

BEFORE THE HEARINGS PANEL

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

AND

IN THE MATTER Submissions on the Proposed Waikato Regional Coastal
Plan concerning fishing controls

**LEGAL SUBMISSIONS ON BEHALF OF NEW ZEALAND SPORT FISHING
COUNCIL**

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Rowan Ashton
Special Counsel
ashton@brookfields.co.nz
Telephone No. 09 979 2210
P O Box 240
DX CP24134
AUCKLAND

BROOKFIELDS
LAWYERS

1. INTRODUCTION

- 1.1 The New Zealand Sport Fishing Council (**NZSFC**) is a national sports organisation with over 36,700 affiliated members from 53 clubs nationwide. NZSFC supports the 700,000 or so New Zealanders that fish. A key role is to advocate for responsible and sustainable management of our marine environment.
- 1.2 The NZSFC submission¹ and further submission² on the Proposed Regional Waikato Regional Coastal Plan (**Proposed Coastal Plan**) seek, in summary, that:³
- (a) new rules are introduced that prohibit or restrict the disturbance of the seabed or foreshore within identified ecologically significant marine areas, including in particular by mobile bottom contact fishing methods such as bottom trawling, Danish seine and scallop dredging;
 - (b) that the Proposed Coastal Plan does not include additional restrictions on low impact fishing methods, such as hook and line fishing and hand gathering (by any fisheries sector).
- 1.3 The relief sought by NZSFC reflects Option 3.2 identified in the section 32 evaluation:⁴ *Identify and map significant indigenous biodiversity sites accompanied by new policies and implementation methods in a specific chapter for ecosystems and indigenous biodiversity, plus prohibit activities that disturb the foreshore and/or seabed within identified significant marine areas.*
- 1.4 While NZSFC has a strong preference for regulation of fishing activity under the Fisheries Act 1996 (**Fisheries Act**), the failure of processes under the Fisheries Act to deliver meaningful restrictions on destructive mobile bottom contact fishing methods means that resort to the RMA is needed to address the significant adverse impacts of these activities.
- 1.5 NZSFC has called expert evidence in support of its submission from Ms Curtis concerning marine science and fisheries management. Ms Curtis has participated in the expert witness conferencing directed by the Panel

¹ Original submission # 36.

² Further submission # 16.

³ Primary submission at paragraph 35. See also further submission # 16 and submission points opposed or supported to the extent consistent with NZSFC's primary submission.

⁴ Section 32 report at pages 383 and 385.

concerning fishing controls. Ms Curtis has also prepared a hearing summary statement which has been pre-filed.

1.6 NZSFC has filed evidence from its president and representatives of affiliated clubs within the region.

1.7 These submissions now address:

(a) The legal framework in terms of:

- (i) Scope of submissions;
- (ii) Jurisdiction to control fishing under the RMA; and
- (iii) Aspects of the policy framework.

(b) An evaluation of the relief sought by NZSFC against the legal framework and evidence before the Panel.

2. LEGAL FRAMEWORK

Scope of submissions on Proposed Coastal Plan

2.1 The Panel must be satisfied that relief sought has been “fairly and reasonably raised” in submissions.⁵ The test is to be approached in a realistic and workable fashion rather than from the perspective of legal nicety.⁶

2.2 The question of whether, based on the framing of original submissions, there was scope to include controls on fishing in a regional coastal plan was considered by the Environment Court in *Bay of Islands Maritime Park Inc v Northland Regional Council* [2022] NZEnvC 228.

2.3 In that case, the Bay of Islands Maritime Park submission sought *policies* to address preservation of natural character or to address the Regional Councils role in protecting marine ecosystems from the adverse effects of fishing activities (no rules or further/consequential were expressly sought). Royal Forest and Bird’s submission sought that: “*The plan should include policies and rules to control the effects of fishing on the values of significant*

⁵ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150, [1994] NZRMA 145.

⁶ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [59] citing *Royal Forest & Bird Protection Soc Inc v Southland DC* [1997] NZRMA 408 at p 413.

ecological areas to achieve Policy 11 NZCPS. Include policies and rules to control the effects of fishing on the values of significant ecological areas.”

- 2.4 The Environment Court found that these very general submissions adequately signalled the relief sought on appeal in a jurisdictional sense.⁷ The relief on appeal, and ultimately granted by the Court, was substantially more detailed than that set out in the original submissions.
- 2.5 The NZSFC submissions on the Proposed Coastal Plan fairly and reasonably raised the relief which it seeks in this hearing and that relief is therefore within the scope of submissions. NZSFC’s primary submission also expressly sought such further, other, alternative and consequential relief (including to objectives, policies, rules, mapping and other methods) as is appropriate to give effect to the relief sought and the reasons for the submission.
- 2.6 There is therefore no jurisdictional issue in terms of scope with the relief sought.

Jurisdiction to control fishing under the RMA

- 2.7 Jurisdiction to control fishing under the RMA has been established by the Court of Appeal in *Attorney-General v Trustees of the Motiti Rohe Moana Trust*⁸. The argument in *Motiti* centred around the meaning of s 30(2) RMA which states:

A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996.

- 2.8 The Court of Appeal held that the effect of s 30(2) is that a regional council may control fishing and fisheries resources in the exercise of its s 30 functions, including the listed s 30(1)(d) functions, provided it does not do so to manage those resources for Fisheries Act purposes.⁹
- 2.9 The purpose of the Fisheries Act¹⁰ is the “*utilisation of fisheries resources while ensuring sustainability*”, within that:

- (a) “Ensuring sustainability” means:

⁷ At [148]-[158].

⁸ *Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2019] NZCA 532

⁹ At [67].

¹⁰ Fisheries Act s 8.

- (i) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
 - (ii) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment
- (b) “utilisation” means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

2.10 Whether a particular control contravenes s 30(2) RMA is to be gauged objectively.¹¹ The Crown proposed five “indicia” to assist with this purpose, which the Court considered may give some objective guidance when assessing whether a given control would contravene s 30(2) in a given factual setting. The indica related to:¹²

- (a) *Necessity* means whether the objective of the control is already being met through measures implemented under the Fisheries Act;
- (b) *Type* refers to the type of control. Controls that set catch limits or allocate fisheries resources among fishing sectors or establish sustainability measures for fish stocks would likely amount to fisheries management;
- (c) *Scope*: a control aimed at indigenous biodiversity is likely not to discriminate among forms or species;
- (d) *Scale*: the larger the scale of the control the more likely it is to amount to fisheries management;
- (e) *Location*: the more specific the location and the more significant its biodiversity values, the less likely it is that a control will contravene s 30(2).

2.11 While these indicia may provide guidance to the Panel, ultimately the question which the Panel must address is whether any proposed control, when objectively viewed, contravenes s 30(2) RMA.

¹¹ At [64].

¹² At [64]-[65].

Aspects of the policy framework

Hauraki Gulf Marine Park Act 2000 (HGMPA)

- 2.12 Sections 7 and 8 of the HGMPA must be treated as a New Zealand coastal policy statement issued under the RMA.¹³
- 2.13 Section 7 recognises the national significance of the interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands.
- 2.14 Section 8 HGMPA sets out the statutory management objectives to recognise the national significance of the Hauraki Gulf, its islands, and catchments, namely:
- (a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:
 - (b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
 - (c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:
 - (d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:
 - (e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:
 - (f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its

¹³ HGMPA, s 10(1).

islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

2.15 All of these management objectives are of relevance to this hearing.

New Zealand Coastal Policy statement (NZCPS)

2.16 Policies of the NZCPS are of particular relevance to the question of fishing controls include:

- (a) Policy 11 – to avoid adverse effects, or significant adverse effects, on listed taxa and environments;
- (b) Policy 13(1)(a) – to avoid adverse effects on outstanding natural character;
- (c) Policy 14 – to promote restoration or rehabilitation of the natural character; and
- (d) Policy 15 – to avoid adverse effects on outstanding natural features and outstanding natural landscapes.

2.17 The Supreme Court in *King Salmon* held that "avoid", as used in the RMA and NZCPS, means "not allow" or "prevent the occurrence of".¹⁴ Allowance of a "minor or transitory" effect is not necessarily inconsistent however with avoiding adverse effects.¹⁵

2.18 The Supreme Court also held that the requirement to "give effect to" the NZCPS simply means "implement", which on the face of it, it is a strong directive, creating a firm obligation.¹⁶ However, recourse to Part 2 would still be permissible if one of three caveats applies: invalidity of any part of the NZCPS, incomplete coverage, or uncertainty of meaning.

2.19 The ratio of *King Salmon* has, arguably, been qualified somewhat by the Supreme Court's subsequent decisions:

- (a) In *Port Otago Ltd v Environmental Defence Society*¹⁷ it was held (in a plan making context) that there may be exceptions to the firm

¹⁴ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [126]

¹⁵ *Ibid* at [144]-[145].

¹⁶ *Ibid* at [77]

¹⁷ *Port Otago Ltd v Environmental Defence Society* [2023] NZSC 112

obligation to implement avoidance policies in circumstances where they conflict with other directive policies:

[78] The appropriate balance between the avoidance policies and the ports policy must depend on the particular circumstances, considered against the values inherent in the various policies and objectives in the NZCPS (and any other relevant plans or statements). All relevant factors must be considered in a structured analysis to decide whether, in the particular factual circumstances, the resource consent should be granted. This means assessing which of the conflicting directive policies should prevail, or the extent to which a policy should prevail, in the particular circumstances of the case.

- (b) In *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*¹⁸, the Supreme Court considered the meaning of "avoid" in Policy 11 NZCPS (in the context of a non-complying resource consent):

[99] Waka Kotahi argued that "have regard to" introduces flexibility into the application of directive policies in a way that "give effect to" would not permit. We do not agree that ss 104 and 171 have this effect, for reasons we will come to, but **we do agree that, in principle, flexibility in the application of Policy 11 does not inevitably subvert it. On the contrary, despite Policy 11 being rule-like and containing something in the nature of a bottom line, there will still be room for deserving exceptions that do not subvert the policy's purpose. In short, wriggle room is built into the policy layers of the system.**

....

[105] Policy 11 is different. It is directive to be sure, in a way that Policies 6 and 10 are not. And, like Policies 13 and 15, it has "the effect of what in ordinary speech would be a rule". But its subject matter (biodiversity in indigenous ecosystems, habitats and taxa) is set at a high level of generality and applying its thresholds (adverse or significant adverse effects) to particular cases may involve fine judgments. **In other words, while Policy 11 is designed to avoid adverse effects, it is not intended to produce perverse outcomes in pursuit of that high level purpose. Rather, its broad terms mean it does—indeed, must—leave room for deserving exceptions, even if, in almost all cases, its effect is clearly "not allow" or "prevent the occurrence of".** These exceptions are necessary for the broad language of the policy to work as intended in the innumerable places and circumstances to which it must be applied, and without producing outcomes plainly at odds with Part 2. The residual discretion is simply a mechanism to ensure that the policies are applied in accordance with the purpose of the RMA.

[emphasis added]

¹⁸ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26

3. RULES FOR MOBILE BOTTOM CONTACT FISHING METHODS

- 3.1 NZSFC supports the rule drafting proposed in Mr Serjeant's evidence as an appropriate framework to implement the relief which it seeks on mobile bottom contact methods. The co-ordinates of the areas which would be restricted under this rule are to be confirmed, and while the trawl corridors option 4 is proposed in Dr Kelly's evidence and is supported by strong evidence as an appropriate starting point, there is scope for refinement of that through this hearing process.

Adverse environmental effects of mobile bottom contact methods

- 3.2 There is a consensus among the science experts as to the adverse environmental effects of mobile bottom contact fishing methods.¹⁹ There is also a consensus that the scale of these adverse effects is significant.²⁰
- 3.3 Dr Townsend's evidence for WRC of 17 April 2025 provides a [link](#) to a useful video explaining the adverse effects of bottom trawling.
- 3.4 No expert witness has been called by the fishing industry or Fisheries New Zealand to counter this evidence.

Benthic biodiversity values affected by mobile bottom contact methods

- 3.5 On the east coast of the Waikato Region, there is high quality information regarding the benthic biodiversity values which are affected by mobile bottom contact fishing. Ms Curtis' evidence provides an extensive description of these values drawing on the body of scientific literature.²¹ Ms Curtis states that the overlap of bottom trawl intensity and sensitive biodiversity is particularly prevalent on the east coast of the Coromandel Peninsula inshore and in the deepwater trawl fishery.²²
- 3.6 Ms Curtis' evidence as to the biodiversity values at threat from bottom contact fishing methods has a significant alignment with the ecological findings of the paper commissioned by Fisheries New Zealand (**FNZ**) from the National Institute of Water and Atmospheric Research (**NIWA**) for the development of the "trawl corridors" proposals, *"Exploring the use of spatial decision-support*

¹⁹ Fishing Controls JWS at [4.1.3].

²⁰ Fishing Controls JWS at [4.1.2] and [4.1.4].

²¹ Evidence of Ms Curtis at [8.2]-[8.54].

²² Evidence of Ms Curtis at [10.9]

tools to identify trawl corridors in the Hauraki Gulf Marine Park".²³ This paper explains the development of a "zonation" decision support tool to inform trade-offs between biogenic benthic habitats and the value of fishing by trawl and Danish seine methods.

- 3.7 Supplementary information sheets produced by FNZ for the consultation on trawl corridors provide a summary representation of:
- (a) the intensity of bottom contacting trawl effort;²⁴
 - (b) the predicted *current occurrence* of 9 different groups of biogenic habitat-forming taxa in the Hauraki Gulf Marine Park relative to each of the 4 proposed closure options.²⁵
- 3.8 The mapping of predicted *current occurrence* of biogenic habitat-forming taxa takes into account previous trawl impacts on the likely current distribution of biogenic taxa. This should be distinguished from likely historical distribution of biogenic taxa which are depicted in parts of Ms Curts' evidence and in Appendix 1 of the NIWA paper. Those historical distributions should be viewed as the recovery potential of areas which have been subject to intensive historical trawling pressure.
- 3.9 However, based only on current occurrence, there are clear benthic biodiversity 'hot spots' which are evident from the NIWA reporting and FNZ supplementary information sheets:
- (a) Surrounding the Mercury Island group and extending north to Cuvier Island / Repanga Island;
 - (b) Surrounding the Alderman Islands and extending north and south;
 - (c) Along the east coast of the Coromandel Peninsula (some parts of which are currently closed to mobile bottom contact methods).
- 3.10 These are important remnants which warrant protection to maintain and enhance indigenous biodiversity.

²³ Bennion, M.; Brough, T.; Leunissen, E.; Morrison, M.; Hillman, J.; Hewitt, J.E.; Rowden, A.A.; Lundquist, C.J. (2023). Exploring the use of spatial decision-support tools to identify trawl corridors in the Hauraki Gulf Marine Park. New Zealand Aquatic Environment and Biodiversity Report No. 306. 101 p.

²⁴ <https://www.mpi.govt.nz/dmsdocument/59413-Trawl-corridors-supplementary-information-Fishing-October-2023>

²⁵ <https://www.mpi.govt.nz/dmsdocument/59410-Trawl-corridors-supplementary-information-Biogenic-October-2023>

Jurisdiction for management of mobile bottom contact methods under the RMA

3.11 Assessing jurisdiction for the proposed controls against the *Motiti* indicia:

Necessity

- (a) The objective of the control is not already being met through measures *implemented* under the Fisheries Act. While a proposal for additional regulatory control of bottom contact fishing methods has been consulted on in November 2023, that proposal has evidently not made it any further as a result of the change of government. Mr Macindoe’s evidence for NZSFC explains how there has been no decision from the Minister of Oceans and Fisheries, Shane Jones, to progress the proposals, and that the Minister’s public statements are inconsistent with him countenancing restrictions on trawling.²⁶
- (b) Mr Hore’s evidence for FNZ states that the Minister is “considering” options to exclude parts of the HGMP from bottom trawling and Danish seining. No timeline for a decision is provided. In the meantime, the Minister is seeking to progress a package of reforms to the Fisheries Act developed in consultation with and for the benefit of the commercial fishing industry.²⁷ In this context, it would be extremely surprising if the Minister turned around and decided to exclude mobile bottom contact fishing from parts of the HGMP.
- (c) For these reasons the necessity indicia is met because there are no implemented, or reasonably anticipated, Fisheries Act measures which would meet the objective of protection of benthic biodiversity.

Type and scope

- (d) A rule prohibiting mobile bottom contact fishing methods from parts of the east coast CMA meets the indicia for type and scope. Such a control does not set catch limits or allocate fisheries resources among fishing sectors or establish sustainability measures for fish stocks. Nor does it discriminate among forms or species. In this regard it is noted that very similar controls were approved by the Environment

²⁶ Evidence of Mr Macindoe at [3.2]

²⁷ <https://www.mpi.govt.nz/consultations/fisheries-reform-proposed-amendments-to-the-fisheries-act-1996/>

Court in *Bay of Islands Maritime Park Inc v Northland Regional Council* [2022] NZEnvC 228.

Scale

- (e) Scale is a relative term, which depends on the frame of reference. When viewed against the vast size of the Fisheries Management area that the east coast of the region sits within, the areas proposed to be restricted are modest in scale. However, when viewed in the context of the east coast CMA of the Waikato Region, the scale of the control is larger, although still a relatively small proportion of the total Waikato CMA. Ultimately, if scale is a concern as to jurisdiction, then the Panel is empowered to refine the scope of the control on mobile bottom contact methods.

Location

- (f) As to location, there is strong evidence from the science experts as to the significance of the identified benthic biodiversity values for the health of the marine environment as a whole. As noted above, the areas which are sought to be closed include the remnant areas of high biogenic values which are identified in the NIWA reporting, and highlighted in Ms Curtis' evidence.

- 3.12 The ultimate question for the Panel is whether the exercise of relevant regional council functions contravenes s 30(2) RMA. Viewed objectively, the purpose of the proposed is not directed at the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996. Rather, it is directed at the core Regional Council function of maintaining indigenous biological diversity for its own sake.

Section 32 RMA assessment

- 3.13 These submissions do not seek to provide an exhaustive section 32 RMA assessment of the proposal. Two matters are emphasised:
- (a) efficiency and effectiveness, and the assessment of the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated; and
 - (b) the risk of not acting.

- 3.14 In terms of the efficiency and effectiveness, the “zonation” decision support tool which was adopted by FNZ to develop the trawl corridors proposal represents a relatively sophisticated assessment. Table 9 provides the resultant biodiversity and economic outcome metrics for each of the spatial management options.²⁸ What is evident is that a relatively small amount of bottom contact fishing occurs in the areas identified for potential protection. As such, the effectiveness of the proposal control is high and the efficiency is also high as the control comes at a limited cost to commercial fishers.
- 3.15 The risk of not acting is that, given the stalling of the FNZ process for trawl corridors, nothing is done to address the significant adverse effects of mobile bottom contact fishing on the east coast of the Waikato Region.

4. ‘NO TAKE’ AREAS SOUGHT BY EDS

- 4.1 NZSFC opposes the blanket ‘no take’ areas proposed by EDS for Indigenous Biological Diversity Area A (**IBDA-A**). This represents a blunt instrument that would impose significant social, economic, and cultural costs, while being poorly targeted at the actual environmental effects of concern. The evidence shows there are more efficient and effective tools available to address kina barrens where they occur.

Ecological values of IBDA-A

- 4.2 The ecological values which have underpinned the identification of the IBDA-A areas in the Proposed Coastal Plan are described in Schedule 7.
- 4.3 A diverse range of ecological values are listed, which as Dr Townsend notes, are driven by a diverse range of criteria in NZCPS Policy 11(a) and Waikato Regional Council Regional Policy Statement Policy 11.4. A review of Schedule 7 indicates that avifauna values, and the relevant New Zealand Threat Classification System category, are the predominant reason for the identification of these areas.
- 4.4 While there are several references to rocky reefs, there are only three mentions of *Ecklonia Radiata* / Kelp, which are in relation to the proposed High Protection Areas at the Motukawao Group and Alderman Islands (A13, A 31, and A32). These areas are subject to existing protection proposals

²⁸ <https://www.mpi.govt.nz/dmsdocument/58729-Discussion-document-Bottom-Fishing-Access-Zones-in-the-Hauraki-Gulf-Marine-Park> Table 9 at pages 40 and 41.

under the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (discussed further below).

Adverse effects of fishing

- 4.5 The science experts have agreed there is strong evidence that the fishing down of key reef predators (particularly snapper and crayfish) adversely affects reef ecosystems by contributing to the proliferation of urchins, subsequent depletion of kelp forests, and formation of urchin barrens.²⁹ The science experts have also agreed that the prevalence of urchin barrens varies across the CMA in relation to other factors, and the extent of urchin barrens is considerably lower in 'no- take' areas than the surrounding fished coast.
- 4.6 Ms Curtis' hearing summary statement comments on the JWS and notes that:³⁰
- (a) Published information on the extent of urchin barrens across the Waikato CMA is limited;
 - (b) Whether kina barrens are active or mature/stable is generally unknown.
 - (c) There is good information for the Mercury Islands extent of kina barrens which appear to be in a stable state i.e. there is not necessarily a current adverse effect occurring.
- 4.7 Mr Hore's evidence provides relevant information in relation to the trajectory of the CRA 2 and SNA 1 fisheries and recent management decisions for those stocks under the Fisheries Act:³¹
- (a) The Minister has decided from 1 April 2025 to close the inner Hauraki Gulf to commercial and recreational spiny rock lobster fishing, with a review of the closure to occur within three years' time. CRA 2 catch limits are to be maintained at their current levels, with recent stock assessments estimating CRA 2 vulnerable biomass to be at 154 percent of the interim management target, and projections indicating that the biomass will continue to increase over the next four years.

²⁹ Fishing Controls JWS at 4.1.5.

³⁰ Hearing Summary statement of Ms Curtis at 3.3-3.4.

³¹ Evidence of Mr Hore at [23]-[30].

- (b) The most recent assessment of the SNA 1 stock was completed in 2023. The assessment indicated that the biomass of the Hauraki Gulf – Bay of Plenty component of the SNA 1 stock had gone through a significant rebuild with the current spawning stock biomass being 5-6 times the biomass present during the late 1990s. Despite this significant increase in biomass, FNZ has taken a precautionous approach not to review the stock to allow SNA 1 to continue its rebuild while generating both fisheries and ecosystem benefits.

Jurisdiction for management under the RMA

- 4.8 Assessing jurisdiction for the proposed “no take” areas against the *Motiti* indicia:

Necessity

- (a) To an extent, the objective of the control is already being met through measures implemented under the Fisheries Act i.e. the measures addressed in Mr Hore’s evidence to close the inner Hauraki Gulf CRA 2 fishery and otherwise increase the biomass of CRA 2 and SNA 1 fisheries to meaningfully contribute to predation on urchins.
- (b) The Hauraki Gulf / Tīkapa Moana Marine Protection Bill also provides high levels of protection, akin to a ‘no take’ area, for significant parts of the east coast of the Waikato CMA, including all of the IBDA-A areas which expressly note *Ecklonia Radiata* / Kelp as a value contributing to their classification. While the Bill is yet to be enacted, it completed its second reading in December 2024 and is expected to complete the final stages over the next couple of months.³²
- (c) For these reasons the necessity indicia is not met.

Type and scope

- (d) A rule prohibiting the take or harvest of animals and plants would meet the indicia for type and scope. This would not set catch limits or allocate fisheries resources among fishing sectors or establish sustainability measures for fish stocks. Nor does it discriminate among forms or species. Again this type and scope of control is

³² Evidence of Mr Hore at [20].

similar to that approved by the Environment Court in previous decisions.

Scale

- (e) There is a legitimate issue as to whether the scale indicia is met, depending upon the frame of reference which is adopted. This is closely related to the location criteria.

Location

- (f) As to location, while there is evidence of high biodiversity values in the IBDA-A areas, there is a largely a mismatch between those values, the environmental effect of concern, and the proposed remedy. This could be seen as not meeting the location indicia, or equally as a failing in terms of efficiency and effectiveness in terms of s 32 RMA.

- 4.9 Again, the ultimate question for the Panel is whether, viewed objectively, the exercise of relevant Regional Council functions contravenes s 30(2) RMA.

Section 32 RMA

- 4.10 These submissions now address s 32 in terms of efficiency and effectiveness, and the associated assessment of benefits and costs of the environmental, economic, social, and cultural effects that are anticipated.

Effectiveness

- 4.11 Prohibiting fishing in an area is an effective mechanism to mitigate the kina barrens, although it is notable that these still occur at material levels in marine reserves such as Te Whanganui-A-Hei (Cathedral Cove) Marine Reserve. As such, 'no-take' areas are not a 'silver bullet' for this issue.
- 4.12 The question is whether the 'no take' approach is justified in terms of efficiency, an assessment of benefits and costs, and other reasonably available alternatives.

Efficiency

- 4.13 Both Ms Curtis³³ and Dr Townsend³⁴ consider that the prohibited activity approach for IBDA-A areas is inefficient or poorly targeted at the environmental effect which it seeks to address i.e. kina barrens.
- 4.14 Ms Curtis identifies that targeted and proportionate management options for kina barrens include:³⁵
- (a) Culling or large-scale removal of kina (a special permitting regime has been put in place for this purpose³⁶).
 - (b) Stock management decisions which increase the biomass, and size and age class, of snapper and crayfish across the region and wider fisheries management area.
 - (c) Rāhui on the take of snapper and crayfish in particular areas, which are temporary and can be monitored.
- 4.15 In comparison, no take areas are a blunt tool to mitigate kina barrens. They prevent fishing activity which is unrelated to the issue of kina barrens such as fishing for pelagic species e.g. Kingfish, Kahawai, Trevally.
- 4.16 The proposed 'no take' areas would have significant adverse effects on the wellbeing of the people and communities of the Coromandel and the west coast of region. These effects are explained by the evidence that NZSFC has called from:
- (a) Mr Macindoe – NZSFC President;
 - (b) Mr Nielson –Tauranga Sport Fishing Club;
 - (c) Mr McIvor – Mercury Bay Game Fishing Club, Matarangi Boat & Fishing Club, Tairua Pauanui Sports Fishing Club.
 - (d) Mr Hindmarsh - Mercury Bay Business Association; and
 - (e) Mr Gutsell - Waikato Sportfishing, Raglan Sport Fishing, Kawhia Sport fishing, and Counties Sport Fishing Club.

³³ Hearing Summary of Ms Curtis at [3.7]

³⁴ Evidence of Dr Townsend of 17 April 2025 at [35]-[41].

³⁵ Hearing Summary of Ms Curtis at [3.6]

³⁶ <https://www.mpi.govt.nz/dmsdocument/64599-Special-permits-to-remove-sea-urchins-for-the-management-or-prevention-of-urchin-barrens>

- 4.17 These witnesses articulate deep concern at the loss of social economic and cultural opportunity from recreational fishing activities, safety effects of closures of sheltered areas forcing smaller craft out into more exposed waters, and the adverse ecological effects of displaced fishing effort creating additional pressure on remaining open areas.
- 4.18 These inefficiencies and costs have not been taken into account by EDS. Taking into account the costs of the controls sought, and the other reasonably practicable options to address kina barrens, the EDS proposal for no take areas is not “most appropriate” and fails the section 32 test.

Relevance of directive provisions to this assessment

- 4.19 The Panel may be faced with a submission that the costs of the proposed no take areas are of limited relevance because the Panel is obliged to “give effect to” policy 11(a) NZCPS. The response to that submission is that:
- (a) There is a mismatch between the values of IBBA-A areas and the identified threat (kina barrens) such that policy 11(a) is largely not engaged;
 - (b) To the extent that rocky reefs are a basis for identification of IBDA-A areas, there is limited evidence of the extent of kina barrens within those areas, and where there is evidence, the barrens appear stable such that there is not a current adverse effect which would engage the avoidance directive of Policy 11(a). While restoration is a legitimate objective, the Panel has choice as to how that might be achieved under the RMA or other legislative regimes.
 - (c) “Minor or transitory” effects are not inconsistent with avoiding adverse effects.³⁷
 - (d) Flexibility in the application of Policy 11 does not inevitably subvert it - there is room for deserving exceptions that do not subvert the policy’s purpose i.e. wriggle room is built into the policy layers of the system.³⁸

³⁷ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593, at [144]-[145].

³⁸ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [99].

- 4.20 Additionally, if Policy 11(a) were engaged by active development of kina barrens, there is arguably a conflicting policy directive in Policy 15(a) NZCPS “*avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment*”.
- 4.21 The Proposed Coastal Plan identifies in Schedule 3 Seascape Outstanding Natural Landscape (**ONL**) and Outstanding Natural Feature (**ONF**) areas. These intersect with IBDA-A areas and include in their associative attributes the very high recreational values associated with boating, fishing and diving:

ONL / ONF	Associative value
Motukawa Group (ONL)	Very high recreational values associated with boating, fishing and diving.
Northern Coromandel Peninsula (ONL)	Very high recreational values associated with boating, fishing and diving.
North Eastern Coromandel Peninsula (ONL)	Very high recreational values associated with boating, game fishing and diving.
Repanga Island / Cuvier Island (ONL)	Very high recreational values associated with boating, fishing and diving.
Opito Headland and Mercury Island Group (ONL)	Very high recreational values associated with boating, fishing and diving (several commercial dive sites identified around the Mercury Islands).
The Alderman Islands (ONL)	Very high recreational and scenic values associated with the islands include activities such as fishing, kayaking and diving.
Whakahau Island Group (ONF)	Very high recreational and scenic values associated with the islands include activities such as fishing, kayaking and diving.

- 4.22 NZSFC’s stakeholder evidence illustrates the significant adverse effect on these outstanding associative values of prohibiting the take and harvest of plants and animals in these areas.
- 4.23 As such, there is an apparent conflict between what is sought by EDS pursuant to policy 11(a) and the requirements of policy 15(a) to avoid adverse effects on ONL and ONF. The apparent conflict is potentially reconciled by a close reading of policy 15(a) which is focused on the avoidance of the adverse effects “of activities” on ONL and ONF. Arguably a prohibition on take is not an activity, it is a rule, and therefore is not within the scope of Policy 15(a).

- 4.24 Regardless, the recognition of very high recreational values associated with boating, fishing and diving in ONL and ONF values schedules illustrates the significance of those values in the context of this region, which in turn militates against an overly rigid application of Policy 11(a) NZCPS.

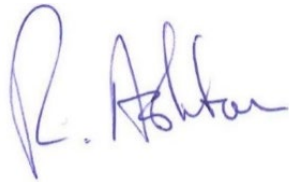
5. CONCLUSION

- 5.1 The evidence before the Panel demonstrates that mobile bottom contact fishing methods are causing significant adverse effects on the benthic biodiversity of the east coast of the Waikato Region's CMA. These effects are well-documented, scientifically supported, and uncontested by opposing evidence.
- 5.2 The Panel has both the jurisdiction and the obligation to implement measures that will protect the significant benthic biodiversity values of the Waikato Region's CMA.
- 5.3 The relief sought by NZSFC - to introduce rules prohibiting the disturbance of the seabed or foreshore within identified ecologically significant marine areas, particularly by mobile bottom contact fishing methods - properly sits within the Panel's jurisdiction under the RMA and does not contravene s 30(2).
- 5.4 There is a demonstrated necessity for RMA intervention given the failure of Fisheries Act processes to deliver meaningful restrictions on destructive mobile bottom contact fishing methods. The current absence of any timeline or commitment from the Minister for progressing trawl corridor proposals reinforces this necessity.
- 5.5 The controls sought by NZSFC are targeted, proportionate, and meet the tests of efficiency and effectiveness under s 32 RMA. They would protect identified biodiversity hotspots while still allowing low-impact fishing methods to continue.
- 5.6 In contrast, the blanket 'no take' approach proposed by EDS for IBDA-A areas fails the s 32 test. It represents a blunt instrument that would impose significant social, economic, and cultural costs while being poorly targeted at the actual environmental effects of concern. The evidence shows there are more efficient and effective tools available to address kina barrens, where they occur.

5.7 For these reasons, NZSFC respectfully requests that the Panel:

- (a) Recommend the inclusion of rules prohibiting mobile bottom contact fishing methods within identified ecologically significant marine areas (i.e. those areas identified for protection in trawl corridors Option 4); and
- (b) Decline the relief sought by EDS for blanket 'no-take' controls in IBDA-A areas.

DATED 24 April 2025



R H Ashton

Counsel for the New Zealand Sport Fishing Council Inc