group ..."*
- 3.8 Waikato Conservation Board's original submission sought to *"identify protected marine zones that prohibit fishing on the west coast"* and to amend the plan *"to identify some of the Schedule 7 areas as no take areas (except for customary fishing where appropriate)"*.<sup>16</sup>
- 3.9 Notwithstanding these requests, the Council's s 42A reports have recommended that all submissions seeking marine protected areas and/or fishing controls be rejected.<sup>17</sup>

#### *EDS's proposed provisions*

- 3.10 EDS put forward a set of provisions focused on controlling fishing activities and methods to protect and enhance indigenous biodiversity in the Waikato CMA.
- 3.11 EDS's proposed provisions were appended to Mr Serjeant's evidence,<sup>18</sup> addressed in EDS's opening legal submissions,<sup>19</sup> and formed the basis of expert conferencing held on 19 March 2025.<sup>20</sup> The provisions included:

#### New benthic disturbance rule – DD-RX

- (a) A new rule in the Disturbance and Deposition (**DD**) chapter that prohibits fishing activities involving dredging, bottom trawling and Danish seining within the east coast of the Waikato CMA, except for within a *benthic access area*.
- (b) Associated provisions (i.e. a new DD-X schedule and definition) to identify the locations of three benthic access areas where the prohibition on mobile bottom contact fishing methods does not apply.

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<sup>15</sup> Royal Forest and Bird Protection Society of New Zealand *"Further Submission on the Proposed Waikato Regional Coastal Plan"* dated 30 April 2024, [here](#). (Classified as #FS29 by the Council).

<sup>16</sup> Submission point #31.01 (refer Attachment A).

<sup>17</sup> Section 42A Report, *General and whole of plan – Proposed Waikato Regional Coastal Plan* at [234]; Section 42A Report *ECO- Ecosystems and indigenous biodiversity - Proposed Waikato Regional Coastal Plan* at [177].

<sup>18</sup> Statement of primary evidence of David Serjeant on behalf of EDS (planning) dated 8 November 2024, Annexure A; as refined in David Serjeant's rebuttal evidence dated 10 February 2025, Annexure A/Rebuttal.

<sup>19</sup> EDS's opening legal submissions.

<sup>20</sup> Direction (7) from the Hearing Panel *"Expert conferencing – controls on fishing methods in relation to potential adverse effects on ecosystems and biodiversity"* dated 20 February 2025 at [3].

### New no-take rule – ECO-RX

- (a) A new rule in the Ecosystems and Indigenous Biodiversity (**ECO**) chapter that prohibits the catching, taking or harvesting of plants and animals within specified SIBA-As.
  - (b) The rule is designed to avoid duplication with equivalent (or similar) no-take protection under the Marine Reserves Act and the Hauraki Gulf | Tīkapa Moana Marine Protection Bill (in the event it is enacted).
  - (c) An advice note confirms the rule does not affect customary (non-commercial) fishing rights under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 or authorised by fisheries regulations.
- 3.12 EDS has refined its proposed provisions to address matters raised by the s 42A reports and other submitters. The revised provisions are appended to Mr Serjeant's summary statement.<sup>21</sup>
- 3.13 EDS's revised provisions include two substantive amendments:
- (a) A new advice note confirms the proposed no-take rule does not apply to aquaculture activities. This addition was requested by Aquaculture New Zealand and the Coromandel Marine Farmers' Association.<sup>22</sup>

This addition is generally consistent with the approach adopted by the Proposed Plan. Other chapters, such as the DD Chapter, include advice notes exempting aquaculture from DD standards and rules in reliance on the AQA provisions.<sup>23</sup> It is also consistent with the approach adopted by the Proposed Regional Plan for Northland.<sup>24</sup>
  - (b) A new schedule ensures the no-take rule is targeted to specified SIBA-As with values that are vulnerable to adverse effects of fishing:
    - (i) A4: Karewa/Gannet Island;
    - (ii) A15: Fantail Bay to Waikawau Bay;
    - (iii) A16: Cape Colville proposed High Protection Area;
    - (iv) A18: Repanga/Cuvier Island;
    - (v) A19: Mercury Islands;
    - (vi) A23: Black Rocks, Flat Island, Ohinauiti Island and Ohinau Island group and surrounds (A);
    - (vii) A26: Whanganui-a-Hei (Cathedral Cove) proposed Marine Reserve extension or High Protection Area;
    - (viii) A30: Aldermen Islands;
    - (ix) A31: Aldermen Islands (Ruamaahu) proposed High Protection Area (north); and
    - (x) A32: Aldermen Islands (Ruamaahu) proposed High Protection Area (south).

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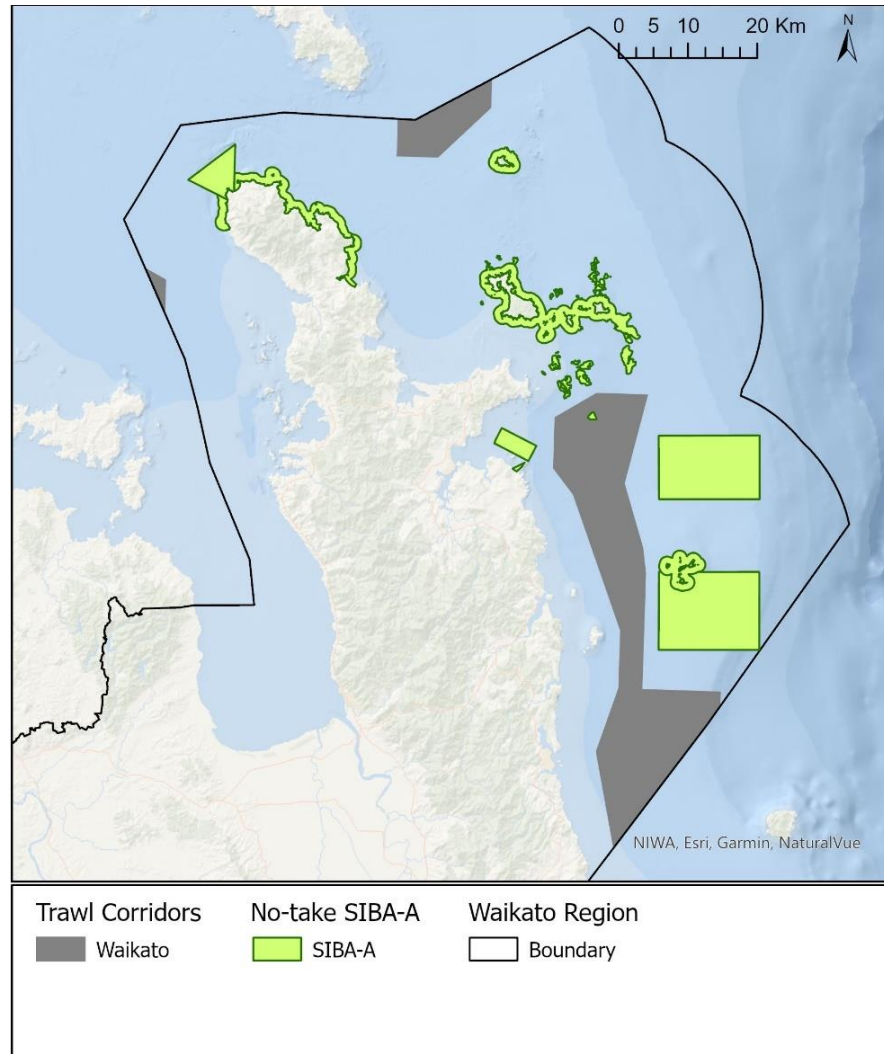
<sup>21</sup> Summary statement of evidence of David Serjeant on behalf of EDS dated 17 April 2025, Annexure A, [here](#).

<sup>22</sup> Memorandum of Counsel to the Hearing Panel on behalf of Aquaculture New Zealand and the Coromandel Marine Farmers' Association regarding controls on fishing dated 17 April 2025.

<sup>23</sup> The advice note states "*Disturbance and deposition associated with aquaculture activities are considered under the relevant rules in the AQA - Aquaculture chapter of the plan*" (page 114 of the Proposed Plan dated 24 January 2025).

<sup>24</sup> Section C.1.10, Proposed Northland Regional Plan (see attachment A to EDS's opening legal submissions).

- 3.14 The substance of EDS's proposed benthic disturbance rule is unchanged. However, the relevant provisions have been refined for clarity and to better align with the structure of the Proposed Plan.
- 3.15 The spatial extent of EDS's proposed fishing controls is shown in Figure 1 below.



**Figure 1.** EDS's proposed fishing controls applying to east coast Waikato CMA. Note this map excludes SIBA-A A4: Karewa/Gannet Island. Bottom contact trawling, dredging and Danish seining would be prohibited in the east coast except for within the 'trawl corridors' (grey). EDS's proposed no-take rule would apply to specific SIBA-As (green).

- 3.16 New Zealand Sports Fishing Council's evidence raises concerns about a no-take rule applying to *all* SIBAs in the Waikato Region.<sup>25</sup>
- 3.17 While EDS originally sought to apply its proposed no-take rule to all SIBA-As (*not* SIBA-Bs), it has reconsidered its position in light of the s 42A reports, ecology evidence and JWS Fishing Controls.

<sup>25</sup> For example, Statement of evidence of Scott Macindoe on behalf of NZSFC dated 17 April 2025 at [5.1]; Statement of evidence of Gordon McIvor on behalf of Mercury Bay Game Fishing Club Inc dated 17 April 2025 at [3.2]; Statement of evidence of Deryk Nielsen on behalf of Tauranga Sport Fishing Club Inc dated 17 April 2025 at [3.1]; Statement of evidence of Ken Hindmarsh dated 17 April 2025 at [2.1].

- 3.18 EDS's proposed no-take rule targets ten SIBA-As that host high biodiversity values in areas vulnerable to adverse effects of fishing.
- 3.19 EDS considers the revised scope of its proposed no-take rule will ensure the Proposed Plan provides for adequate protection of marine biodiversity while achieving better consistency with the higher order planning documents and the purpose of the Act.
- 3.20 For completeness, EDS confirms that it seeks to retain policy ECO-P12 (as notified) and method ECO-M1 (with some amendments) for reasons addressed in its opening legal submissions.<sup>26</sup> It is important these provisions are retained to provide for additional protection of ecologically important areas in the future.

#### **4. RATIONALE FOR EDS'S RELIEF**

- 4.1 Paragraphs 5.1-5.27 of EDS's opening legal submissions addressed the relevant legal framework.
- 4.2 Paragraphs 7.12-7.65, 9.35-9.40 and 10.5-10.15 of EDS's opening legal submissions addressed the rationale for its relief regarding fishing controls.
- 4.3 It is not intended to reproduce that material. However, EDS wishes to briefly comment on four matters:
- (a) Current state of protection for marine biodiversity.
  - (b) Need to give effect to higher order planning documents.
  - (c) Appropriateness of EDS's proposed provisions.
  - (d) *Motiti* indicia.

##### *Current state of protection*

- 4.4 Currently, there are limited measures aimed at protecting indigenous biodiversity and ecosystems from fishing impacts in the Waikato CMA.

##### Marine Reserves Act

- 4.5 There is one 'no take' marine reserve at Te Whanganui-o-Hei / Cathedral Cove. The reserve was established in 1992 by the Marine Reserves Act and covers an area of approximately 840ha (or ~9km<sup>2</sup>). No recreational or commercial fishing is allowed in this area. The area protected under the Marine Reserves Act is equivalent to 0.09% of the Waikato CMA (~10,000km<sup>2</sup>).<sup>27</sup>

##### Fisheries Act

- 4.6 There are various fisheries closures applying to parts of the Waikato CMA. Of particular relevance are:<sup>28</sup>

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<sup>26</sup> At paragraphs 9.24-9.34.

<sup>27</sup> Waikato Regional Council "Strategic Policy Takutai moana coastal and marine", [here](#).

<sup>28</sup> Joint Supplementary Statement of Bruce McAuliffe and David Phizacklea on behalf of WRC dated 21 February 2025 at 46-48 and associated maps.



- (a) Bottom trawling and Danish seining is prohibited in approximately 35% of the east coast CMA.<sup>29</sup> These closures primarily apply to the west of the Coromandel Peninsula but include discrete nearshore areas further east (see Figure 1, **Attachment B**). These closures partially overlap with EDS's proposed benthic disturbance rule.
- (b) A temporary closure of the Coromandel, Hauraki Gulf and Western Bay of Plenty scallop fishery (**SCA CS**). The entire SCA CS fishery was closed in March 2023.<sup>30</sup> The closure is a temporary measure under the Fisheries Act and dredging for scallops could resume in most parts of the CMA in the future. Discrete areas are subject to permanent dredging restrictions (see Figure 1, **Attachment B**).
- (c) A temporary closure of the inner Hauraki Gulf to harvest of spiny rock lobster. A decision to close this part of the CRA2 fishery was made last month and took effect from 1 April 2025 (see Figure 2, **Attachment B**).<sup>31</sup> The closure area partially overlaps with two SIBA-As that are within the scope of EDS's proposed no-take rule: A15 – Fantail to Waikawau Bay and A16 – Cape Colville proposed High Protection Area.

### *Future protections*

#### Hauraki Gulf/Tikapa Moana Marine Protection Bill

- 4.7 Paragraphs 7.49-7.52 of EDS's opening legal submissions addressed the implications of the Hauraki Gulf/Tikapa Moana Marine Protection Bill (**HG Bill**).
- 4.8 The status of the HG Bill has not changed. However, Mr Hore in his evidence for MPI notes that the Bill is "*expected to complete the final stages over the next couple of months*".<sup>32</sup>
- 4.9 The HG Bill proposes to establish four high protection areas (**HPA**), a seafloor protection area (**SPA**) and an extension to the existing marine reserve at Whanganui A Hei (Cathedral Cove) in the east coast Waikato CMA.
- 4.10 Under the HG Bill:
  - (a) The purpose of HPAs is to "*protect and enhance indigenous biodiversity ... and, if that biodiversity is degraded restore it*".<sup>33</sup>
  - (b) Fishing is prohibited within HPAs in the Waikato CMA.<sup>34</sup>
  - (c) Customary fishing in HPAs authorised under fisheries regulations is allowed (except for mobile bottom contact fishing methods).<sup>35</sup>
  - (d) Mobile bottom contact fishing methods (i.e. dredging, bottom trawling and Danish seining) within SPAs are prohibited.<sup>36</sup>

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<sup>29</sup> Council's s 32 Report, appendix 3, "*Existing protection within the Waikato enacted under the Fisheries Act 1996*".

<sup>30</sup> Hon Stuart Nash *Sustainability measures for the Coromandel scallop fishery* (SCA CS) dated 17 March 2023, [here](#).

<sup>31</sup> Statement of supplementary evidence of Dr Shane Kelly on behalf of EDS (marine ecology) dated 17 April 2025.

<sup>32</sup> Statement of evidence of Jacob Hore on behalf of MPI dated 17 April 2025, at [20].

<sup>33</sup> The Hauraki Gulf / Tikapa Moana Marine Protection Bill, cl 16 (as reported from the Environment Committee).

<sup>34</sup> The Hauraki Gulf / Tikapa Moana Marine Protection Bill, cl 18 (as reported from the Environment Committee).

<sup>35</sup> The Hauraki Gulf / Tikapa Moana Marine Protection Bill, cl 19 (as reported from the Environment Committee).

<sup>36</sup> The Hauraki Gulf / Tikapa Moana Marine Protection Bill, cl 14(2) (as reported from the Environment Committee).

- 4.11 The HG Bill will (if enacted) provide no-take protection for five areas in the east coast CMA. Those areas are mapped as SIBA-As in the Proposed Plan (i.e. A16, A26, A31, A32 and A36). The HG Bill will also provide partial protection from fishing (by banning bottom contact fishing methods) in the SIBA-A at Cape Colville (i.e. A17).

#### Other initiatives

- 4.12 Mr Hore describes management actions forming part of the Hauraki Gulf Fisheries Plan.<sup>37</sup> These include the exclusion of bottom trawling and Danish seining from parts of the Hauraki Gulf Marine Park and development of a management plan for kelp forest restoration.<sup>38</sup>
- 4.13 EDS notes that the Hauraki Gulf Fisheries Plan was approved by the (then) Minister for Oceans and Fisheries in August 2023.<sup>39</sup> Of relevance, it states:<sup>40</sup>
- (a) Management objective 1.1 *“protect marine benthic habitats from any adverse effects of bottom contact fishing methods, to enable passive and active restoration that support ecosystem services”*; and
  - (b) Management action 1.1.1 *“exclude bottom trawling and Danish seining from the Hauraki Gulf except within defined areas (subject to statutory processes)”*.
- 4.14 To date, there has been little progress towards achieving these outcomes.
- 4.15 In November 2023, the (then) Government undertook public consultation on options for implementing a ban on bottom trawling and Danish seining in parts of the Hauraki Gulf. There is no current certainty that any of the controls will be implemented under the Fisheries Act.<sup>41</sup> Mr Hore’s evidence is that the options remain under consideration.<sup>42</sup> No decisions have been made.
- 4.16 EDS’s concerns regarding the lack of progress towards protecting marine benthic habitats and ecosystems in the east coast Waikato CMA are echoed by Mr MacIndoe in his evidence for New Zealand Sports Fishing Council. Mr MacIndoe states:<sup>43</sup>
- The Trawl corridors that were eventually consulted on in November 2023 largely provided for a continuation with the status quo, with all heavily trawled areas remaining open for exploitation. Even these limited restrictions on trawling have not eventuated, with no decision from the Minister of Oceans and Fisheries, Shane Jones, to progress the proposals. From the Ministers public statements, it is clear that he will not countenance restrictions on trawling.
- 4.17 The reality is that these measures are not in place at this time and there is no indication they will be progressed by the current Government.

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<sup>37</sup> Statement of evidence of Jacob Hore on behalf of MPI dated 17 April 2025, at [21].

<sup>38</sup> Ibid.

<sup>39</sup> Hauraki Gulf Fisheries Plan 2023 at 18.

<sup>40</sup> Ibid.

<sup>41</sup> EDS’s opening legal submissions dated 11 February 2025 at [7.53]-[7.55].

<sup>42</sup> Statement of evidence of Jacob Hore on behalf of MPI dated 17 April 2025, at [22.1].

<sup>43</sup> Ibid at [3.2].

- 4.18 EDS submits that the Council cannot delay or defer necessary protections for indigenous biodiversity in light of the available evidence on significant effects of fishing activities in parts of the Waikato CMA.

*Failure to give effect to higher order planning documents*

- 4.19 The Proposed Plan must give effect to higher order planning documents.<sup>44</sup>
- 4.20 EDS's opening legal submissions identified key policies of the NZCPS and the operative Waikato Regional Policy Statement (**RPS**).<sup>45</sup>
- 4.21 EDS submits that the Proposed Plan fails to give effect to the NZCPS because, by omitting fishing controls, it allows for potentially significant adverse effects on indigenous biodiversity and ecosystems that meet criteria in Policy 11.
- 4.22 Moreover, the Plan fails to give effect to the RPS because it does not protect marine habitat within SIBAs from adverse effects of fishing nor does it control fishing activities to protect and enhance indigenous biodiversity within the coastal environment of the Waikato Region.
- 4.23 EDS considers the Plan fails to sufficiently recognise that the Hauraki Gulf Marine Park is a place of national significance with ecological values that should be protected and enhanced.<sup>46</sup>
- 4.24 Key gaps in existing protection for marine biodiversity are addressed below.

Gaps in protection

- 4.25 The Waikato CMA hosts a rich and biodiverse variety of environments.<sup>47</sup>
- 4.26 Schedule 7 of the Proposed Plan includes mapped areas with significant indigenous biodiversity values (**SIBAs**). As outlined in Ms Webb's evidence:<sup>48</sup>
- (a) SIBA-As are considered to meet criteria in Policy 11(a) of the NZCPS; and
  - (b) SIBA-Bs are considered to meet criteria in Policy 11(b) of the NZCPS.
- 4.27 The current state of protection in the Waikato CMA leaves areas with high values, including significant biodiversity and ecosystem values in SIBAs, exposed to adverse effects of fishing activities.
- 4.28 Currently, mobile bottom contact fishing activities can be undertaken across the mid to outer Hauraki Gulf Marine Park. Particularly to the east of the Coromandel Peninsula. This includes within:
- (a) Mapped SIBA-As with highly diverse kelp forests, macroalgae beds (including *At-risk* species of seaweeds), rhodoliths, bryozoans shellfish

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<sup>44</sup> Resource Management Act 1991, s 67(3).

<sup>45</sup> EDS's opening legal submissions at [5.19]-[5.26].

<sup>46</sup> Hauraki Gulf Marine Park Act 2000, ss 7 and 8.

<sup>47</sup> Statement of evidence of Dr Shane Kelly on behalf of EDS dated 8 November 2024 at [5.1]-[5.20].

<sup>48</sup> Statement of evidence of Claire Webb on behalf of WRC (ecology and SIBA mapping) dated 11 October 2024 at [5.6].

beds, sponge aggregations, shallow rocky reefs and other diverse biogenic habitats.<sup>49</sup>

EDS finds it particularly concerning that the Proposed Plan provides *no protection* from bottom contact fishing methods in SIBA-A A15 (Fantail Bay to Waikawau Bay) despite this area hosting diverse biogenic habitats, including *At-Risk* seaweed species, that have been impacted by scallop dredging and trawling in the past. The description of values in Schedule 7A states “*biogenic habitats are expected to recover if ongoing bottom disturbance is avoided*”.<sup>50</sup> The Proposed Plan does not avoid ongoing disturbance from bottom contact fishing in this area.

(b) Mapped SIBA-Bs with “*highly sensitive*” benthic taxa including sponges, anemones, soft corals, sea fans, sea pens, hard corals, sea lilies and armless stars (i.e. SIBA B44 – East Coast Benthic Habitat).

4.29 The evidence of Dr Kelly and Ms Curtis-Wilson is that marine ecology values sensitive to bottom contact fishing activities are widely distributed across the east coast Waikato CMA (i.e. beyond mapped SIBAs).<sup>51</sup> Figures showing the predicted distribution of sensitive taxa and biogenic habitats are included in the MPI Consultation Documents attached to Dr Kelly’s primary evidence.<sup>52</sup>

4.30 Other types of recreational and commercial fishing can occur in most SIBAs on the east coast Waikato CMA, with the exception of the existing marine reserve at Cathedral Cove and partial fisheries closures (described above).

4.31 EDS acknowledges that future marine protected areas established by the HG Bill are likely to provide benefits for indigenous biodiversity.<sup>53</sup>

4.32 However, EDS considers the HG Bill will not adequately protect indigenous biodiversity and ecosystems from fishing impacts. This view is supported by the JWS Fishing Controls, which states:

[4.2.6] Nick Shears considers the Hauraki Gulf Marine Protection Bill provides little additional ‘no-take’ protection of shallow coastal areas within SIBA-A in the CMA.

...

[4.2.8] The science experts, excluding Sydney Curtis, agree if the above ... goes ahead, as currently drafted, there still needs to be additional management measures to address adverse effects in the SIBA-A, such as high protection areas. If the proposals are not implemented as currently drafted, then the science experts would need to review the package of controls to identify whether or not even further protection is required of the SIBA-A.

4.33 The HG Bill is not yet law. This is important because, even if the future protections were enacted without delay, recovery of degraded ecosystems is likely to take decades.

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<sup>49</sup> This includes SIBA-A16, A17, A15, A18, A19, A23, A30, A31, A32.

<sup>50</sup> The Proposed Plan, Schedule 7A.

<sup>51</sup> The relevant evidence is summarised in EDS’s opening legal submissions at [7.22]-[7.28].

<sup>52</sup> Refer Figures 1-9 showing “*predicted habitat suitability*” for various taxa and biogenic habitats at pages 100-108 of Dr Shane Kelly’s primary evidence dated 8 November 2024.

<sup>53</sup> In reliance on the JWS Fishing Controls at [4.2.2] and [4.2.5].

- 4.34 Dr Townsend in his evidence notes that longer lived slow growing species such as corals and sponges are likely to take more than 10 years to recover.<sup>54</sup> Available information on ecosystem recovery in no-take marine reserves to the northeast of the Waikato Region (at Leigh and Tāwharanui) shows the reversal of kina barrens and recovery of kelp forests can take 15-25 years.<sup>55</sup> This means recovery of degraded areas is likely to occur slowly and possibly over the entire life of the Proposed Plan (and beyond).
- 4.35 The HG Bill does not include any mechanism to enable additional marine protected areas nor does it protect any areas with high biodiversity on the west coast. This leaves areas with significant indigenous biodiversity and ecosystem values exposed to ongoing fishing impacts.

Evidence of fishing impacts on marine ecology values

- 4.36 The science experts all agree that the adverse effects of mobile bottom contact fishing methods and fishing down of key predators on reef systems in the Waikato CMA are *significant*.<sup>56</sup>
- 4.37 The JWS Fishing Controls identifies areas where effects of fishing are impacting on ecologically important values. It states:

[4.1.4] The science experts consider that on some areas of the east coast there is information to indicate that mobile bottom contact fishing is having and has had adverse effects on indigenous biodiversity. It is known that significant indigenous biodiversity values have already been lost on the east coast. ...

[4.1.6] Nick Shears notes that urchin barrens are extensive along parts of the eastern Coromandel and offshore islands on the east coast, including within SIBA-A. He notes there is extensive urchin barren on the Karewa Gannet Island on the west coast.

[4.1.7] The science experts agree there are good levels of information for broad scale reef and seagrass habitat coverage of Mercury Islands. Research has found low numbers and small sizes of predators which is a clear indication of high levels of fishing, both commercial (e.g. potting and bottom longlining) and recreational (e.g. line fishing, diving, potting and spearfishing) of both snapper and crayfish. This is reflected in the presence of urchin barrens at the Mercury Islands, noting that their extent varies considerably among sites across the Islands.

- 4.38 EDS notes that storm-related loss of kelp was discussed during the general and whole of plan hearing held on 18 February 2025.<sup>57</sup> Dr Townsend's evidence confirms that the primary cause of kina barrens is *not storms*.<sup>58</sup> Dr Kelly has also commented on storm disturbance in his evidence.<sup>59</sup> In Dr Kelly's opinion, storm

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<sup>54</sup> Supplementary statement of evidence of Dr Michael Townsend on behalf of WRC dated 17 April 2025 at [18].

<sup>55</sup> This was addressed in relation to the Proposed Northland Regional Plan. See *Bay of Islands Maritime Park Inc v Northland Regional Council* [2022] NZEnvC 228 at [93].

<sup>56</sup> JWS Fishing Controls at [4.1.2].

<sup>57</sup> Refer Mr Phil Clow's presentation showing images of kelp wash up at Hotwater Beach February 2023, [here](#).

<sup>58</sup> Supplementary statement of Dr Michael Townsend on behalf of WRC at [23].

<sup>59</sup> Supplementary statement of evidence of Dr Shane Kelly on behalf of EDS dated 17 April 2025 at [2.11].

effects tend to be “short-term perturbations from which systems can rapidly recover if other pressures do not prevent or impede recovery”.<sup>60</sup>

- 4.39 Given the above, controls on activities (such as fishing) should be implemented to enhance the resilience of marine ecosystems. Particularly as other stressors, such as storms, cannot be easily controlled.

Summary of EDS’s position

- 4.40 EDS considers current and potential future measures do not adequately control fishing activities to maintain indigenous biodiversity and ecosystems in the Waikato CMA. This leaves a gap that should be addressed by the Proposed Plan.
- 4.41 Regarding the NZCPS, the Proposed Plan must ensure that adverse effects on Policy 11(a) values and significant adverse effects on Policy 11(b) values are avoided. In other cases, adverse effects are to be avoided, remedied or mitigated.
- 4.42 The science evidence before the Hearing Panel shows that fishing activities can cause significant adverse effects on sensitive taxa and biogenic habitats in the Waikato CMA. The JWS Fishing Controls confirms:
- (a) Mobile bottom contact fishing methods have already resulted in loss of significant indigenous biodiversity on the east coast;<sup>61</sup> and
  - (b) Overfishing of reef predators (snapper and rock lobster) has already contributed to trophic cascades with associated loss of kelp forests and formation of kina barrens across shallow coastal reefs located on the east coast and west coast of the Waikato CMA.<sup>62</sup>
- 4.43 The Proposed Plan should not provide for fishing activities that could result in adverse effects on significant biodiversity, contrary to the requirements of Policy 11.
- 4.44 If there is any doubt about the effects of fishing activities on ecologically important values, Policy 3 of the NZCPS requires that a precautionary approach is taken.
- 4.45 The Proposed Plan does not attempt to manage impacts of fishing on indigenous biodiversity *at all*. EDS considers this is an abrogation of the Council’s functions under s 30 of the Act. It is not consistent with Policy 3 and 11 of the NZCPS or relevant policies in the RPS.
- 4.46 EDS has put forward proposed provisions to ensure the Proposed Plan gives effect to the higher order planning documents in a way that is consistent with the sustainable management purpose of the Act.

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<sup>60</sup> Ibid at [2.11].

<sup>61</sup> JWS Fishing Controls at [4.1.4].

<sup>62</sup> JWS Fishing Controls at [4.1.5], [4.1.6], [4.1.7].

*Appropriateness of EDS's proposed controls*

- 4.47 The Proposed Plan's s 32 report assessed the effectiveness of prohibiting the taking of all plants and animals within identified significant areas as high.<sup>63</sup> However, it does not follow through and include such controls. Moreover, it omits controls on benthic disturbance associated with mobile bottom contact fishing methods.
- 4.48 The Proposed Plan includes relevant objectives and policies which would support controls on fishing.<sup>64</sup> For example:
- (a) Objective ECO-O1: Ecosystems and indigenous biodiversity in the coastal marine area are maintained, and enhanced and restored where appropriate, and areas of significant indigenous biodiversity are protected.
  - (b) Objective ECO-O2: The degradation and loss of ecosystem processes, including decline in habitat quality and extent, in the coastal marine area is prevented.
  - (c) Policy ECO-P1: Avoid adverse effects on significant indigenous biodiversity ... [including the values of SIBA-A].
  - (d) Policy ECO-P2: Avoid significant adverse effects on significant indigenous biodiversity ... [including the values of SIBA-B].
  - (e) Objective DD-O1: Natural coastal processes and the functioning of coastal ecosystems are protected from the adverse effects of inappropriate disturbances, dredging or the removal of sand, shell and other natural material.
  - (f) Policy DD-P5: Avoid significant adverse effects, and **avoid**, remedy or mitigate other adverse effects, on:  
...  
*b. indigenous ecosystems and habitats that are particularly vulnerable to modification, including: estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, seagrass and saltmarsh and other biogenic habitats and ecosystems*
- 4.49 In EDS's submission, the proposed objectives and policy framework (above) make it clear that significant adverse effects are to be avoided where environmental values are high (in the Policy 11(a) sense) and/or the adverse effects are significant (in the Policy 11(b) sense).
- 4.50 EDS's proposed benthic disturbance rule will ensure adverse effects of bottom contact fishing activities are avoided in areas with sensitive taxa and biogenic habitats, including SIBAs on the east coast Waikato CMA. The rule allows for bottom trawling, Danish seining and dredging in specified benthic access areas where fishing effort (and associated effects) have been concentrated in the past.
- 4.51 EDS's proposed no-take rule will ensure adverse effects of fishing are avoided in mapped SIBA-As with high biodiversity and ecosystem values vulnerable to overfishing. This includes shallow coastal reef habitats where kina barrens have been recorded.

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<sup>63</sup> The Council's s 32 Report at 386 and as addressed in the Summary statement of evidence of David Serjeant on behalf of EDS (planning) dated 17 April 2025.

<sup>64</sup> The Proposed Plan (s 42A addendum recommendations Version), January 2025.

- 4.52 In Dr Townsend’s opinion, some SIBA-A, such as A8 and A9, may be too small to maximise the delivery of benefits from restricting fishing activities within them.<sup>65</sup> EDS’s revised no-take rule does not apply to these areas.
- 4.53 Dr Townsend has indicated that no-take protection of the Mercury Islands could be beneficial. Specifically:<sup>66</sup>

Protecting the indigenous biodiversity across a number of the Mercury Islands could support the recovery of key predator across the remaining islands, and slow or reverse the expansion of kina barrens. Additionally, targeting a SIBA, like SIBA-19, in the north-eastern Coromandel could further enhance the development of a network of marine protected areas (i.e. enhancing dispersal and connectivity options across the CMA).

- 4.54 This position is supported by Dr Kelly’s evidence that:<sup>67</sup>

Available information therefore indicates that the extent of urchin barrens is likely to slowly increase around the Mercury Islands (and elsewhere) if fishing continues to constrain crayfish and snapper sizes and abundances at levels below those required to control urchin grazing. However, available scientific research indicates that no-take protection from fishing should lead to the eventual recovery of kelp forests and the maintenance of a more natural “balance” in areas where it is applied.

- 4.55 EDS’s proposed no-take rule would apply protection to the Mercury Islands SIBA-A-A19 as well as other shallow coastal rocky reef habitats with high biodiversity and ecosystem values in the Waikato CMA. It would support the future HPA network established by the HG Bill (if enacted) and complement measures implemented under the Marine Reserves Act and Fisheries Act.
- 4.56 EDS submits that its proposed controls would provide protective benefits for indigenous biodiversity in a way that better achieves the desired objectives of the Proposed Plan.<sup>68</sup> In short, this is because:
- (a) Current protection for indigenous biodiversity in the Waikato CMA is inadequate;
  - (b) Future marine protected areas that *may* be established under the HG Bill will not address those deficiencies;
  - (c) There is no certainty that other methods will be put in place utilising other legislation. For example, no decisions have been made to progress the MPI benthic access areas/trawl corridors consulted on in 2023; and
  - (d) EDS’s relief is targeted to areas with ecologically important values that warrant additional protection from fishing activities.

#### *Application of Motiti indicia*

- 4.57 EDS’s opening legal submissions addressed the *Motiti* criteria. For reasons already addressed, EDS remains of the view that its proposed controls do not contravene s 30(2) of the Act.<sup>69</sup>

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<sup>65</sup> Supplementary statement of Dr Michael Townsend on behalf of WRC dated 17 April 2025 at [36].

<sup>66</sup> Ibid at [40].

<sup>67</sup> Supplementary evidence of Dr Shane Kelly on behalf of EDS dated 17 April 2025 at [2.12].

<sup>68</sup> JWS Fishing Controls at [4.2.2].

<sup>69</sup> EDS’s opening legal submissions at [7.60]-[7.65].



- 4.58 These submissions briefly comment on the interface of EDS's proposed controls with current and future protections under the HG Bill and the Fisheries Act in response to matters raised in evidence.

#### Proposed no-take rule

- 4.59 EDS's revised no-take rule applies to ten SIBA-As. None of the specified SIBA-As are subject to current no-take protection.
- 4.60 Two of the SIBA-As partially overlap with the temporary closure of the Inner Hauraki Gulf rock lobster fishery.<sup>70</sup> This is the first partial closure to spiny rock lobster fishing of its kind in New Zealand. The closure does not apply to other known reef predators (such as packhorse rock lobster and snapper). EDS considers the effectiveness of this type of closure for maintaining indigenous biodiversity and reversing ecosystem effects of fishing (e.g. kina barrens) is uncertain.
- 4.61 In contrast, there is scientific research showing that no-take protection can promote recovery of depleted predator populations and kelp forests over decadal scales. This is reflected in the JWS on Fishing Controls, which states:<sup>71</sup>

The Te Whanganui-o-Hei/Cathedral Cove Marine Reserve within the CMA provides one example where predators are larger and more abundant, the extent of urchin barrens is considerably lower than the surrounding fished coast. This is consistent with patterns observed within other 'no-take' marine protected areas in northeastern New Zealand.

- 4.62 In EDS's submission, uncertainty surrounding the effectiveness of partial fisheries closures weighs in favour of its proposed no-take protection being implemented through the Proposed Plan.
- 4.63 EDS's no-take rule overlaps with four proposed HPAs in the HG Bill.<sup>72</sup> As outlined above, the proposed rule includes advice notes to ensure it does not duplicate or frustrate protections established under the HG Bill or Marine Reserves Act.
- 4.64 The rule is intended to operate as a backstop by ensuring SIBA-As with values that are vulnerable to overfishing (including shallow rocky reef habitats) are protected until the controls in the HG Bill take effect. The objectives of the proposed no-take rule are not already being met because the HG Bill is not yet law. Therefore, the proposed control passes the 'necessity' criteria in *Motiti*.

#### Proposed benthic disturbance rule

- 4.65 Dr Townsend in his evidence places considerable reliance on EDS's proposed benthic disturbance rule being implemented by Government. For example, he states (emphasis added):<sup>73</sup>

The Environmental Defence Society (EDS) are seeking that the proposed 'Option 4' be included as a benthic disturbance rule in the coastal plan (7.14(a), 7.14(b) in the EDS legal submission). **If accepted, the coastal plan would**

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<sup>70</sup> SIBA -A15 – Fantail Bay to Waikawau Bay and A16 – Cape Colville future HPA.

<sup>71</sup> JWS Fishing Controls at [4.1.5].

<sup>72</sup> SIBA-A16, A26, A31 and A32.

<sup>73</sup> Statement of evidence of Dr Michael Townsend on behalf of WRC dated 17 April 2025 at [27].

**control fishing activities over a substantial area, and potentially duplicate central government legislation in my opinion.**

- 4.66 Elsewhere in his evidence Dr Townsend describes the proposed control as being *“already proposed under legislation”*.<sup>74</sup>
- 4.67 Dr Townsend’s primary concern appears to be that EDS’s benthic disturbance rule would duplicate proposed controls, not that it provides unwarranted protection for indigenous biodiversity and ecosystems.
- 4.68 Possible measures aimed at prohibiting bottom trawl and Danish seine fishing activities have not progressed to legislation. The proposals remain in limbo and there is no certainty that they will be pursued by Government.
- 4.69 EDS considers it is not appropriate to rely on potential protective benefits offered by alternative measures when there is no certainty they will be pursued.
- 4.70 As a final point on this matter, EDS notes that the options consulted on by MPI did not address potential effects of commercial scallop dredging. In Dr Kelly’s opinion, the effects of commercial scallop dredging are similar to bottom trawling and Danish seining.<sup>75</sup> EDS has included dredging within scope of its proposed benthic disturbance rule to address these effects.
- 4.71 EDS considers the only certain way to control fishing activities to maintain indigenous biodiversity is to include appropriate controls in the Proposed Plan.
- 4.72 EDS submits that its proposed controls are necessary and appropriate to protect ecologically important areas (and associated values) in accordance with the higher order planning documents. The scale of EDS’s proposed benthic disturbance rule reflects the ecological characteristics on the east coast and the predicted distribution of biogenic habitat and species that are vulnerable to adverse effects of bottom contact fishing methods in this area.
- 4.73 Alternative measures are too uncertain and they should not be relied on to justify Council inaction.

**5. EDS’S POSITION ON SCOPE**

- 5.1 The Hearing Panel has invited parties to address whether submissions seeking controls on fishing activities are within scope of the Proposed Plan and whether the Council has jurisdiction to grant the relief sought.<sup>76</sup>
- 5.2 This matter was discussed at the general and whole of plan hearing held on 17 and 18 February 2025.<sup>77</sup>
- 5.3 Paragraphs 3.2-3.15 of EDS’s supplementary legal submissions addressed the legal tests on scope and how they apply in the context of the Proposed Plan.<sup>78</sup>

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<sup>74</sup> Ibid at [30] and [33].

<sup>75</sup> Statement of evidence of Dr Shane Kelly on behalf of EDS dated 8 November 2024 at [9.12].

<sup>76</sup> Direction (10) from the Hearing Panel (20 March 2025) at [4]-[5].

<sup>77</sup> The Hearing Panel sought clarification from legal counsel for the Council and EDS during speaking slots on both days. The audio logs are available [here](#).

<sup>78</sup> Supplementary legal submissions on behalf of EDS, dated 14 March 2025, available [here](#).

- 5.4 For the same reasons, EDS submits that its relief regarding fishing controls is within scope of the Proposed Plan and there are no jurisdictional issues that would preclude the Council from granting the relief sought.
- 5.5 The Council and EDS are generally aligned on this position.
- 5.6 In its supplementary legal submissions, the Council concluded:
- (a) EDS's submission is "on" the Proposed Plan (i.e. it is within scope of the Plan) because "*this is a full plan review and the submission seeks additional regulatory provisions applying within the spatial area covered by the proposed plan*".<sup>79</sup>
  - (b) EDS's relief regarding fishing controls "*should be determined by the Hearing Panel on its merits (rather than treating the proposal as being out of scope of the EDS submission)*".<sup>80</sup> In other words, there are no jurisdictional issues that would preclude the Council from granting the relief sought by EDS.
- 5.7 There are two matters that EDS wishes to comment on briefly. These are:
- (a) The extent to which the s 32 report informs the scope of the Proposed Plan; and
  - (b) The Council's suggested approach to determining whether EDS's relief was "*fairly and reasonably raised*" in its original submission.

*The s 32 report is not determinative of scope*

- 5.8 During the general and whole of plan hearing, the Hearing Panel queried whether fishing controls were addressed in the Council's s 32 report and what the implications might be for scope.<sup>81</sup>
- 5.9 The High Court in *Albany North* confirmed that the relief requested by a submitter does not need to be addressed in the original s 32 report to be "on" the plan. The Court observed:<sup>82</sup>

[131] A s 32 report is ... simply a relevant consideration among many in weighing whether a submission is "on" the plan change. ...

[132] Section 32 does not purport to fix the final frame of the instrument as a whole or an individual provision. The section 32 report is amenable to submissional challenge and there is no presumption that the provisions of the proposed plan are correct or appropriate on notification. On the contrary, the schemes of the RMA and Part 4 clearly envisage that the proposed plan will be subject to change over the full course of the hearings process, including in the case of the PAUP, a further s 32 evaluation for any proposed changes which is to be published with (or within) the recommendations on the PAUP.

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<sup>79</sup> Waikato Regional Council, supplementary legal submissions – fishing controls, available [here](#), at [2.9].

<sup>80</sup> Ibid at [2.22].

<sup>81</sup> Waikato Regional Council "Proposed Coastal Plan Hearing Day 2 – 18<sup>th</sup> February 2025", Speaker Log, see 10.15am, [here](#).

<sup>82</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [131]-[132].

- 5.10 In EDS's submission, this confirms that the Council's s 32 report is not determinative of the scope of the Proposed Plan.
- 5.11 In any event, the s 32 report *does* include some consideration of fishing impacts on indigenous biodiversity in the Waikato CMA. For example:
- (a) The s 32 report identifies "*degradation and loss of indigenous biodiversity values from use and development*" including "*recreational and commercial fishing in particular areas*" as an issue.<sup>83</sup> Associated responses were "*identify SIBA*", "*require resource consents for inappropriate activities in SIBA*", "*rules that require activities that disturb the ... seabed to be avoided in areas identified as having significant biodiversity value*" and "*restrict other inappropriate activities in the CMA*".
  - (b) The s 32 report explicitly recognises that "*fishing, especially large scale commercial fishing through bottom trawling or drift netting, has long-term and wide-ranging impacts on fish species and their habitats*".<sup>84</sup> The potential planning responses were as addressed above under (a).<sup>85</sup>
  - (c) The ECO section of the s 32 report included analysis of options for managing effects of activities on mapped areas with significant indigenous biodiversity.<sup>86</sup> The scope of the Council's evaluation included "*new rules added that prohibit that taking of plants and animals within the identified significant marine areas*".<sup>87</sup>
  - (d) The DD section of the s 32 report acknowledged that disturbance activities, including bottom-contact mobile fishing (trawling and dredging), were identified as an issue during the plan review and engagement process. It states:<sup>88</sup>

Bottom trawling, dredging and mining, were frequently mentioned and responses indicate a preference that these activities be restricted or banned altogether in order to protect life on the seabed. A couple of key suggestions include bottom impact fishing methods should require consent and be publicly notified, and that testing should be carried out first.

- 5.12 EDS's proposed ECO-X Rule was (in substance) assessed in the Council's s 32 report and its proposed new DD-X Rule addresses an issue that was explicitly identified in the s 32 report. While not determinative, these factors support EDS's position that its relief is within scope of the Proposed Plan.

*A 'cautious approach' is not warranted*

- 5.13 The Council has suggested "*a cautious approach to imposing fishing controls*" is justified because EDS's original submission did not include "*specific wording*".<sup>89</sup>

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<sup>83</sup> Council's s 32 report at 371.

<sup>84</sup> Ibid at 373.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid at 380-381.

<sup>87</sup> At 381.

<sup>88</sup> At 313.

<sup>89</sup> Waikato Regional Council, supplementary legal submissions – fishing controls, at [2.23].

- 5.14 EDS submits that a cautious approach is not justified and queries the relevance of several authorities relied on by the Council to support this proposition.
- 5.15 As acknowledged by the Council's legal submissions, the High Court in *Countdown Properties (Northlands) Ltd*<sup>90</sup> confirmed it is not necessary to specify the exact wording of relief. The Court noted that the test for whether an amendment is "*fairly and reasonably raised*" is a question of degree to be judged by the terms of the proposed change and the content of the submissions.<sup>91</sup>
- 5.16 EDS notes that the Court emphasised the importance of public participation in the planning process under the Act:<sup>92</sup>
- Persons making submissions in many instances are unlikely to fill in the forms exactly as required by the First Schedule and the Regulations, even when the forms are provided to them by the local authority. The Act encourages public participation in the resource management process, the ways whereby citizens participate in that process should not be bound by formality.
- 5.17 The Court observed that the issues raised in submissions were discussed during the hearing and no one was likely to be prejudiced by the alterations in the Council's revised plan.<sup>93</sup>
- 5.18 It would be unprecedented for the Hearing Panel to adopt a narrower view of scope that requires a submitter to obtain expert advice and put forward specific wording or provisions in an original submission on a public full plan review. Such an approach would undermine the core principles of public participation that are embedded in the framework of the Act.
- 5.19 A number of other submitters sought fishing controls without putting specific wording or provisions forward (refer **Attachment A**). As previously indicated, several submitters sought to protect areas and/or to implement controls on certain fishing methods/activities. This creates a wide scope of potential relief.
- 5.20 Forest & Bird sought (among other matters) to ban trawling from the Hauraki Gulf and further submitted in support of EDS's relief. It is difficult to see how EDS's proposed provisions could give rise to prejudice or be viewed as a 'submissional sidewind' in this context.
- 5.21 EDS considers limited weight should be given to several cases cited by the Council in its supplementary legal submissions on scope.
- 5.22 In *Romily Properties Ltd v Auckland City Council*,<sup>94</sup> the submitter sought that a notified rule "*be re-written to encourage new building to relate to the form of its [sic] neighbours rather than a zone wide control*".<sup>95</sup> On appeal, the submitter sought more specific relief (with the assistance of legal counsel).

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<sup>90</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC).

<sup>91</sup> *Ibid* at 41.

<sup>92</sup> *Ibid* at 42.

<sup>93</sup> *Ibid* at 44.

<sup>94</sup> *Romily Properties Limited v Auckland City Council* ENC Auckland A095/96, 8 November 1996.

<sup>95</sup> At [2].

5.23 Two factors distinguish *Romily* from EDS's relief:

- (a) First, the amendments sought by the submitter related to a *notified provision*. This provided greater opportunity to particularise the specific relief sought at the original submission stage. In this case, the Proposed Plan (as notified) did not include any fishing controls. EDS's original submission identified this "*as a gap in the Proposed Plan that needs addressing*".<sup>96</sup> The Council's s 42A reports failed to do so. This left it to EDS to obtain expert input and put forward appropriate provisions through evidence.
- (b) Second, the submitter did not raise specific relief until the appeal stage. In this case, EDS sought expert planning and ecology input and a set of provisions was included in Mr Serjeant's primary planning evidence, dated 8 November 2024.<sup>97</sup> This was the earliest opportunity to put forward specific wording following receipt of the Council's s 42A reports (which confirmed the Council's response to EDS's submission) and prior to the deadline for rebuttal evidence and hearings.

5.24 In *Bennett v Thames-Coromandel District Court*,<sup>98</sup> the submitter raised general concerns about a number of notified provisions but failed to specify the relief sought. The form used to complete the submission included a space for amendments and this was "*simply left blank*".<sup>99</sup>

5.25 This deficiency in the submission prompted the Council to contact the submitter to clarify the nature of the relief sought. As described in the judgment:

[23] A staff member at the Council contacted Mr Bennett by email on 7 March 2017 seeking clarification of the relief that he sought in his submission. Mr Bennett responded by email on the same day stating "*I do not believe I need to state the decision sought for the objection to be lodged so the matter can be heard in the Environment Court.*" In short, Mr Bennett declined the opportunity to provide the requisite information as he intended to take the matter to this Court. This was because he was frustrated that the Council had not incorporated into the Proposed Plan, ARC provisions in the form he had suggested in earlier discussions.

5.26 The Council's legal submissions omit this important detail.<sup>100</sup>

5.27 In contrast to *Bennett*, EDS is not aware of any attempts by the Council to clarify the nature of the relief it sought. Its relief that fishing controls be included in the Proposed Plan was raised in EDS's original submission and captured by the Council's Summary of Decisions Requested (as addressed above).

5.28 The Council also refers to the *Motiti* Environment Court decision, which found there was wide scope to include fishing controls in a regional coastal plan. The Council appears to emphasise that this finding reflected "*the context of greater public discussion about fishing controls around the Motiti Island area*".<sup>101</sup>

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<sup>96</sup> EDS's original submission on the Proposed Plan, dated 14 November 2023, at [24].

<sup>97</sup> Statement of evidence of David Serjeant on behalf of EDS (Planning), dated 8 November 2024, Annexure A.

<sup>98</sup> *Bennett v Thames-Coromandel District Council* [2017] NZEnvC 111.

<sup>99</sup> *Ibid* at 12.

<sup>100</sup> Refer para [2.15] of the Council's legal submissions dated 12 March 2025.

<sup>101</sup> Supplementary legal submissions on behalf of Waikato Regional Council dated 12 March 2025 at [2.17].

- 5.29 With respect, this overlooks the extensive public discussion that occurred on the topic of ‘protecting marine biodiversity’ prior to notification of the Proposed Plan and the community feedback received both in support and opposition to inclusion of fishing controls in the Plan.<sup>102</sup> It also overlooks the high level of public interest in fishing controls as reflected in the submissions received on the Plan (refer **Attachment A**).
- 5.30 EDS’s submission attracted further submissions in opposition to its relief regarding fishing controls.<sup>103</sup> This confirms other submitters were aware that fishing controls were being sought by EDS. This is an important point that distinguishes it from other cases where submitters were not alert to potential controls and only found out about specific relief when it was raised on appeal.<sup>104</sup>
- 5.31 The Council’s legal submissions refer to the *Bay of Islands Maritime Park Inc v Northland Regional Council* and the Environment Court’s comments that:<sup>105</sup>
- Clearly the further the provisions would impact upon recreational and commercial fishing, the more cautious the Court would be in imposing controls that have not been clearly identified.
- 5.32 EDS notes that the Court went on to say: “*this goes to the extent of any controls rather than the question as to whether these were adequately signalled in a jurisdictional sense*”.<sup>106</sup> In other words, it is a question to be assessed on the merits not a factor determinative of scope.<sup>107</sup>
- 5.33 To the best of its knowledge, EDS is the only submitter to have put forward specific provisions for the Panel’s consideration. Those provisions were put forward prior to commencement of hearings and formed the basis of expert conferencing. This is not the same as raising relief on appeal and it does not raise any issue of prejudice. In EDS’s view, a ‘cautious approach’ to imposing fishing controls is not justified.

## 6. OTHER MATTERS

- 6.1 EDS’s original submission sought the inclusion of a coastal occupation charging regime in the Proposed Plan.<sup>108</sup> At the general and whole of plan hearing, the Panel sought clarification of the nature of this relief.<sup>109</sup> EDS confirms that it is not pursuing this relief.
- 6.2 A table confirming EDS’s position on its wider package of relief is included in **Attachment C**.

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<sup>102</sup> Joint Supplementary Statement of Bruce McAuliffe and David Phizacklea on behalf of WRC dated 21 February 2025 at 38-47 and Attachment 5 and 6.

<sup>103</sup> For example, FS16 New Zealand Sport Fishing Council opposed EDS’s submission point #95.19 and supported with amendments EDS’s submission point #95.16. FS23: Seafood New Zealand, NZ Rock Lobster Industry Council and Paua Industry Council opposed EDS’s submission points #95.19 and #95.16. FS24 Brooks Seafood Ltd generally opposed “*all submitters who oppose bottom trawling*”. In contrast FS29 Royal Forest and Bird Protection Society of New Zealand Inc generally supported all of EDS’s submission points to the extent they did not conflict with their relief sought.

<sup>104</sup> For example, *Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council* [2024] NZEnvC 255.

<sup>105</sup> *Bay of Islands Maritime Park Inc v Northland Regional Council* [2022] NZEnvC 228 at [155] as cited in the Council’s supplementary legal submissions dated 12 March 2025 at [2.20].

<sup>106</sup> At [156].

<sup>107</sup> At [155].

<sup>108</sup> EDS’s original submission on the Proposed Plan, dated 14 November 2023, at [46].

<sup>109</sup> At the general and whole of plan hearing held on 18 February 2025 and the aquaculture hearing held on 9 April 2025.

**7. CONCLUSION**

- 7.1 The Proposed Plan does not give effect to the NZCPS or RPS because it fails to adequately protect important indigenous biodiversity and ecosystem values from fishing activities that affect such values.
- 7.2 EDS has put forward a set of provisions to ensure the higher order documents are given effect to.
- 7.3 EDS's evidence confirms that its proposed provisions are appropriate to maintain indigenous biodiversity in areas with ecologically important values in the Waikato CMA.

24 April 2025

**T A Turner**



## **ATTACHMENT A: SUBMISSIONS ON THE PROPOSED PLAN**

The table below lists relevant submission points addressing fishing controls in the Proposed Plan as reproduced from the Council's Summary of Decisions Requested (dated 27 March 2024). It is not intended to provide a comprehensive list but to show the nature of relief sought and level of interest in fishing controls (both for and against).

**1 – Davis, Frank**

| Sub pt | Support/Oppose | Provision  | Decision requested  | Submission  |
|--------|----------------|------------|---|---|
| 1.01   | Oppose         | Schedule 3 | AMEND Schedule 3 so that the Waikato Regional Coastal Plan upholds the right of all people to undertake recreational fishing in waters surrounding Slipper Island and the Alderman Islands. | The submitter states that residents of many coastal communities, including Pauanui, Tairua and Opoutere, rely on fishing grounds surrounding Slipper Island and the Alderman Islands, and considers that if these waters are closed to recreational fishing, fishing boats would need to travel further, thereby wasting fuel and adding extra costs. |
| 1.02   | Oppose         | Whole Plan | AMEND the Waikato Regional Coastal Plan so that the plan upholds the right of all people to undertake recreational fishing in waters surrounding Slipper Island and the Alderman Islands.   | The submitter states that residents of many coastal communities, including Pauanui, Tairua and Opoutere, rely on fishing grounds surrounding Slipper Island and the Alderman Islands and considers that if these waters are closed to recreational fishing, fishing boats would need to travel further, thereby wasting fuel and adding extra costs.  |

**4 – Slipper Island Residents Association**

| Sub pt | Support/Oppose | Provision | Decision requested   | Submission   |
|--------|----------------|-----------|--|--|
| 4.01   | Oppose         | General   | PROVIDE for the proposed high protection areas to be total 'no take' Marine Reserves OR PROVIDE for a reduction by negotiation in commercial quota and daily bag limits across the board for everyone, recreational and commercial of 12 finfish per person per day. | The submitter strongly disagrees with these high protection areas to effectively reserve parts of the ocean for 'customary take' by Māori. The SIRA considers themselves the natural caretakers / tangata whenua of the proposed area around slipper island. |
| 4.02   | Oppose         | General   | PROVIDE only for a marine reserve that extends south of Penguin/Rabbit islands but not north of them. Or on the east of the island.  | The submitter requests to have a say in the boundaries of any marine reserves [around Penguin/Rabbit islands].   |

#### 6 – Ngāti Tara Tokanui Iwi

| Sub pt | Support/Oppose         | Provision | Decision requested   | Submission  |
|--------|------------------------|-----------|--|---|
| 6.26   | Not Stated             | General   | AMEND the Plan to implement a complete ban on trawler and sea floor impact fishing.  | Ngāti Tara Tokanui iwi propose a complete ban on specific types of fishing. [See submission for full details].  |
| 6.27   | Not Stated             | General   | AMEND the Plan to designate resting periods for specific ocean areas where no fishing is allowed, with agreement between private and commercial operators. | Ngāti Tara Tokanui iwi propose a complete ban on specific types of fishing. [See submission for full details].  |
| 6.33   | Oppose with amendments | DD-Rules  | AMEND DD-R1 to DD-R32 to have immediate legal consequences for harmful activities.   | Ngāti Tara Tokanui iwi oppose rules DD-R1 to DD-R32 as they lack immediate legal effects, allowing potentially harmful activities by forestry, industry, and trawling without legal consequences.   |
| 6.34   | Oppose with amendments | ECO-Rules | AMEND ECO-R1 to ECO-R19 to have immediate legal consequences for harmful activities.   | Ngāti Tara Tokanui iwi oppose rules ECO-R1 to ECO-R19 as they lack immediate legal effects, allowing potentially harmful activities by forestry, industry, and trawling without legal consequences. |

#### 7 – Auckland Council

| Sub pt | Support/Oppose | Provision | Decision requested   | Submission   |
|--------|----------------|-----------|--|--|
| 7.15   | Not Stated     | DD-P5     | INSERT new policy to manage the impacts of fishing other than “disturbance”. | The submission requests the provision of guidance or policy to manage the impacts of fishing other than “disturbance,” on significant biological areas, important seascapes and sites of importance to tangata whenua. |
| 7.16   | Not Stated     | General   | INSERT new policy to manage the impacts of fishing other than “disturbance”. | The submission requests the provision of guidance or policy to manage the impacts of fishing other than “disturbance,” on significant biological areas, important seascapes and sites of importance to tangata whenua. |

**11 - STET Ltd**

| Sub pt | Support/Oppose          | Provision   | Decision requested  | Submission   |
|--------|-------------------------|-------------|---|--|
| 11.01  | Oppose                  | Whole Plan  | AMEND PLAN provisions as required to include protection of biodiversity from the effects of fishing.  | The submitter considers WRC has a responsibility to protect indigenous biodiversity from fishing, particularly bottom impact fishing methods. The submitter is disappointed that WRC has not identified the ecosystem services that could be enhanced by controlling the effects of fishing in the CMA.  |
| 11.02  | Oppose                  | DD-General  | AMEND DD provisions to prohibit the disturbance of the seabed or foreshore in specifically identified and mapped areas.   | The submitter considers that WRC has a responsibility to maintain indigenous biodiversity and a new expectation to address Fisheries Act failures, and that WRC are responsible for restricting activities, techniques and practices that result in disturbance of the foreshore and seabed, or affect marine life in some areas to protect indigenous species, habitats and ecosystems, including fish and other marine life. |
| 11.03  | Oppose                  | ECO-General | AMEND ECO Chapter to prohibit the taking of all indigenous plants and animals in specifically identified and mapped areas.  | The submitter considers that WRC has a responsibility to maintain indigenous biodiversity and a new expectation to address Fisheries Act failures, and that WRC are responsible for restricting activities, techniques and practices that result in disturbance of the foreshore and seabed, or affect marine life in some areas to protect indigenous species, habitats and ecosystems, including fish and other marine life. |
| 11.04  | Support with amendments | Schedule 7  | AMEND Schedule 7 SIBA sites to include the following:<br>1) shag and seabird foraging areas, including protecting them from fishing<br>2) identifying the habitats of threatened freshwater species and protecting them from fishing<br>3) protecting the foraging areas of threatened marine species from fishing. | The submitter considers that the SIBAs identified look to be poorly informed and do not address the values of matters identified, as threatened shorebird species (including matuku moana/reef heron) feed on small fish.  |

|       |                         |                       |   |  |
|-------|-------------------------|-----------------------|---|--|
|       |                         |                       | <p>4) identify areas where locally extinct species are still present and are likely to recover faster if protected from fishing</p> <p>5) identify and protect a percentage of pelagic habitat.</p>   |  |
| 11.05 | Support with amendments | Map layer: SIBA A & B | <p>AMEND Map layer for SIBA A and B sites to include areas of:</p> <p>1) shag and seabird foraging areas</p> <p>2) habitats of threatened freshwater species</p> <p>3) important habitats for threatened marine species</p> <p>4) areas where locally extinct species are still present and likely to recover faster</p> <p>5) a percentage of pelagic habitat OR AMEND Map layer SIBA A and B to identify a representative 30% of the CMA and protect it from fishing.</p> | The submitter considers that the SIBAs identified look to be poorly informed and do not address the values of areas identified. If review cost is too prohibitive then a representative 30% could be nominated   |
| 11.06 | Oppose                  | DD-General            | AMEND DD provisions to require resource consents for Bottom Impact Fishing Methods (BIF) and require AEE's to assess impacts of methods including indirect effects.   | The submitter considers that WRC must not permit BIF or exclude BIF from [consideration in] the coastal plan as BIF is inconsistent with Policy 11.4 of the WRPS and that BIF methods are a source of carbon emissions. The submitter notes that BIF is a notifiable activity in any new Coastal Plan since the Motiti decision. The submitter is of the opinion that Fisheries NZ trawl surveys should also require resource consent. |
| 11.07 | Oppose                  | ECO-General           | AMEND ECO provisions to create a Marine Protected Area (MPA) network to complement the High Protection Areas (HPA) proposed in Revitalising the Gulf 2021 AND AMEND ECO provisions to prohibit fishing in MPA network identified [see also 11.5 re Schedule 7 and 11.8 re Maps].  | The submitter considers that WRC needs to take a precautionary approach to maintain indigenous biodiversity as per Section 30(1)(ga) of the RMA, and WRC coastal Plan has failed to protect 'significant vegetation and habitat' from the effects of fishing. The submitter considers the Motiti decision has empowered councils to address this.  |
| 11.08 | Oppose                  | Maps: General         | INSERT a Map layer of "Marine Protected Areas" and include a representative 30% of the CMA, including consideration of the following areas:   | The submitter considers that an MPA network will maintain indigenous biodiversity and increase resilience to climate change. See submission for more information, including justification for each of the areas identified.  |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  | 1) The Mercury Islands Group<br>2) The deeper areas of the CMA in the Hauraki Gulf Marine Park<br>3) Alderman Island gap<br>4) Motukawao Group<br>5) Port Charles and Kennedy Bay<br>6) Purangi Estuary<br>7) Opoutere Estuary |  |
|--|--|--|--|--|

## 12 – Hauraki Gulf Forum

| Sub pt | Support/Oppose          | Provision   | Decision requested  | Submission  |
|--------|-------------------------|-------------|---|---|
| 12.05  | Support with amendments | ECO-General | CLARIFY the interface between SIBA-A vs SIBA-B vs HPA vs SPA etc, and how the WRC plans to act to protect these identified areas. | The public needs clarity on the relationship of plan provisions with HGMP provisions and MPI trawl corridors and Fisheries Plan provisions. |

## 31 - Waikato Conservation Board

| Sub pt | Support/Oppose | Provision  | Decision requested   | Submission  |
|--------|----------------|------------|--|---|
| 31.01  | Not Stated     | Whole Plan | <p>AMEND plan to identify protected marine zones that prohibit fishing on the west coast of the Waikato Region.</p> <p>AND AMEND plan to identify some of the Schedule 7 areas as no take areas (except for customary fishing where appropriate) or as marine reserves</p> <p>AND AMEND plan to apply a mātaihai reserves approach in consultation with Mana Whenua.</p> | <p>There should be more protected marine zones on the west coast. While central government can issue directions regarding marine reserves, the submitter believes regional council should consider similar actions. Schedule 7 outlines the significant indigenous biodiversity areas, which is useful, but these are not 'no fish zones'. Some of these areas of significance should be considered as no-take areas (except for customary fishing rights, when appropriate) or stretches of them are considered for marine reserves.</p> <p>Submitter recognises the beneficial impact of mātaihai Reserves where stock regeneration impacts benefit the surroundings, and recommends working with Mana Whenua early to identify such areas.</p> |

**36 - New Zealand Sport Fishing Council Inc**

| Sub pt | Support/Oppose | Provision | Decision requested   | Submission   |
|--------|----------------|-----------|--|--|
| 36.03  | Not Stated     | General   | INSERT rules that prohibit or restrict the disturbance of the seabed or foreshore within identified ecologically significant marine areas that are vulnerable to disturbance, including by mobile bottom contact fishing methods such as bottom trawling, Danish seining and scallop dredging. | The submitter is of the opinion that controls on mobile bottom contact fishing methods out to the 12nm limit are needed to maintain and enhance indigenous biodiversity. |
| 36.04  | Not Stated     | General   | INSERT a rule to prohibit purse seining.   | The submitter considers that prohibiting purse seining will maintain and enhance indigenous biodiversity.  |
| 36.11  | Oppose         | General   | ENSURE the Plan does not include additional restrictions on low impact hook and line fishing and hand gathering (by any fisheries sector).   |  |

**48 - Cross, Stuart**

| Sub pt | Support/Oppose | Provision | Decision requested  | Submission   |
|--------|----------------|-----------|---|--|
| 48.01  | Oppose         | General   | PROVIDE for a ban on commercial fishing.  | The submitter considers commercial fishing trawlers are trawling near the beach and moving closer to the shoreline, which is impacting the local community and recreational fishing.   |
| 48.02  | Oppose         | General   | AMEND the plan to include a non-commercial fishing zone through the Coromandel. | The submitter considers commercial fishing trawlers are trawling near the beach and moving closer to the shoreline, which is impacting the local community and recreational fishing. The submitter would prefer that commercial fishing is banned entirely, but alternatively seeks a zone through the Coromandel in which commercial fishing is banned and which prevents commercial fishing close to communities and shorelines. |

**49 - Bakalich, Karlene**

| Sub pt | Support/Oppose | Provision | Decision requested  | Submission   |
|--------|----------------|-----------|---|--|
| 49.01  | Oppose         | General   | PROVIDE for a ban on commercial fishing close to our shoreline. | Whiritoa Beach is a small community who has and continues to have commercial fishing boats trawling up and down the beach. [...] |

**50 – Te Ohu Kaimoana**

| Sub pt | Support/Oppose | Provision  | Decision requested  | Submission  |
|--------|----------------|------------|---|---|
| 50.02  | Support        | Whole Plan | RETAIN that the proposed plan has not sought to manage fisheries or fisheries related effects | The submitter supports that the proposed plan has not sought to manage fisheries related effects, recognising that this function sits with the Fisheries Act as agreed to under the Fisheries Settlement. The submitter is opposed to any attempts to manage fisheries related activity and its impacts through measures under the coastal plan |

**52 - Seafood New Zealand Limited**

| Sub pt | Support/Oppose | Provision | Decision requested  | Submission  |
|--------|----------------|-----------|---|---|
| 52.01  | Support        | General   | RETAIN the approach taken in the Plan, that where fishing is the activity creating the risk to significant indigenous biodiversity, any additional protection required should be managed using the tools under the Fisheries Act 1996 rather than a Resource Management Act based initiative. | The submitter remains committed to the protection of areas of significant marine biodiversity. The submitter supports the approach taken in the draft Coastal Plan. The submitter supports the Fisheries Act as the most appropriate mechanism for managing fishing activity. The submitter's support for using the Fisheries Act recognises that it provides the most appropriate, integrated, effective and efficient mechanism for managing fishing activity across territorial boundaries within the territorial sea and EEZ. |



**55 - Whāingaroa Environmental Defence Incorporated**

| Sub pt | Support/Oppose             | Provision | Decision requested               | Submission   |
|--------|----------------------------|-----------|----------------------------------|--|
| 55.34  | Support with amendments DD | DD-R17    | INSERT restrictions on trawling. | The Plan should include trawling regulations, as set out in the Motiti decision and supported by the previous draft Plan, which said "Bottom trawling, dredging and mining, . . . be restricted or banned altogether in order to protect life on the seabed" |

**56 - Pelco NZ Limited**

| Sub pt | Support/Oppose | Provision  | Decision requested   | Submission   |
|--------|----------------|------------|--|--|
| 56.15  | Neutral        | Whole Plan | PROVIDE for the utilisation of regulatory tools provided by the Fisheries Act (1996), rather than localised tools generated by the Resource Management Act (1991), including the implementation of permanent non-use areas (spatial closures) AND PROVIDE for the adoption of a collaborative (industry engaged) approach to manage Areas of significant indigenous biodiversity within Schedule 7, including the Mercury Islands, Slipper Island, and Alderman Islands. | Several of the offshore Islands of the Eastern Coromandel and Bay of Plenty marine areas are included as Areas of significant indigenous biodiversity within Schedule 7. The submitter considers that objectives and policies outlined in the draft Plan (and currently being considered in the Hauraki Gulf/Tikapa Moana Protection Bill) have the potential to directly impact fishing operations. The submitter advocates for the utilisation of regulatory tools associated with the Fisheries Act (1996). They do not support the implementation of permanent non-use areas (spatial closures). They state that evidence suggests these are not an appropriate tool for managing pelagic fish stocks or biodiversity and go against (commonly held) cultural values which seek to ensure mauri by balancing the use and the resting of areas on a temporary basis, if and where there are concerns. |

#### 69 - Auckland Conservation Board

| Sub pt | Support/Oppose          | Provision    | Decision requested  | Submission   |
|--------|-------------------------|--------------|---|--|
| 69.01  | Support with amendments | ECO-Policies | INSERT new policy ECO-P13 along the lines of: <u>"ECO-P13 - Establish new no-take marine areas in locations of highest marine biodiversity value: Undertake further scientific examination of the SIBA-A areas already identified, in order to prioritise those of highest marine biodiversity value, and establish them as no-take areas (except for customary fishing rights)."</u> | The submitter states while they commend the SIBAs, only a few of these SIBA areas are in current or proposed no-take areas. The submitter notes that since the Court of Appeal has confirmed regional councils can control fishing for resource management purposes when it relates to the protection of biodiversity, significant habitat, natural character or it relates to the relationship of Māori with waters and taonga species, the submitter proposes an additional Biodiversity policy. They state this will importantly continue the "Revitalising the Gulf" process, and help to identify additional high priority biodiversity areas within the Waikato. |

#### 78 - Whitianga and Coromandel Peninsula Commercial Fishermen's Association

| Sub pt | Support/Oppose         | Provision   | Decision requested  | Submission   |
|--------|------------------------|-------------|---|--|
| 78.01  | Oppose                 | ECO-General | ENSURE that commercial fishing matters are addressed under the Fisheries Act and not the Coastal Plan.  | The submitter does not consider the Coastal Plan has flexibility and responsibility to manage adverse effects of fishing activities. DOC and Fisheries New Zealand processes already exist – Council to coordinate its interests with those parties in the development of an appropriate fisheries plan. |
| 78.02  | Oppose with amendments | Whole Plan  | CONSIDER reviewing the proposed plan for the Hauraki gulf area to align with DOC and FNZ measures, and Hauraki Gulf Fisheries Plan<br><br>AND PROVIDE for marine biodiversity protection measures for West Coast ecologically significant areas utilising Fisheries Act provisions. | The submitter sees no need for a third regulatory agency independently seeking the same protection measures for the Hauraki Gulf and for west coast.   |

|       |                        |            |  |   |
|-------|------------------------|------------|--|---|
| 78.04 | Oppose with amendments | Schedule 7 | CLARIFY what protection measures are to be implemented for the specific SIBA sites | The submitter does not consider it acceptable that WRC will consider these on a site by site specific proposal. The submitter understands that ecologically significant sites need to be identified and protected, but has a problem with accepting that ecologically significant sites which have long been fished by all sectors using a variety of methods should now be viewed as SIBA-A assuming that class requires a no-take policy. |
|-------|------------------------|------------|--|---|

#### 84 - Bennett, June

| Sub pt | Support/Oppose | Provision  | Decision requested   | Submission  |
|--------|----------------|------------|--|---|
| 84.01  | Oppose         | DD-General | AMEND the DD chapter to not allow bottom trawling, seining and dredging.   | The submitter wants no bottom trawling, seining or dredging allowed in the waters managed by the Waikato Regional Council.                          |
| 84.04  | Oppose         | Whole Plan | AMEND the plan to remove no-take marine areas.<br>[...]  | The submitter prefers fishing controls to be managed by the Fisheries Act.  |
| 84.06  | Oppose         | DD-General | AMEND the plan to not allow dredging in deeper water where seamounts, seafood and fish populations are in decline. | The submitter does not support the dredging of the ocean environment in deeper water where sea mounts, seafood and fish populations are in decline. |

#### 95 – Environmental Defence Society Inc

| Sub pt | Support/Oppose                     | Provision  | Decision requested   | Submission   |
|--------|------------------------------------|------------|--|--|
| 95.16  | Support with amendments<br>GENERAL | Whole Plan | AMEND the Plan to provide greater regulation of seabed disturbance activities. | The submitter considers that the impacts of bottom-contact mobile fishing (e.g., trawling, seining and dredging), sediment dredging and disposal, coastal developments (e.g., wharves, marinas, and other engineered structures), shellfish aquaculture and boat anchoring and swing moorings are likely to be most damaging within SIBAs, but they can also have significant adverse effects on benthic indigenous biodiversity outside of SIBAs. Further, seabed |

|       |                        |         |  |   |
|-------|------------------------|---------|--|---|
|       |                        |         |  | disturbance also damages the sequestration of organic carbon in marine sediments and can release carbon back into the atmosphere.   |
| 95.19 | Oppose with amendments | General | AMEND the Plan to provide regulation of fishing methods and activities that have the potential to adversely affect ecosystems and indigenous biodiversity.       | The submitter considers that the lack of regulation of fishing methods that have the potential to adversely affect ecosystems and indigenous biodiversity is an abrogation of Council's functions under s30 of the RMA, which enables the Council to manage the effects of fishing activities to maintain indigenous biological diversity.      |
| 95.20 | Not Stated             | GENERAL | RECONSIDER provisions for activities in the Plan to ensure that effects on ecosystems and indigenous biodiversity in and outside SIBA are appropriately managed. | The submitter considers that the plan does not adequately recognise and protect indigenous biodiversity outside of SIBAs, including mobile species. For example, while DD-P5 seeks to avoid adverse effects of disturbance activities on indigenous species and habitats, corresponding rules do not take indigenous biodiversity into account. |

**99 - Royal Forest and Bird Protection Society of New Zealand Inc**

| Sub pt | Support/Oppose                     | Provision  | Decision requested   | Submission   |
|--------|------------------------------------|------------|--|--|
| 99.003 | Support with amendments<br>GENERAL | Whole Plan | AMEND the Plan to implement stricter guidelines to help protect biodiversity such as a ban on bottom trawling and set netting in the Hauraki Gulf. | Clear measures such as these will activate the restoration of the CMA and the indigenous biodiversity that inhabit that area |

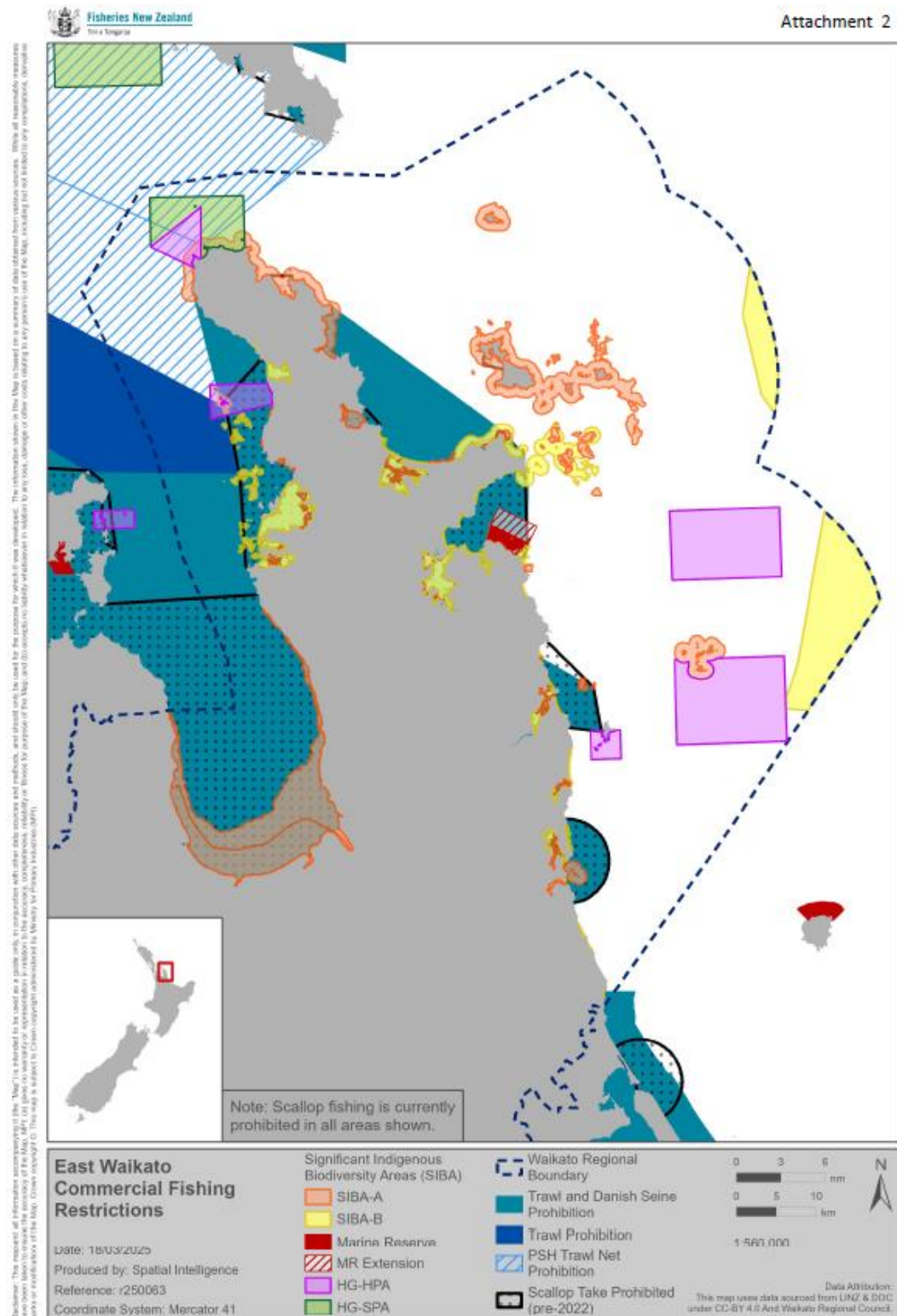
|        |            |             |   |   |
|--------|------------|-------------|---|---|
| 99.149 | Not Stated | ECO-General | AMEND ECO Chapter to insert new policies and rules to control the effects of fishing on the values of significant ecological areas, including significant benthic ecological areas and in particular to exclude mobile bottom contact fishing methods. This should be defined to include bottom trawling, Danish seining and dredging but not to include hand gathering or potting. | Regional councils have jurisdiction to control the effects of fishing on indigenous biodiversity. The plan should include policies and rules to control the effects of fishing on the values of significant ecological areas to achieve Policy 11 NZCPS. The submitter is particularly concerned with the effects of mobile bottom contact fishing methods that cause significant damage to the seabed. |
|--------|------------|-------------|---|---|

#### 108 – Proforma Group A<sup>1</sup>

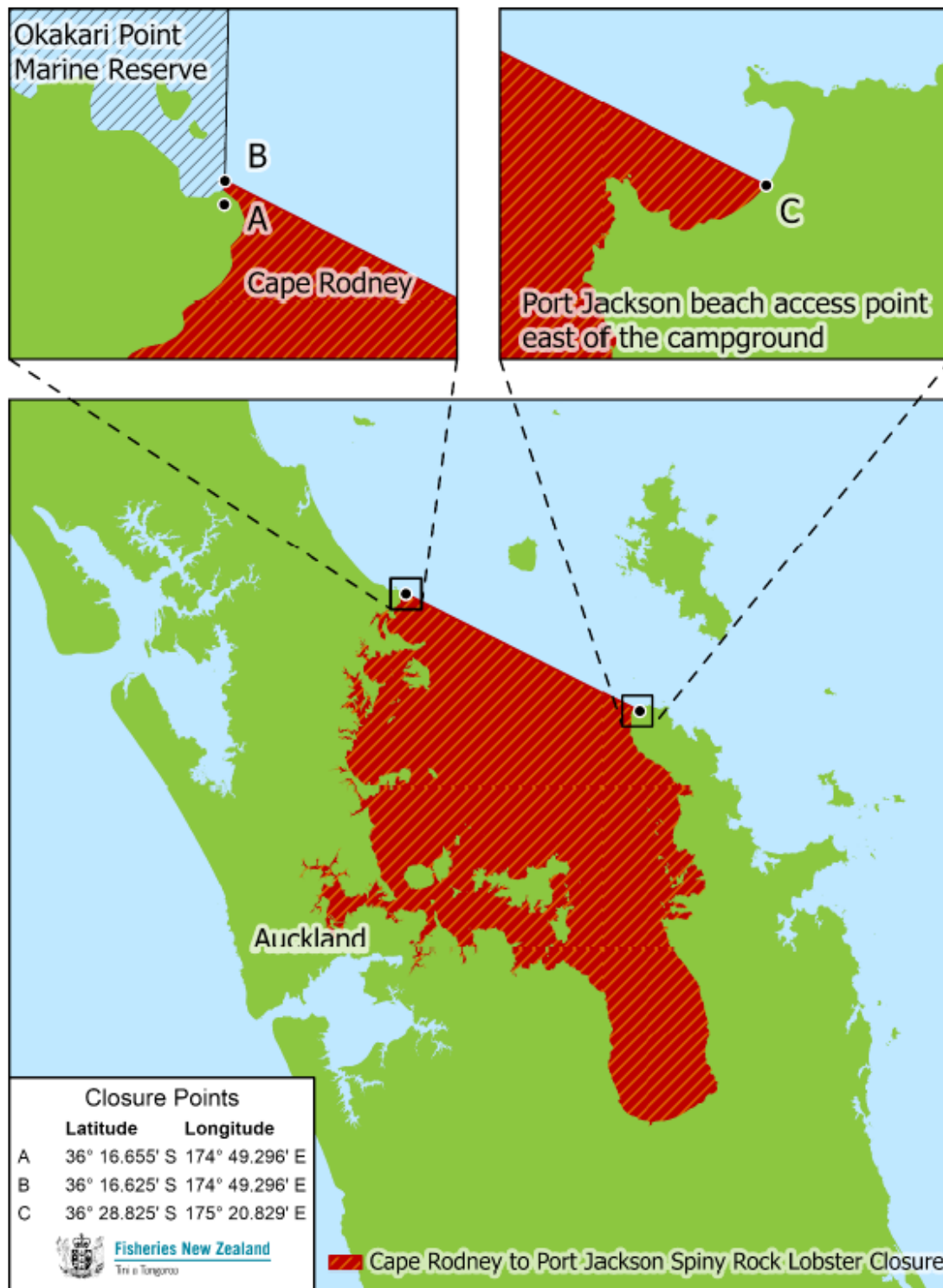
| Sub pt | Support/Oppose         | Provision | Decision requested   | Submission   |
|--------|------------------------|-----------|--|--|
| 108.01 | Oppose with amendments | General   | <p>AMEND the Plan to address the outcomes sought in the relevant submissions as identified in Attachment 1:</p> <ol style="list-style-type: none"> <li>1. I want the waters of the Hauraki Gulf and off the Coromandel to be healthy and abundant with fish and sea creatures.</li> <li>2. I am concerned about the spread of invasive species in our waterways, both freshwater and marine.</li> <li>3. I want no bottom trawling, seining or dredging allowed in the waters managed by the Waikato Regional Council.</li> <li>4. I want the Waikato Regional Council to take more decisive action to stop pollution and sediments from land entering our waterways, both freshwater and marine.</li> <li>5. I want the Waikato Regional Council to recognise the incredible value that families</li> </ol> | <p>Refer individual submissions made in Attachment 1 to the summary of submissions for details.</p> <p>[Note that the Group A submissions have been generated using a survey form sent by LegaSea to their members via Facebook and other channels.]</p> |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  | <p>get from being on and near the sea. Not much else compares to the satisfaction of spending a day at the beach or on a boat fishing with the young ones. And nothing beats the kids cooking their catch for the whanau to eat and enjoy together.</p> <p>6. For me and my family's wellbeing, I want the Waikato Regional Council to maintain public access to our waterways, and ensure those waterways are thriving with native species and protected from invasive species.</p> <p>7. I want Waikato Regional Council area waters to be healthy.</p> <p>8. I do not support creating no-take marine areas under the Waikato Regional Council Coastal Plan.</p> <p>9. I prefer fishing controls to be managed under the Fisheries Act.</p> <p>Additionally, some submissions seek the following decisions or outcomes (identified with underlining in Attachment A):</p> <ul style="list-style-type: none"> <li>• Ban or restrict commercial fishing in part or all of the Waikato CMA</li> <li>• Change the location or shape of proposed marine protection areas</li> <li>• Establish additional marine protection areas</li> </ul> <p>[...]</p> |  |
|--|--|--|--|--|

## ATTACHMENT B: MAPS



**Figure 1.** Map showing spatial extent of current commercial trawl and Danish seine restrictions (implemented via fisheries regulations under the Fisheries Act). This map is reproduced from the JWS Fishing Controls (dated 19 March 2025).



**Figure 2.** Map showing the spatial extent of current closure of spiny rock lobster fishery within CRA 2. This map is reproduced from Mr Jacob Hore's evidence for MPI (dated 17 April 2025).



## **ATTACHMENT C: SUMMARY OF EDS'S POSITION ON RELIEF SOUGHT**

The table below has been provided to assist the Panel with its recommendations. It focuses on matters that were (or remain) in dispute.

Unless explicitly stated, EDS reserves its position as set out in its original submission.

The '*relief sought by EDS*' column reflects changes addressed in EDS's original submission on the Proposed Plan, legal submissions and evidence (i.e. as previously raised).

| Plan provision  | Council's s 42A versions of Proposed Plan  | Relief sought by EDS  | Summary of EDS's position   | Council's position (per s 42A Reports)   |
|---|--|---|---|--|
|   | <ul style="list-style-type: none"> <li>The base text is the notified Proposed Plan.</li> <li>Green text is the Council's recommended changes (s 42A addendum strikethrough) (24 January 2025).</li> <li>Blue and red text is the Council's recommended changes (s 42A strikethrough) (14 October 2024).</li> </ul> | <u>Underline</u> and <del>strikethrough</del> shows the changes sought by EDS.  |   | <b>The Council <i>does not support or supports</i> the changes sought by EDS</b> |
| Interpretation - new definition of "benthic access area"                  | [No provision]   | <u>Means an area specifically identified in Schedule DD-X</u>   | EDS seeks this addition for reasons set out in its opening legal submissions at [7.12]-[7.33], [7.60]-[7.64], [10.5]-[10.15] and as addressed in its legal submissions (24 April 2025). | Does not support.  |
| Interpretation – new definition of "significant effects on SIBA-B values" | [No provision]   | <u>Means an effect that has a moderate or greater magnitude of effect, to be determined in accordance with the magnitude rankings of Table 8 of Ecological Impact Assessment (EclA) EIANZ guidelines for use in New Zealand: terrestrial and freshwater ecosystems 2nd EDITION May 2018</u> | <b>EDS confirms that it is not pursuing this relief.</b>  | Does not support.  |
| IM-O1   | <b>Integrated management of resources</b><br>Resources and activities in the coastal environment are managed in an integrated manner that recognises the inter-relationships between resources and people.   | <b>Integrated management of resources</b><br>Resources and activities in the coastal environment are managed in an integrated manner that recognises the inter-relationships between resources and people <u>and between terrestrial and coastal environments.</u>                          | EDS seeks this amendment for reasons set out in its opening legal submissions at [8.1]-[8.7]. See Mr Serjeant's rebuttal evidence at [2.26]-[2.27].                                     | Does not support.  |

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| AQA-P2   | <p><del>Commercial</del> <u>Avoiding new aquaculture in inappropriate significant</u></p> <p><del>Commercial</del> <u>New</u> aquaculture is inappropriate for existing aquaculture and new aquaculture in the following areas of the CMA unless adverse effects are avoided on the attributes and values of these areas.</p> <ol style="list-style-type: none"> <li>1. <del>Areas of</del> Outstanding natural character identified in Schedule 4</li> <li>2. Sites <del>or areas</del> of significance to Māori identified in Schedule 6</li> <li>3. SIBA-A <del>that meet the criteria in policy 11(b) of the NZCPS 2010</del> identified in Schedule 7A</li> <li>4. Nationally significant surf breaks and <u>swell corridors</u> identified in Schedule 8A</li> <li>5. <u>Any gazetted marine reserve, mooring area or navigable river mouth.</u></li> </ol> <p><del>In addition any further commercial aquaculture (excluding existing marine farms) is generally inappropriate on the Eastern Coromandel, but may be appropriate in the identified possible aquaculture areas shown on the maps to this plan.</del></p> | - | <p>EDS's original submission supported intent to avoid effects on areas with high values (at [43]).</p> <p>EDS supports retention of this policy insofar as it seeks to protect the identified values and notes that it has a typo that needs to be fixed (header).</p> | As specified in text shown in left hand column. |
| AQA-P2AA | <p><u>Inappropriate areas for existing aquaculture activities</u></p> <p><u>Existing aquaculture activities located within an area listed in AQA-P2 are considered to be within an inappropriate area for existing aquaculture activities. Resource consent may be granted if adverse effects on the attributes and</u></p>  | - | <p>As above, emphasising the Council's ability to identify inappropriate areas under Policy 7 of the NZCPS. EDS addressed this in speaking notes dated 9 April 2025 and at the AQA hearing.</p>   | As specified in text shown in left hand column. |

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|          | <p><u>values of the areas identified as inappropriate can be avoided.</u></p> <p><u>Advisory note:</u></p> <p>1. <u>AQA-P2AA and the planning maps define areas inappropriate for existing aquaculture activities and together are intended to meet the requirements for identification of inappropriate area for existing aquaculture activities set out in Regulation 6 of the NES-MA.</u></p>   |   | See Mr Serjeant's rebuttal evidence at [2.30]-[2.35].  |   |
| AQA-P2AB | <p><u>Existing aquaculture outside of significant areas</u></p> <p><u>Recognise existing aquaculture outside of the significant areas listed in AQA-P2 as an appropriate use.</u></p>  | <p><del>Existing aquaculture outside of significant areas</del></p> <p><del>Recognise existing aquaculture outside of the significant areas listed in AQA-P2 as an appropriate use.</del></p> | EDS seeks that this policy be deleted for the reasons set out in its opening legal submissions at [11.12]-[11.16]. See Mr Serjeant's rebuttal evidence at [2.26]-[2.27]. | As specified in text shown in left hand column. |
| AQA-P2A  | <p><b>Eastern Coromandel aquaculture restriction</b></p> <p><u>New aquaculture activities in the Eastern Coromandel aquaculture restriction area will not generally be allowed, unless for:</u></p> <p>1. <u>Marae-based aquaculture</u></p> <p>2. <u>Scientific trials and research</u></p> <p>3. <u>Aquaculture within possible aquaculture areas identified in the maps to this plan, provided any adverse effects are able to be sufficiently avoided, remedied or mitigated and the activity is not within an area identified in AQA-P2(1) to (4)-(5)</u></p> | -   | EDS sought the addition of (5) to implement intended protection for marine reserves.   | Supports.                                       |
| AQA-P3   | <p><del>Avoidance of adverse effects from aquaculture activities</del></p>   | <p><u>Avoidance of adverse effects from aquaculture activities</u></p>  | EDS seeks to retain this policy for reasons set out in its opening legal   | Does not support.                               |

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|         | <p><del>Require aquaculture activities to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on:</del></p> <ol style="list-style-type: none"> <li><del>1. Navigation safety and recreational use of the coastal marine area</del></li> <li><del>2. The operation of existing marine farms</del></li> <li><del>3. Historic heritage sites identified in Schedule 5</del></li> <li><del>4. Sites or areas of significance to Māori identified in Schedule 6</del></li> <li><del>5. SIBA-B that meet the criteria in policy 11(b) of the NZCPS 2010 identified in Schedule 7B</del></li> <li><del>6. Marine mammals, seabirds and shorebirds and their habitats</del></li> <li><del>7. Regionally significant surf breaks identified in Schedule 8B and their swell corridors</del></li> </ol> | <p>Require aquaculture activities to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on:</p> <ol style="list-style-type: none"> <li>1. Navigation safety and recreational use of the coastal marine area</li> <li>2. The operation of existing marine farms</li> <li>3. Historic heritage sites identified in Schedule 5</li> <li>4. Sites or areas of significance to Māori identified in Schedule 6</li> <li>5. SIBA-B that meet the criteria in policy 11(b) of the NZCPS 2010 identified in Schedule 7B</li> <li>6. Marine mammals, seabirds and shorebirds and their habitats</li> <li>7. Regionally significant surf breaks identified in Schedule 8B and their swell corridors</li> </ol> | <p>submissions at [11.12]-[11.16].</p> <p>See Mr Serjeant's rebuttal evidence at [2.36].</p>   |                   |
| AQA-P6  | <p><b>Flexibility in aquaculture to respond to climate change, innovation and best practices, farming methods or locations</b></p> <p><del>Enable</del><u>Provide for</u> aquaculture activities to respond to climate change, innovation and best practices, through providing a flexible operating environment <del>and review of consent conditions</del>. This may include <del>allowing</del> new farming methods within existing consented space, or enabling <u>suitable</u> alternative locations for existing aquaculture activities, <u>and allowing for new species</u>.</p>   | <p><b>Flexibility in aquaculture to respond to climate change, innovation and best practices, farming methods or locations</b></p> <p><del>Enable</del><u>Provide for</u> aquaculture activities to respond to climate change, innovation and best practices, through providing a flexible operating environment <u>and review of consent conditions</u>. This may include <del>allowing</del> new farming methods within existing consented space, or enabling <u>suitable</u> alternative locations for existing aquaculture activities, <u>and allowing for new species</u>.</p>   | <p>EDS seeks retention of the wording "<i>and review of consent conditions</i>" as the CMA is highly dynamic and it is appropriate to have clear direction providing an option to review conditions.</p> | Does not support. |
| AQA-P13 | <p><del>New aquaculture activities to be developed in a staged manner</del></p>   | <p><u>New aquaculture activities to be developed in a staged manner</u></p>   | <p>EDS seeks that this policy be retained for reasons set out in its opening legal</p>   | Does not support. |

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|  | <p><u>Consider requiring new aquaculture activities to be developed in a staged manner, where:</u></p> <ol style="list-style-type: none"> <li><u>1. New species are being introduced and any adverse effects are not known and are potentially significant; or</u></li> <li><u>2. New technology is being proposed and the adverse effects from such technology are uncertain and potentially significant; or</u></li> <li><u>3. The sensitivity of the receiving environment to aquaculture activities warrants a precautionary approach.</u></li> </ol> <p><u>A staged approach will require:</u></p> <ol style="list-style-type: none"> <li><u>4. Baseline environmental information, which may include benthic or marine mammal surveys</u></li> <li><u>5. A Development Plan detailing the stages appropriate to the scale of the aquaculture activity being applied for</u></li> <li><u>6. An Environmental Monitoring Plan including environmental limits and triggers against which to assess environmental change to inform decisions on the progression of further stages of the aquaculture development</u></li> <li><u>7. Identification of actions to be undertaken to avoid, remedy or mitigate effects that exceed the environmental limits or triggers, through resource consent conditions or within the Environmental ...</u></li> </ol> | <p><u>Consider requiring new aquaculture activities to be developed in a staged manner, where:</u></p> <ol style="list-style-type: none"> <li><u>1. New species are being introduced and any adverse effects are not known and are potentially significant; or</u></li> <li><u>2. New technology is being proposed and the adverse effects from such technology are uncertain and potentially significant; or</u></li> <li><u>3. The sensitivity of the receiving environment to aquaculture activities warrants a precautionary approach.</u></li> </ol> <p><u>A staged approach will require:</u></p> <ol style="list-style-type: none"> <li><u>4. Baseline environmental information, which may include benthic or marine mammal surveys</u></li> <li><u>5. A Development Plan detailing the stages appropriate to the scale of the aquaculture activity being applied for</u></li> <li><u>6. An Environmental Monitoring Plan including environmental limits and triggers against which to assess environmental change to inform decisions on the progression of further stages of the aquaculture development</u></li> <li><u>7. Identification of actions to be undertaken to avoid, remedy or mitigate effects that exceed the environmental limits or triggers, through resource consent conditions or within the Environmental Monitoring Plan that forms part of any granted consent.</u></li> </ol> | <p>submissions at [11.17]-[11.21].</p> <p>See Mr Serjeant's primary evidence at [7.4(c)].</p> |  |
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| AQA-P14 | <p><b>Reconsenting of existing marine farms</b></p> <p>Provide for the reconsenting of existing marine farms not covered by the NES-MA where:</p> <ol style="list-style-type: none"> <li>1. The scale and type of effects of the activity on the environment are lesser, the same, or similar</li> <li>2. <del>Safe recreation and maritime n</del>Navigation safety is not compromised</li> <li>3. There is an existing <del>substantial</del>-level of economic investment</li> <li>4. Best practices are implemented to avoid or minimise adverse effects on biogenic habitats, reefs and threatened <del>or and at-risk</del> marine species</li> </ol>  | -  | EDS sought the addition of <u>"and at-risk species"</u> .  | Supports.         |
| AQA-P18 | <p><del>Information requirements for commercial aquaculture applications</del></p> <p><del>Require resource consent applications for commercial aquaculture activities to include, but not be limited to, the following information to include information in their assessment of environmental effects that addresses, among other matters, the management of:</del></p> <ol style="list-style-type: none"> <li><del>1. A nNavigation safety and lighting plan and maintenance programme, with approval in principle from the Harbourmaster</del></li> <li><del>2. A Risks to marine mammals and seabirds interaction management plan</del></li> <li><del>3. A bBiosecurity risksmanagement plan, which includes including how the operation of the farmactivity will address the requirements of AQA-P9</del></li> </ol> | <p><b>Information requirements for aquaculture applications</b></p> <p><u>Require resource consent applications for aquaculture activities to include an assessment of environmental effects that addresses, as a minimum, the following potential effects and risks:</u></p> <ol style="list-style-type: none"> <li><u>1. Effects on the benthic environment and indigenous biodiversity values, including any biogenic habitats, reefs and threatened and at-risk marine species</u></li> <li><u>2. Effects on water quality</u></li> <li><u>3. Effects of changes in hydrodynamic conditions and associated effects on surfbreaks</u></li> <li><u>4. Effects on marine mammals</u></li> <li><u>5. Effects on seabirds, shorebirds and wading birds</u></li> </ol> | <p>The Council has recommended that policy P18 and P19 be replaced with an advice note.</p> <p>EDS seeks to retain the policies with amendments as recommended by Dr Giles (for the Council). This is addressed in EDS's opening legal submissions at [11.23]-[11.24]. See Mr Serjeant's rebuttal evidence at [2.38]-[2.40].</p> | Does not support. |

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|         | <p><del>4. Any relevant requirements of AQA-P19 Environmental Monitoring Plan.</del></p>  | <p><u>6. Effects of genetic interactions of the proposed species to be farmed with wild populations</u></p> <p><u>7. Biosecurity risks from the introduction and spread of marine pests, harmful aquatic organisms, and disease</u></p> <p><u>8. Effects on landscape and natural character</u></p> <p><u>9. Effects on amenity values</u></p> <p><u>10. Effects on navigation safety</u></p> <p><u>11. Effects on public access</u></p> <p><u>12. Effects on cultural values</u></p> <p><u>13. Cumulative effects.</u></p>  |           |           |
| AQA-P19 | <p>Environmental monitoring plan for aquaculture activities</p> <p>Ensure applications for aquaculture activities include an Environmental Monitoring Plan that addresses Provide appropriate environmental monitoring requirements to address, as a minimum, the following potential effects and risks as relevant to the activity for which resource consent is being sought, and any relevant guidelines identified by the consenting authority council:</p> <p>1. Effects on the benthic environment and indigenous biodiversity values, including any biogenic habitats, reefs and threatened and at risk marine species</p> <p>2. Effects on water quality</p> <p>3. Effects of changes in hydrodynamic conditions</p> <p>4. Effects on marine mammals</p> <p>5. Effects on seabirds, shorebirds and wading birds</p> | <p><u>AQA-P19 Environmental monitoring of aquaculture activities</u></p> <p><u>Provide for appropriate environmental monitoring of effects and risks listed in AQA-P18 (1) to (7) relevant to the activity for which resource consent is being sought, and any relevant guidelines identified by the consenting authority or provide information and reasoning that monitoring of specific environmental effects and risks is not necessary.</u></p> <p><u>Monitoring of aquaculture activities should:</u></p> <ol style="list-style-type: none"> <li><u>1. Directly relate to the actual or potential adverse effects of the aquaculture activity on the environment</u></li> <li><u>2. Be proportionate to the nature, scale and intensity of the predicted effects of the aquaculture activity</u></li> <li><u>3. Be proportionate to the nature and sensitivity of the receiving environment</u></li> <li><u>4. Reflect the current level of scientific knowledge and certainty on the</u></li> </ol> | As above. | As above. |



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|  | <p>6. Effects of genetic interactions of the proposed species to be farmed with wild populations</p> <p>7. Biosecurity risks from the introduction and spread of marine pests, harmful aquatic organisms, and disease</p> <p>8. Contribution to cumulative effects</p> <p>60. Monitoring of aquaculture activities should:</p> <ol style="list-style-type: none"> <li>1. Directly relate to the actual or potential adverse effects of the aquaculture activity on the environment</li> <li>2. Be proportionate to the nature, scale and intensity of the predicted effects of the aquaculture activity</li> <li>3. Be proportionate to the nature and sensitivity of the receiving environment</li> <li>4. Reflect the current level of scientific knowledge and certainty on the predicted effects of the aquaculture activity.</li> </ol> <p><i>Advisory note:</i></p> <ol style="list-style-type: none"> <li>1. <i>Waikato Regional Council guidelines for monitoring of non-fed aquaculture should be referred to in preparing an Environmental Monitoring Plan</i></li> </ol> <p><i>Advisory notes</i></p> <p><i>In considering monitoring requirements for aquaculture activities, any relevant guidelines should be referred to, including Waikato Regional Council guidelines "Guidance for identifying appropriate water quality, benthic, and hydrodynamic effects monitoring for non-fed aquaculture in the Waikato region", Waikato Regional Council technical report TR 2023/14 or successor document</i></p> | <p><u>predicted effects of the aquaculture activity.</u></p> <p><i>Advisory note:</i></p> <ol style="list-style-type: none"> <li>1. <u>Waikato Regional Council guidelines for monitoring of non-fed aquaculture should be referred to in preparing an Environmental Monitoring Plan.</u></li> <li>2. <u>All effects and risks listed in AQA-P18 (1) – (7) need to be considered for potential environmental monitoring but do not necessarily require monitoring. If environmental monitoring is not considered necessary, supporting information and reasoning must be provided.</u></li> </ol> |  |  |
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| AQA-R1  | <b>Aquaculture scientific trials and research</b><br>[Not reproduced]   | <b>Aquaculture scientific trials and research</b><br>[Not reproduced]<br><br>EDS sought two amendments to this rule:<br>1. The addition of ' <a href="#">and at-risk</a> ' to the matters of control in 1.a; and<br>2. The addition of <a href="#">SIBA-B</a> and <a href="#">Schedule 7</a> to the requirements listed in 2.c. | EDS seeks the addition of SIBA-Bs within the requirements listed in 2.c. to ensure adequate protection for these values.<br><br>This was addressed in EDS's opening legal submissions at [11.9]-[11.11]. See Mr Serjeant's primary evidence at [5.7(b)]. | Supports the addition of 'at-risk'.<br><br>Does not support the addition of SIBA-B. |
| AQA-R2  | <b>Spat catching and retention (spat farming)</b><br>[Not reproduced]   | <b>Aquaculture scientific trials and research</b><br>[Not reproduced]<br><br>EDS sought the addition of <a href="#">SIBA-B</a> and <a href="#">Schedule 7</a> to the requirements.  | As above.  | Does not support.   |
| AQA-R7  | <del>Commercial</del> <a href="#">Aquaculture activities</a><br><b>Activity Status: DIS</b><br>[Not reproduced]   | [Not reproduced].   | EDS sought the addition of <a href="#">(5)</a> to implement intended protection for marine reserves.   | Supports.   |
| AQA-R10 | <b>New <del>commercial</del> aquaculture in significant areas where aquaculture is inappropriate</b><br><b>Activity Status: NC</b><br>[Not reproduced]  | -   | EDS sought the addition of <a href="#">(5)</a> to implement intended protection for marine reserves.   | Supports.   |
| DD-P4   | <b>Temporary disturbance and deposition by New Zealand Defence Force activities</b><br><br>Allow for disturbance and deposition in the coastal marine area associated with temporary activities undertaken by the New Zealand Defence Force, except in any: | <b>Temporary disturbance and deposition by New Zealand Defence Force activities</b><br><br>Allow for disturbance and deposition in the coastal marine area associated with temporary activities undertaken by the New Zealand Defence Force, except in any:   | EDS seeks the addition of SIBA-Bs in this policy as addressed in its opening legal submissions at [10.35]-[10.36].<br><br>See Mr Serjeant's primary evidence at [5.7(a)].  | Does not support.   |

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|        | <ol style="list-style-type: none"> <li>1. Outstanding natural character area identified in Schedule 4</li> <li>2. Site <del>or area</del> of significance to Māori identified in Schedule 6</li> <li>3. SIBA-A identified in Schedule 7A.</li> <li>4. Nationally significant surf break identified in Schedule 8A.</li> </ol> <p><u>In which case temporary activities shall only be allowed where the activities will have minor or temporary effects, and have a functional need to occur in an area identified in Schedule 4, 6, 7A, or 8A.</u></p> | <ol style="list-style-type: none"> <li>1. Outstanding natural character area identified in Schedule 4</li> <li>2. Site <del>or area</del> of significance to Māori identified in Schedule 6</li> <li>3. SIBA-A <u>or SIBA-B</u> identified in Schedule <u>7</u> <del>7A</del>.</li> <li>4. Nationally significant surf break identified in Schedule 8A.</li> </ol> <p><u>In which case temporary activities shall only be allowed where the activities will have minor or temporary effects, and have a functional need to occur in an area identified in Schedule 4, 6, 7A, or 8A.</u></p>     |  |   |
| DD-P5  | <p><b>Activities disturbing the foreshore and seabed</b></p> <p>[Not reproduced]</p> <ol style="list-style-type: none"> <li>1. Avoid significant adverse effects, and <u>avoid</u>, remedy or mitigate other adverse effects, on: [...]</li> </ol>   | -   | EDS sought the addition of 'avoid' to ensure consistency with Policy 11(b) of the NZCPS.   | Supports.                                   |
| DD-P8  | <p><b>Appropriate circumstances for reclamation</b></p> <p>Consider allowing reclamation where all of the following criteria are met:</p> <ol style="list-style-type: none"> <li>1. There are no practicable alternative ways of providing for the activity, including locating it on land outside the coastal marine area</li> <li>2. There is a functional or <u>operational</u> need to be located in, <u>or adjacent to</u>, the coastal marine area</li> <li>3. The reclamation will provide significant regional or national benefit</li> </ol>  | <p><b>Appropriate circumstances for reclamation</b></p> <p>Consider allowing reclamation where all of the following criteria are met:</p> <ol style="list-style-type: none"> <li>1. There are no practicable alternative ways of providing for the activity, including locating it on land outside the coastal marine area</li> <li>2. There is a functional or <u>operational</u> need to be located <u>in the particular location</u>, <del>or adjacent to</del>, <u>the coastal marine area</u></li> <li>3. The reclamation will provide significant regional or national benefit</li> </ol> | <p>EDS seeks amendments to ensure this policy amounts to a 'necessary exception'. The reasons are set out in EDS's opening legal submissions at [10.16]-[10.27].</p> <p>See Mr Serjeant's rebuttal at [2.42]-[2.43].</p> | Does not support.                           |
| DD-P11 | <p><b>Prospecting, exploration or mining in the coastal marine area</b></p> <p>Disturbance of the foreshore and seabed for</p>   | <p><b>Prospecting, exploration or mining in the coastal marine area</b></p>   | EDS supports the addition of 'any marine mammal sanctuary'.  | Does not support relief related to SIBA-Bs. |

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|  | prospecting, exploration or mining is inappropriate. Resource consent will not be granted to remove sand, shell, shingle or any other natural material within any outstanding natural character <a href="#">area</a> identified in Schedule 4, <a href="#">any marine mammal sanctuary</a> , or any SIBA-A identified in Schedule 7A .  | Disturbance of the foreshore and seabed for prospecting, exploration or mining is inappropriate. Resource consent will not be granted to remove sand, shell, shingle or any other natural material within any outstanding natural character <a href="#">area</a> identified in Schedule 4, <a href="#">any marine mammal sanctuary</a> , or any SIBA-A <a href="#">or SIBA-B</a> identified in Schedule <del>7</del> 7A .  | However, EDS seeks further amendments to recognise ‘SIBA-B values’ within the scope of this policy.<br><br>The reasons are set out in EDS’s opening legal submissions at [10.16]-[10.27]. See Mr Serjeant’s primary evidence at [5.7(c)].  |                             |
| DD General Standards and Terms<br><br>Standard 2   | The following standards and terms apply to <b>DD-R1, DD-R2, DD-R3, DD-R4, <del>DD-R4A, DD-R9A, DD-14, DD-R15, DD-R16, DD-R17, DD-R20 and DD-R21</del></b> for which compliance is required for these permitted or controlled activities:<br>[...]<br><br>2. The activity does not <del>take place in, or involve disturbance, result in</del> damage or destruction <del>in of shellfish beds,</del> areas vegetated by mangroves, seagrass or saltmarsh, <del>or</del> bird <del>foraging</del> <a href="#">roosting and nesting</a> areas. <del>during nesting season unless otherwise allowed by the rule.</del> | The following standards and terms apply to <b>DD-R1, DD-R2, DD-R3, DD-R4, <del>DD-R4A, DD-R9A, DD-14, DD-R15, DD-R16, DD-R17, DD-R20 and DD-R21</del></b> for which compliance is required for these permitted or controlled activities:<br>[...]<br><br>2. The activity does not <del>take place in, or involve disturbance, result in</del> damage or destruction <del>in of</del> <a href="#">shellfish beds</a> , areas vegetated by mangroves, seagrass or saltmarsh, <del>or</del> bird <del>foraging</del> <a href="#">roosting and nesting</a> areas. <del>during nesting season unless otherwise allowed by the rule.</del> | EDS seeks two changes to Standard 2:<br><br>1. Retention of “ <i>shellfish beds</i> ” and<br>2. Deletion of “ <i>unless otherwise allowed by the rule</i> ”.<br><br>The reasons are addressed in EDS’s opening legal submissions at [10.28]-[10.34]. See Mr Serjeant’s rebuttal at [2.41]. | Does not support.           |
| DD General Standards and Terms<br><br>Standard 2.b | <a href="#">2b. Any removal of vegetation associated with the maintenance of infrastructure is kept to the minimum necessary for the activity.</a>  | <a href="#">2b. Any removal of vegetation associated with the maintenance of infrastructure is kept to the minimum necessary for the activity and complies with relevant rules in the ECO - Ecosystems and indigenous biodiversity chapter.</a>  | EDS sought additional words in Standard 2.b. to ensure the plan reader is aware that the DD rule does not provide for vegetation removal.  | Does not support.           |
| DD-R3  | <b>Temporary military training activities</b><br><br><b>Activity status: PER</b>  | <b>Temporary military training activities</b><br><br>[Not reproduced]  | EDS sought the addition of SIBA-A and SIBA-B in this   | The Council has recommended |

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|  | <p>Temporary military training activities in the coastal marine area for defence purposes.</p> <p><u>Where:</u></p> <ol style="list-style-type: none"> <li>1. The activity complies with the General Standards and Terms for activities in the DD - Disturbances and deposition chapter</li> <li>2. <u>If the activity involves weapons firing, a</u>At least 10 working days advance written notice is given to Waikato Regional Council and the relevant iwi authority, describing the activity and the area within which the activity is to occur</li> <li>3. The activity does not exclude public use or access except where it is necessary to protect public health and safety or where public access would be in conflict with the Defence Act 1990</li> <li>4. <del>Any restrictions on public access are publicly notified in advance and by notice placed at the boundary of the site in a publicly accessible location for the duration of the activity</del></li> <li>5. The activity occurs for less than <del>30</del>31 days in any calendar year.</li> <li>6. <u>The activity does not occur in any SIBA-A area identified in Schedule 7A and does not result or potentially result in harm to any threatened or at-risk species.</u></li> </ol> <p><u>Advisory note:</u><br/>Nothing in this rule permits the discharge of contaminants into the environment.</p> | <p>[...]</p> <ol style="list-style-type: none"> <li>8. <u>The activity does not occur in any SIBA-A area identified in Schedule 7A and does not result or potentially result in harm to any threatened or at-risk species</u></li> </ol> | <p>rule. This was only partially accepted by the Council's s 42A report.</p> <p>EDS seeks the addition of SIBA-Bs in this policy as addressed in its opening legal submissions at [10.35]-[10.36].</p> <p>See Mr Serjeant's primary evidence at [5.7(a)].</p> | <p>adding (6) to cover SIBA-A but this does not include SIBA-B.</p> |
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| DD-R10 | <p><del>Disturbance and removal of sand, shell, shingle or other natural material not within outstanding natural character or significant indigenous biodiversity areas</del></p> <p><b>Activity status: DIS</b><br/>Disturbance of the foreshore or seabed involving and the removal of sand, shell, shingle or other natural material from the coastal marine area.<br/>[...]</p> <p>3. Removal of sand, shell, shingle or other natural material and minerals from the foreshore or seabed</p> | -   | EDS sought changes for clarity and to address a typo. See Mr Serjeant's primary evidence at [6.6(b)].  | Supports.         |
| DD-R12 | <p><b>Prospecting, exploration or mining in areas of outstanding natural character or significant indigenous biodiversity</b><br/><b>Activity status: PR</b><br/>Disturbance of the foreshore and seabed in any area of outstanding natural character identified in Schedule 4, or a SIBA-A identified in Schedule 7A associated with prospecting, exploration or mining of sand, shell, shingle, petroleum products or other natural material</p>  | <p><b>Prospecting, exploration or mining in areas of outstanding natural character or significant indigenous biodiversity</b><br/><b>Activity status: PR</b><br/>Disturbance of the foreshore and seabed in any area of outstanding natural character identified in Schedule 4, or a SIBA-A area identified in Schedule 7A associated with prospecting, exploration or mining of sand, shell, shingle, petroleum products or other natural material</p> | EDS seeks the addition of SIBA-Bs in this policy as addressed in its opening legal submissions at [10.35]-[10.36]. See Mr Serjeant's primary evidence at [5.7(c)]. | Does not support. |
| DD-R17 | <p><b>Maintenance dredging</b><br/><b>Activity status: CON</b><br/>Maintenance dredging and associated vehicle use, involving the removal of sand, shingle, shell or other natural material from the foreshore or seabed to another location either within or outside the coastal marine area, and any associated vehicle use and ancillary vegetation removal.</p>   | -   | EDS sought the addition of 'indigenous biodiversity' as a matter of control. See Mr Serjeant's primary evidence at [6.6(c)].                                       | Does not support. |

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|        | <p><u>Where:</u></p> <ol style="list-style-type: none"> <li><del>The activity complies with the General Standards and Terms for activities in the DD—Disturbances and deposition chapter</del></li> </ol> <p>Control is reserved over:</p> <ol style="list-style-type: none"> <li>Frequency, timing and location</li> <li>Method of dredging</li> <li>The volume of dredged material</li> <li>Location and method of disposal of dredged material.</li> <li>The location, extent and timing of vehicle use</li> <li>Cumulative effects</li> <li>Information and monitoring</li> <li>Noise <a href="#">and vibration</a>.</li> <li><a href="#">Management of effects on indigenous biodiversity</a>.</li> </ol>  |   |   |           |
| DD-R20 | <p><b><u>Disturbance, <del>D</del>eposition, <a href="#">disposal or dumping</a> of small quantities of natural material</u></b></p> <p><b>Activity status: PER</b><br/> Disturbance, <del>s-and</del> deposition, <a href="#">disposal or dumping</a> of sand, shell, shingle or natural material in, on or under the foreshore or seabed, <a href="#">and associated vehicle use</a>, <del>in quantities of less than 100m<sup>3</sup> in any 12-month period.</del></p> <p><u>Where:</u></p> <ol style="list-style-type: none"> <li>The activity complies with the General Standards and Terms for activities in the DD - Disturbances and deposition chapter; and</li> <li><a href="#">The activity does not occur in any SIBA-A identified in Schedule 7A and does not result or potentially result in harm to any threatened or at-risk species; and</a></li> </ol> | - | <p>EDS sought two amendments:</p> <ol style="list-style-type: none"> <li>Add comma between disturbance and deposition in the heading; and</li> <li>Add new matter to address SIBA-A in (2) <u>“The activity does not occur in any habitat within a SIBA-A identified in Schedule 7A and does not result or potentially result in harm to any threatened or at-risk species.”</u></li> </ol> | Supports. |

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|        | <p>3. Either:</p> <p>a. any deposition is no more than 100m<sup>3</sup> in any 12 month period; or</p> <p>b. any deposition is undertaken by a local authority, including for the purpose of beach nourishment, and is no more than 1,000m<sup>3</sup> in any six month period.</p>   |   |  |           |
| DD-R21 | <p><b>Beach renourishment, <u>other soft protection works, and or deposition activities associated with marina areas and waterway canal development areas</u></b></p> <p><b>Activity status: CON</b></p> <p>Deposition of any sand, <del>or</del> shell, <u>shingle or other natural material in or onto</u> the foreshore or seabed, and associated vehicle use, <u>for the purpose of:</u></p> <p>1. <del>Beach renourishment in volumes greater than 1,000m<sup>3</sup> for the purpose of beach renourishment; or</del></p> <p>2. <u>Deposition greater than 100m<sup>3</sup> for any other activity including other forms of soft protection works, or deposition in marina areas or waterway canal development areas.</u></p> <p><u>Where:</u></p> <p>1. The activity complies with the General Standards and Terms for activities in the DD - Disturbances and deposition chapter</p> <p>2. <u>The activity does not occur in any SIBA-A identified in Schedule 7A and does not result or potentially result in harm to any threatened or at-risk species.</u></p> <p>3. The beach renourishment <u>or soft protection</u> activity is <del>part of a coast or</del></p> | - | EDS sought the addition of a new matter to address SIBA-A. <u>"The activity does not occur in any habitat within a SIBA-A identified in Schedule 7A and does not result or potentially result in harm to any threatened or at-risk species."</u> | Supports. |



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|                | <del>shoreline management plan adopted and approved</del> <u>carried out by</u> a local authority <u>or their agents</u>  |  |  |                   |
| DD-R22         | <u>Disturbance, d</u> <del>Deposition, disposal or dumping of sand, shingle, shell or other</del> natural material  | -  | EDS sought amendments to the header for clarity.   | Supports.         |
| DD-R23         | <u>Disturbance, d</u> <del>Deposition, disposal or dumping of natural material</del>  | -  | EDS sought amendments to the header for clarity.   | Supports.         |
| DD-R24         | <u>Disturbance, d</u> <del>Deposition, disposal or dumping of material containing hazardous substances</del>  | -  | EDS sought amendments to the header for clarity.   | Supports.         |
| DD-R29         | Reclamation associated with <u>specified use and development</u> <del>regionally significant infrastructure</del> in areas of significant indigenous biodiversity or outstanding natural character<br><br>Activity status: NC<br>Reclamation or drainage of the foreshore or seabed in the coastal marine area in an area of outstanding natural character identified in Schedule 4, or a SIBA-A identified in Schedule 7A. | Reclamation associated with <u>specified use and development</u> <del>regionally significant infrastructure</del> in areas of significant indigenous biodiversity or outstanding natural character<br><br>Activity status: NC<br>Reclamation or drainage of the foreshore or seabed in the coastal marine area in an area of outstanding natural character identified in Schedule 4, or a SIBA-A <u>or SIBA-B</u> identified in Schedule <u>7 7A</u> . | EDS seeks the addition of SIBA-Bs in this policy as addressed in its opening legal submissions at [10.35]-[10.36].<br><br>See Mr Serjeant's primary evidence at [5.7(d)].                                    | Does not support. |
| New DD-RX rule | [No provision]  | <u>DD-RX Bottom contact fishing activities within the east coast coastal marine area</u><br><br><u>Activity status: PR</u><br><u>Any fishing activities involving dredging, bottom trawling and Danish seining.</u><br><br><u>Where:</u><br><u>The activity is within the east coast Waikato coastal marine area unless the activity is within a benthic access area identified in Schedule DD-X.</u>  | EDS seeks this additional rule for reasons set out in its opening legal submissions at [7.12]-[7.33], [7.60]-[7.64], [10.5]-[10.15] and as addressed in its supplementary legal submissions (24 April 2025). | Does not support. |

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| New DD<br>Schedule and<br>Map | [No provision]   | Refer table with specified coordinates and map as set out in Mr Serjeant's summary statement of evidence and Dr Kelly's supplementary evidence (both dated 17 April 2025).  | EDS seeks this additional schedule with coordinates and map showing benthic access areas for reasons set out in its opening legal submissions at [7.12]-[7.33], [7.60]-[7.64], [10.5]-[10.15] and as addressed in its supplementary legal submissions (24 April 2025).              | Does not support. |
| ECO-P3                        | <b>Assessment of adverse effects on indigenous biodiversity</b><br><br>When assessing the extent and consequence of any adverse effects of activities on indigenous biodiversity, consider as a minimum the following matters:<br>[...]<br><u>8. That threatened and at-risk marine mammal and bird species may be present for any part of their life cycle</u>  | -   | EDS sought the deletion of 'marine mammal and bird' to ensure the scope of this policy covered other highly mobile fauna such as fish, sharks and rays.   | Supports.         |
| ECO-P4                        | <b>Provide for use and development that may impact indigenous biodiversity</b><br><br>Consider providing for use and development that will adversely affect the indigenous biodiversity values associated with the areas listed in ECO-P1 and ECO-P2, where the proposal:<br><br>1. Relates to the <u>construction, operation, maintenance or protection of both existing and new</u> regionally significant infrastructure; or<br><br><u>1A Relates to the construction of the National</u> | <b>Provide for use and development that may impact indigenous biodiversity</b><br><br>[Not reproduced in full]<br><br>7.a: There is a functional <u>and operational</u> need <u>to undertake for</u> the activity <u>to be undertaken</u> in areas listed in ECO-P1, <u>or where threatened and at risk species listed in ECO-P1 may be adversely affected and ECO-P2 and ECO-P2;</u> and | EDS seeks amendments to clauses (7) and (8). The amendments sought are necessary to clarify the scope of application (e.g. this policy applies to SIBA-B areas) and to require consideration of alternative locations outside of SIBAs.<br><br>The reasons for these amendments are | Does not support. |

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|  | <p><u>Grid; or</u></p> <p><u>4A-1B Relates to the operation, maintenance, protection, upgrading, expansion, alteration or replacement of existing</u> regionally significant infrastructure <del>provided that the scale and intensity of adverse effects from the proposal are the same or similar as those arising from the existing infrastructure;</del> or</p> <p>2. Relates to the implementation of statutory functions or powers for the purpose of maintaining or enhancing biodiversity and intertidal habitats, or for biosecurity activities; or</p> <p>3. Relates to a <del>currently authorised use that was</del> lawfully established <u>use</u>, provided there has been no increase to the scale and significance of effects associated with an activity; or</p> <p>4. Relates to use and development within development areas; or</p> <p>5. Provides for maintenance of existing public walking or boating access to and along the coastal marine area; <u>or</u></p> <p>6. Provides for access to cultural heritage sites or sites of significance for traditional use.</p> <p>7. <del>Any</del> <u>Consideration of activities listed in ECO-P4(1)</u> may only occur where:</p> <p>a. there is a functional <del>and operational</del> need <u>to undertake for the activity to be undertaken</u> in areas listed in ECO-P1, <u>or where threatened and at risk species listed in ECO-P1 may be adversely affected and ECO-P2;</u> and</p> <p>b. There are no <del>practical</del> practicable alternative</p> | <p>7.b: There are no <del>practical</del> <u>practicable</u> alternative <del>land-based</del> locations, <u>including on land</u>; and</p> <p>7.c. The avoidance of effects required by ECO-P1 <del>and ECO-P2</del> <u>and ECO-P2</u> is not possible.</p> <p><u>8. Consideration of activities listed in ECO-P4(1A)-ECO-P4(6) inclusive may only occur where:</u></p> <p><u>a. there is an operational need to undertake the activity in areas listed in ECO-P1 or ECO-P2 or where threatened and at risk species listed in ECO-P1 may be adversely affected; and</u></p> <p><u>b. there is no practicable alternative <del>land-based</del> locations, including on land; and</u></p> <p><u>c. the avoidance of adverse effects required by ECO-P1 and significant adverse effects required by ECO-P2 is not possible.</u></p> | <p>addressed in EDS's opening legal submissions at [9.2]-[9.9]. See Mr Serjeant's rebuttal evidence at [2.1]-[2.14].</p> |  |
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|        | <p><u>land-based</u> locations; and</p> <p>c. The avoidance of effects required by ECO-P1 <del>and ECO-P2</del> is not possible.</p> <p><u>8. Consideration of activities listed in ECO-P4(1A)-ECO-P4(6) inclusive may only occur where:</u></p> <p><u>a. there is an operational need to undertake the activity in areas listed in ECO-P1 or ECO-P2 or where threatened and at risk species listed in ECO-P1 may be adversely affected; and</u></p> <p><u>b. there is no practicable alternative land-based locations; and</u></p> <p><u>c. the avoidance of adverse effects required by ECO-P1 and significant adverse effects required by ECO-P2 is not possible.</u></p> |  |  |                   |
| ECO-P5 | <p><b>Requirements when assessing a proposal under ECO-P4</b></p> <p>Ensure the following when considering use and development under ECO-P4:</p> <p>1. Adverse effects <u>on the values in ECO-P1 and ECO-P2</u> are:</p> <p>a. avoided to the extent practicable, having regard to the activity's technical and operational requirement; <u>and</u></p> <p><u>b. If A</u> <del>adverse effects that</del> cannot be avoided, <u>they</u> are remedied <del>or mitigated</del> to the extent practicable; <u>and</u></p> <p><u>c. If adverse effects cannot be remedied, they are mitigated to the extent practicable.</u></p>   | <p><b>Requirements when assessing a proposal under ECO-P4</b></p> <p><del>2.-4. Where m</del> <u>More than minor</u> <del>Residual</del> adverse effects on the values of <u>any SIBA-A identified in Schedule 7A, or on threatened and at-risk marine mammal and bird species identified in ECO-P1(2) and ECO-P1(3), and significant residual adverse effects on areas identified in ECO-P2</u> <del>that cannot be avoided, remedied or mitigated, these are: offset in a manner consistent with the principles in Schedule 7C.</del></p> <p><del>3.-5. Significant</del> <u>More than minor</u> residual adverse effects on values of <u>any SIBA-A identified in Schedule 7, or on threatened and at-risk marine mammal and bird species</u></p> | <p>EDS seeks amendments to the policy direction establishing an effects management hierarchy in ECO-P5(2) for reasons set out in its opening legal submissions at [9.10]-[9.23].</p> <p>See Mr Serjeant's rebuttal evidence at [2.1]-[2.14].</p> | Does not support. |

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|         | <p><del>2. 4. Where more than minor residual adverse effects on the values of any SIBA-A identified in Schedule 7A, or on threatened and at-risk marine mammal and bird species identified in ECO-P1(2) and ECO-P1(3), and significant residual adverse effects on areas identified in ECO-P2 that cannot be avoided, remedied or mitigated, these are offset in a manner consistent with the principles in Schedule 7C.</del></p> <p><del>3. 5. Significant More than minor residual adverse effects on values of any SIBA-A identified in Schedule 7, or on threatened and at-risk marine mammal and bird species identified in ECO-P1(2) and ECO-P1(3) that cannot be offset are:</del></p> <p><del>a. avoided; or</del></p> <p><del>b. only experienced over a short-term; or</del></p> <p><del>c. acceptable given the positive effects of the proposal on indigenous biodiversity values; or</del></p> <p><del>d. can be offset in a manner consistent with the principles in Schedule 7C.</del></p> <p><del>e. in exceptional circumstances, financial contributions may be considered.</del></p> <p><del>6. 4. Clauses (2) and (3) does not apply to the National Grid.</del></p> | <p><del>identified in ECO-P1(2) and ECO-P1(3) that cannot be offset are:</del></p> <p><del>a. avoided; or</del></p> <p><del>b. only experienced over a short-term; or</del></p> <p><del>c. acceptable given the positive effects of the proposal on indigenous biodiversity values; or</del></p> <p><del>d. can be offset in a manner consistent with the principles in Schedule 7C.</del></p> <p><del>e. in exceptional circumstances, financial contributions may be considered.</del></p> <p><del>6. 4. Clauses (2) and (3) does not apply to the National Grid.</del></p> |  |                   |
| ECO-P12 | <p><del>Avoiding disturbance and other activities in vulnerable ecologically significant areas</del></p> <p><del>Within identified vulnerable ecologically significant marine areas, activities that disturb the foreshore and seabed or adversely affect the indigenous biodiversity values must be avoided</del></p>  | <p><del>Avoiding disturbance and other activities in vulnerable ecologically significant areas</del></p> <p><del>Within identified vulnerable ecologically significant marine areas, activities that disturb the foreshore and seabed or adversely affect the indigenous biodiversity values must be avoided</del></p>  | EDS seeks to retain this policy in the Plan for reasons set out in its opening legal submissions at [9.27]-[9.34]. See Dr Kelly's primary evidence at [1.4] and [7.20]-[7.22]. | Does not support. |

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| New ECO-RX rule | [No provision]   | <p><u>ECO-RX Catching, taking or harvesting of plants and / or animals from significant areas</u></p> <p><u>Activity status: PR</u></p> <p><u>The catching, taking, or harvesting of plants and / or animals.</u></p> <p><u>Where:</u></p> <ol style="list-style-type: none"> <li><u>The activity occurs within a SIBA-A identified in Schedule ECO-X.</u></li> </ol> <p><u>Advice Notes</u></p> <ol style="list-style-type: none"> <li><u>This rule does not apply to aquaculture activities (refer Chapter 8 Aquaculture).</u></li> <li><u>This rule does not apply to any gazetted marine reserve under the Marine Reserves Act 1971.</u></li> <li><u>By operation of s 10(d) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, this rule does not prevent customary (non-commercial fishing) provided for in regulations made in accordance with Part 9 of the Fisheries Act 1996 or regulations 50-52 of the Fisheries (Amateur Fishing) Regulations 2013.</u></li> <li><u>This rule does not apply to high protection areas identified in the Hauraki Gulf   Tikapa Moana Marine Protection Act that are subject to effective protections under that Act.</u></li> </ol> | EDS seeks this additional rule for reasons set out in its opening legal submissions at [5.3]-[5.27], [7.12]-[7.16], [7.34]-[7.46], [7.65], [9.35]-[9.40] and as addressed in its legal submissions (24 April 2025). | Does not support. |
| ECO-M1          | <p><b>Identifying vulnerable ecological areas</b></p> <p>Waikato Regional Council will identify ecologically significant marine areas vulnerable</p> | <p><b>Identifying vulnerable ecological areas</b></p> <p>Waikato Regional Council will identify ecologically significant marine areas</p>  | EDS seeks to retain this method with amendments for reasons set out in its  | Does not support. |

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|  | to disturbance activities where there is sufficient information to support the protection of these areas. | <p><del>vulnerable to disturbance activities</del> where there is sufficient information to support the protection of these areas and</p> <ul style="list-style-type: none"> <li>• <u>Work with tangata whenua, central government, local authorities, stakeholders and communities to identify areas of significant indigenous biodiversity in order to address the limited information available for much of the region's CMA;</u></li> <li>• <u>Require information gathering on potential presence of significant indigenous biodiversity.</u></li> </ul> | <p>opening legal submissions at [9.27]-[9.34].</p> <p>See Dr Kelly's primary evidence at [1.4] and [7.20]-[7.22].</p>  |                   |
| New ECO Schedule X – SIBA-As within scope of no-take rule ECO-RX | [No provision]  | <p>[Not reproduced]</p> <p>Refer table with specified SIBA-As subject to new ECO-RX rule as set out in Mr Serjeant's summary statement of evidence (dated 17 April 2025).</p>   | <p>EDS seeks this provision for reasons set out in its opening legal submissions at [5.3]-[5.27], [7.12]-[7.16], [7.34]-[7.46], [7.65], [9.35]-[9.40] and as addressed in its legal submissions (24 April 2025).</p> | Does not support. |
| New WAQ M1   | [No provision]  | <p><u>WAQ-M1 Waikato Regional Council to implement integrated remediation plans for the Firth of Thames that would identify and assess contributing factors to degraded water quality from land and coastal activities, identify remedial options, and specify actions to be taken to restore water quality and degraded ecological functions and values</u></p>  | <p><b>EDS confirms that it is not pursuing this relief.</b></p>  | Does not support. |

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| Schedule 7 –<br><br>Significant Biodiversity Area A and B criteria | <b>Significant Biodiversity Area A and B criteria</b><br><br>[Not reproduced]<br><br><b>Significant Indigenous Biodiversity Areas – B (SIBA-B):</b><br>Areas which, due to their physical form, scale, or inherent biodiversity values, are regionally significant because of their predominance of native vegetation, provision of indigenous habitat, and/or vulnerable ecosystem types that also form important migratory pathways or ecological corridors in the coastal environment. They are considered <del>more resilient ecosystem types, or to be</del> ecosystem types that are <u>more</u> widespread throughout the region. | -   | EDS sought the deletion of “ <i>more resilient ecosystem types</i> ”. This was addressed in Dr Kelly’s primary evidence at [7.8]-[7.9] and agreed at the ECO expert conferencing.  | Supports.         |
| Schedule 7A<br>SIBA-A  | <b>Schedule 7A – Significant Indigenous Biodiversity Areas A identified in the Waikato region coastal marine area (SIBA-A)</b><br><br>[Not reproduced]   | EDS sought to include the existing West Coast Marine Mammal Sanctuary ( <b>MMS</b> ) in Schedule 7A.  | EDS’s position is summarised in its legal submissions dated 14 March 2025.   | Does not support. |
| Schedule 7A<br>SIBA-A  | <b>Schedule 7A – Significant Indigenous Biodiversity Areas A identified in the Waikato region coastal marine area (SIBA-A)</b><br><br>[Not reproduced]   | EDS supports the recommended changes to SIBA-Bs B16, B17, 18 and B19 (as notified), which are now identified within SIBA-As AX1, AX2, AX4 and AX5 (as recommended). | EDS sought the reclassification of SIBA-B19 to SIBA-A status by inclusion in Schedule 7A along with changes to the spatial extent of SIBA-B to protect <i>Galeolaria hystrix</i> .<br><br>This was addressed by EDS’s legal counsel at the ECO hearing on 18 March 2025 and in Dr Kelly’s primary evidence at [7.17]-[7.18]. | Supports.         |



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| Schedule 9A – water quality limits    | <b>Schedule 9A – Water quality limits</b><br><br>[Not reproduced]<br><br>[The Council's s 42A report recommends the inclusion of a new attribute related to ambient pH] | -   | EDS reserves its position as set out in its original submission (#95.36) and supports the Council's recommended change to the extent it provides for improved water quality outcomes in the Firth. | Supports.         |
| Schedule 9C – areas of degraded water | <b>Schedule 9C – Areas of degraded water</b><br><br>Areas of coastal water identified as degraded water:<br>• Firth of Thames<br>• <del>Whiritoa lagoon</del>           | <b>Schedule 9C – Areas of degraded water</b><br><br>Areas of coastal water identified as degraded water:<br>• Firth of Thames<br>• <u>Whiritoa lagoon</u> | <b>EDS confirms that it is not pursuing this relief.</b>   | Does not support. |
| Coastal occupation charges            | [No coastal occupation charging regime was included in the notified Plan]   | EDS's original submission sought <u>#95.54</u> : <i>AMEND the Plan to impose coastal occupation charges.</i>  | <b>EDS confirms that it is not pursuing this relief.</b>   | Does not support. |