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**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV-2024-485-367**

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<b>UNDER THE</b>	<b>the Judicial Review Procedure Act 2016; Part 30 of the High Court Rules; the Declaratory Judgments Act 1908; and the Common Law</b>
<b>IN THE MATTER OF</b>	<b>an application for judicial review and/or declaratory judgments</b>
<b>BETWEEN</b>	<b>OTAGO ROCK LOBSTER INDUSTRY ASSOCIATION INCORPORATED</b>  <b>Applicant</b>
<b>AND</b>	<b>THE MINISTER OF CONSERVATION</b>  <b>First respondent</b>
<b>AND</b>	<b>THE MINISTER OF TRANSPORT</b>  <b>Second respondent</b>  <b>THE MINISTER OF FISHERIES</b>  <b>Third respondent</b>

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**JOINT MEMORANDUM OF COUNSEL IN ADVANCE OF FIRST CALL SEEKING  
CONSENT DIRECTIONS, AND APPEARANCES EXCUSED ACCORDINGLY**

**22 July 2024**

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**CROWN LAW  
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**MAY IT PLEASE THE COURT:**

This memorandum is filed by consent.

1. This joint memorandum is filed ahead of the first call of this matter in the Judges Chambers list on 29 July 2024 at 10:00 am.
2. The parties have conferred and seek directions by consent on the matters in sch 10 to the High Court Rules 2016 that are relevant to this proceeding at its current stage.

**Introduction**

3. The applicant is an incorporated society representing the interests of the commercial kōura/rock lobster fishing industry in the CRA7 (Otago) quota management area.<sup>1</sup>
4. It has applied for judicial review and/or declaratory judgments regarding decisions by the Minister of Conservation (first respondent) under the Marine Reserves Act 1971 (**Act**) preceding the intended establishment of six marine reserves off the southeast coast of the South Island, together with the concurrence decisions of the Ministers of Transport and (Oceans and) Fisheries.
5. The proposed marine reserves are within the Kāi Tahu takiwā.
6. The applicant filed its statement of claim on 21 June 2024. It was served on 24 June 2024. The respondents' statement of defence is to be filed and served by 30 July 2024.

**Parties**

7. The respondents note that the third respondent is now (and was at the time of the decisions at issue) known as the Minister for Oceans and Fisheries. The parties have agreed that the intitulum for this proceeding should be adjusted accordingly.

**Additional Parties**

8. The respondents informed Te Rūnanga o Ngāi Tahu (**Kāi Tahu**) of this proceeding on 27 June 2024.

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<sup>1</sup> As defined in Part 3 of the first sch to the Fisheries Act 1996.

9. Given the significant public interest in the establishment of the marine reserves at issue (over 4,000 submissions were received during public consultation), the parties have agreed that additional parties should be informally served with the proceeding or otherwise notified.
10. To that end the respondents have identified a list of representative organisations with a potential interest in the proceeding that it considers ought to be specifically notified of the existence of this proceeding (in **Appendix A**). The respondents have provided the applicant with a list of email contact details for each identified representative organisation.
11. In the circumstances, the parties seek directions:
  - 11.1 for the respondents to informally serve on Kāi Tahu a copy of the statement of claim, this joint memorandum and the Court's Minute in response to this joint memorandum;
  - 11.2 for the applicant to informally serve by email the **Appendix A** parties with the statement of claim, this joint memorandum and the Court's Minute in response to this joint memorandum; and
  - 11.3 for the respondents to publish the statement of claim, this joint memorandum and the Court's Minute in response to this joint memorandum on the Department of Conservation (**DOC**) website.

#### **Discovery, interim relief and other interlocutory applications**

12. The parties do not currently envisage any orders for the production of the relevant records of the decision maker will be required. The respondents have agreed to ensure the initial disclosure documents they serve on the applicant with their statement of defence will include the decision-making documents provided to Ministers (including providing copies of key documents previously released under the OIA with redactions removed, other than redactions made to protect legal privilege or confidentiality).

13. The respondents will also provide the material identified as confidential on a counsel only basis. If, and to the extent that, counsel identify confidential material that is necessary to address in evidence, they will seek to agree on appropriate arrangements to enable that.
14. The respondents are currently considering a request by the applicant to postpone any formal recommendation (for the making of Orders in Council establishing the marine reserves) to the Governor-General under s 5(9) of the Act pending determination of this proceeding. Regardless, no such recommendation is likely to be made before October 2024 (at the earliest). In the current circumstances, interim orders are not required.
15. The parties do not presently anticipate the need to file any other interlocutory applications.

#### **Readiness for hearing**

16. The parties consider that, until it is known if any interested parties wish to join the proceeding, the case is not ready for hearing length to be estimated or for a fixture to be allocated.
17. A further case management conference should be set down after the statement of defence is filed and the participation of further parties (if any) is known. Its purpose will be to timetable next steps in the proceeding and dispose of any preliminary issues that may be unresolved.

#### **Categorisation**

18. The proceeding should be categorised as a category 2 proceeding.

#### **Directions sought**

19. By consent, the parties respectfully seek the following directions:
  - 19.1 the third respondent is to be renamed as the Minister for Oceans and Fisheries;
  - 19.2 within five working days of this Court's Minute approving the parties' proposals at [11] above for informal service and notice:
    - 19.2.1 the respondents are to informally serve Kāi Tahu;

- 19.2.2 the applicant is to informally serve by email the representative bodies listed in **Appendix A**; and
- 19.2.3 the respondents are to publish on DOC's website the statement of claim, this joint memorandum and the Court's Minute in response to this joint memorandum.
- 19.3 any interested parties are to inform the Court of their intention to join, or intervene in, this proceeding by way of memorandum of counsel to be filed and served by 23 August 2024;
- 19.4 the proceeding is categorised as a category 2 proceeding;
- 19.5 the parties are excused from attending the Judge's Chambers List on 29 July 2024; and
- 19.6 the matter will be set down for a case management conference after 6 September 2024.

22 July 2024




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M S Smith  
Counsel for the applicant




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N C Anderson  
Counsel for the respondents

This statement of claim is filed by Nicholai Christopher Anderson, of Crown Law.

The address for service of the respondents is Crown Law, Level 2, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the respondents may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (c) emailed to the solicitor at [Nicholai.Anderson@crownlaw.govt.nz](mailto:Nicholai.Anderson@crownlaw.govt.nz) provided the documents are also emailed to [Matthew.Maguire@crownlaw.govt.nz](mailto:Matthew.Maguire@crownlaw.govt.nz); [Darsheka.Ranchhod@crownlaw.govt.nz](mailto:Darsheka.Ranchhod@crownlaw.govt.nz); and [Norhan.ElSanjak@crownlaw.govt.nz](mailto:Norhan.ElSanjak@crownlaw.govt.nz)

**APPENDIX A – LIST OF POTENTIAL INTERESTED PARTIES: REPRESENTATIVE ORGANISATIONS**

1. Christchurch Penguin Rehabilitation
2. Dive Nation
3. Dunedin Host
4. Eastern Boating and Fishing Club
5. Environment and Conservation Organisations of NZ Ltd
6. Fish and Game New Zealand
7. Fish Mainland
8. Fisheries Inshore New Zealand
9. Giant Kelp 3G Quota Owner Group
10. Green Island Fishing Club
11. Harbour Fish
12. Kina Industry Council
13. New Zealand Sea Lion Trust
14. New Zealand Sport Fishing Council
15. NZ Rock Lobster Industry Council
16. Our Seas Our Future
17. PauaMAC5 Incorporated
18. Paua Industry Council
19. Port Chalmers Fisherman's Co-operative Society
20. Royal Forest & Bird Protection Society Inc
21. Save the Otago Peninsula (STOP)
22. Sea Shepherd New Zealand

23. South Island Eel Industry Association
24. Southern Inshore Fisheries
25. Speciality and Emerging Fisheries Group
26. St Clair SLSC
27. Tautuku Fishing Club Dunedin
28. Te Ohu Kai Moana Trustee Ltd
29. The New Zealand Marine Sciences Society
30. The New Zealand Professional Fishing Guides Association
31. Waitaha Taiwhenua o Waitaki Trust
32. WWF-NZ
33. Yellow Eyed Penguin Trust