IN THE HIGH COURT OF NEW ZEALAND **CIV-2024-485-** 367
WELLINGTON REGISTRY

I TE KOTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

UNDER	the Judicial Review Procedure Act 2016; Part 30 of the High Court Rules; the Declaratory Judgments Act 1908; and the Common Law
IN THE MATTER OF	an application for judicial review and/or for declaratory judgments
BETWEEN	**OTAGO ROCK LOBSTER INDUSTRY ASSOCIATION INCORPORATED**, a duly incorporated society having its registered offices at Floor 12, 7 Waterloo Quay, Pipitea, Wellington **Applicant**
AND	**THE MINISTER OF CONSERVATION**, of Wellington **First respondent**
AND	**THE MINISTER OF TRANSPORT** **Second respondent**, of Wellington
AND	**THE MINISTER OF FISHERIES** **Third respondent**, of Wellington

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STATEMENT OF CLAIM
(APPLICATION FOR JUDICIAL REVIEW AND DECLARATIONS)

Dated: 21 June 2024

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STATEMENT OF CLAIM
(APPLICATION FOR JUDICIAL REVIEW AND DECLARATIONS)

A. THE PARTIES

1. The applicant is the Otago Rock Lobster Industry Association Inc (**ORLIA**).

2. ORLIA:

   2.1 Is an incorporated society whose aims relevantly include advancing the overall betterment of rock lobster quota share owners, annual catch entitlement (ACE) holders, processors and fishermen associated with the area CRA 7 as defined in Part III of the First Schedule to the Fisheries Act 1996 (**CRA 7**).

   2.2 Is recognised as the commercial stakeholder organisation representing the interests of the commercial kōura/rock lobster industry in the CRA7 fishery.

   2.3 Has a membership that consists of:

   (a) CRA7 quota share owners, including those who are current fishers, former fishers and others engaged in the CRA7 kōura/rock lobster industry;

   (b) Owners of Annual Catch Entitlements (ACE) in CRA7;

   (c) Licensed processors of kōura/rock lobster from CRA7; and

   (d) Kāi Tahu interests, including those held individually by fishers with blood or other familial connections and those held commercially via settlement quota and additional quota subsequently purchased (noting that ORLIA does not purport to speak for Kāi Tahu; and nor does Kāi Tahu purport to speak for ORLIA).

3. The respondents (collectively, the **Ministers**) relevantly exercise statutory powers, under s 5 of the Marine Reserves Act 1971 (the **1971 Act**), to

recommend to the Governor-General the making of an Order in Council declaring that any area described in the order shall be a marine reserve subject to such conditions as may be recommended by the Minister of Conservation.

B. STATUTORY FRAMEWORK

4. The 1971 Act provides for the setting up and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study.

5. Section 5 prescribes a detailed procedure for establishing a marine reserve. It relevantly states:

> **5 Procedure for declaring a marine reserve**
> (1) No Order in Council shall be made under section 4 unless—
> (a) application for the Order in Council is made to the Director-General by 1 or more of the following:
> ...
> (v) the Director-General:
> (b) notice of intention to apply for an Order in Council declaring the area a marine reserve has, after consultation with the Director-General, been published by the applicant for the order at least twice, with an interval of not less than 5 nor more than 10 days between each publication, in some newspaper circulating at or nearest to the place where the area is situated, and at least once in each of 4 daily newspapers, one of which shall be published in Auckland, one in Wellington, one in Christchurch, and one in Dunedin:
> (c) every notice published pursuant to paragraph (b)—
> ...
> (ii) states the place where the plan referred to in subsection (2) may be inspected:
> (iii) gives a general description of the area proposed to be declared a marine reserve:
> ...
> (v) calls upon all persons wishing to object to the making of the order to send their objections in writing, specifying the grounds thereof, to the Director-General within 2 months from the date of first publication of the notice and to serve a copy of the objections, specifying the grounds thereof, on the applicant within the same time:
> (d) notice in writing of the proposed marine reserve is given by the applicant to—
> (i) all persons owning any estate or interest in land in or adjoining the proposed reserve. For the purposes of this subparagraph, land shall be deemed to adjoin a proposed marine reserve notwithstanding that it is separated from it by the foreshore or by any road, or that is at a distance of not more than 100 metres from the proposed marine reserve if separated from it by any other reserve of any kind whatsoever or any marginal strip within the meaning of the Conservation Act 1987:
> ...

(2) The Director-General shall cause a plan to be prepared on a suitable scale showing all tidal waters coloured blue, and the boundaries and extent of the area sought to be declared a marine reserve. The plan shall be open for inspection free of charge during ordinary office hours by any person at the office of the Department nearest to the proposed reserve.
(3) All persons wishing to object to the making of the order shall, within 2 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1), send their objections in writing, specifying the grounds thereof, to the Director-General and shall serve a copy of their objections, specifying the grounds thereof, on the applicant within the same time.
(4) The applicant may, on receiving any copy of objections under subsection (3), answer those objections in writing to the Director-General within 3 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1), and the Director-General shall send any such answer he may receive within that time to the Minister [of Conservation] for consideration.
(5) The Director-General shall refer to the Minister [of Conservation] all such objections received within the said period of 2 months, and any answer received within the said period of 3 months.
(6) Where any objection has been made in accordance with subsection (3), the Minister [of Conservation] shall, before considering the application, decide whether or not the objection should be upheld and, in doing so, shall take into consideration any answer made to the objection by the applicant and, if the applicant is the Director-General, any report on the objection and the application the Minister may have obtained from an independent source. If the objection is upheld the area shall not be declared a marine reserve. In making any such decision, the Minister [of Conservation] shall not be bound to follow any formal procedure, but shall have regard to all submissions made by or on behalf of the objector, and to any answer made by the applicant, and shall uphold the objection if he is satisfied that declaring the area a marine reserve would—

...
(c) interfere unduly with commercial fishing:
...
(e) otherwise be contrary to the public interest.

...
(8) The Director-General shall cause the Minister's decision, together with the grounds therefor, to be notified in writing to the objector and to the applicant.
(9) If, after consideration of all objections, the Minister [of Conservation] is of the opinion that no objection should be upheld and that to declare the area a marine reserve will be in the best interests of scientific study and will be for the benefit of the public, and it is expedient that the area should be declared a marine reserve, either unconditionally or subject to any conditions (including any condition as to providing the cost of marking the boundaries of the marine reserve under section 22, and any condition permitting fishing within the reserve by persons not holding a permit issued under Part 4 of the Fisheries Act 1983), the Minister shall, if the Ministers of Transport and Fisheries concur, recommend to the Governor-General the making of an Order in Council accordingly.
...

6. Sections 4(1) and 5(9) of the 1971 Act permit a marine reserve area to be established subject to conditions.

7. Sections 3(4) and 5(9) of the 1971 Act envisage that those conditions might include conditions permitting specified fishing to continue within the reserve.

C. ESTABLISHING MARINE RESERVES

8. In April 2014 the government established the South-East Marine Protection Forum – Te Roopu Manaaki ki te Toka (the **Forum**) to consider and recommend a network of marine protected areas off the south-east coast of the South Island.

9. In February 2018 the Forum presented a report (the **Report**) to the government proposing two options for networks of marine protected areas: "Network 1" and "Network 2".

10. According to the Report, Network 1:

    10.1 Covered approximately 1,267 km^2 of ocean and it included six marine reserves and five Type 2 marine protected areas (Report, p 23).

    10.2 Was supported by the Forum's environment, tourism, community, and science representatives, as well as one of the two recreational fishing representatives (Report, p 23).

    10.3 Included as site D1 "Te Umu Koau" (**Site D1**) a proposed marine reserve covering approximately 96 km^2, being 1.1% of the Forum region (Report, p 139). The Report at p 139 noted that this site included an approximately 4 km extension from the area that the Forum had initially consulted on in its Consultation Document. The proposed Site D1 also altered the angle of the offshore boundaries, shifting the reserve north.

11. The Network 2 option outlined in the Report:

    11.1 Covered approximately 366 km^2 of ocean and it included three marine reserves and two Type 2 marine protected areas (Report, p 23).

    11.2 Was supported by the commercial fishing representatives and one of the two recreational fishing representatives on the Forum (Report, p 23).

12. In May 2019 the Ministers of Conservation and Fisheries directed agencies to proceed under statutory processes to consult on and progress Network 1.

13. Public consultation on Network 1 was started on 17 February 2020 and withdrawn on 9 April 2020 due to New Zealand's COVID-19 Alert Level 4

restrictions, which limited people's ability to participate meaningfully. Consultation was recommenced on 3 June 2020 for two months until 3 August.

14. As part of the public consultation process a consultation paper dated June 2020 (the **Consultation Paper**) was published. Relevantly, the Consultation Paper:

14.1 Included as Appendix 1 (at p 54) an application by the Director-General of Conservation for six marine reserves, which stated that Site D1 covered approximately 96 km^2 (p 65) and that it included approximately 4.5% of the deep reef habitat in the southeast region (p 68).

14.2 Stated at p 13 in respect of Site D1:

> Agencies are aware of significant concerns expressed by Kāi Tahu and the commercial fishing industry with regards to the proposal for a marine reserve at site D1. The proposed marine reserve extends over areas of offshore reef that are seasonally important rock lobster (*Jasus edwardsii*) fishing grounds. Kāi Tahu are concerned that prohibiting commercial fishing on these grounds would impact on their people, particularly those members of the Moeraki, Otakou and Puketeraki Rūnaka whose families are involved in rock lobster fishing, processing and export.
>
> The Ministers of Conservation and Fisheries are interested in the views of submitters about how the marine reserves proposed for site D1 (Te Umu Koau Marine Reserve) could be progressed to balance these concerns against marine protection objectives.

14.3 Elaborated as follows, at p 26, on the anticipated impact on commercial fishing interests if a marine reserve was established at Site D1:

> All commercial fishing would be prohibited. Based on 2017 values, Fisheries New Zealand estimates the export value of potentially displaced commercial catches from the site to be approximately NZ$2 million (40.6 tonnes) per year. Of this, $1.84 million is attributed to the displacement of koura/rock lobster (*Jasus edwardsii*; 17.7 tonnes), with Fisheries New Zealand estimating that 20.7% of the catch in CRA7 (the quota management area within which this site falls) occurs in this area. …

15. Ultimately 4,056 submissions were made in response to the Consultation Paper.

16. ORLIA was amongst those submitters. As stated at [1.5] of ORLIA's written submission, ORLIA provided a "substantial bundle of evidence and analysis to

demonstrate the significant economic, social and other impacts this reserve network would have on its fishers and the Otago kōura/rock lobster industry".

17. ORLIA's written submission also relevantly included:

17.1 Emphasis that its analysis was sensitive to what was being consulted on:

> 18.4 ORLIA's position as set out in these submissions is based on, and sensitive to, the particular proposal being consulted on. That position may differ if the proposal (or any part of it) changes, including the boundaries of any proposed marine reserves.

17.2 A request that consideration should be given to methods that might accommodate ongoing kōura/rock lobster fishing within any reserves:

> 16.9 The evidence prepared by ORLIA, and the recent increases in TACC in CRA7 support an assessment that the Otago kōura/rock lobster fishery is in extremely good health. This indicates that due consideration should have been – and should be – given to alternative management methods which might accommodate ongoing fishing for kōura/rock lobster within any reserve areas.
>
> 16.10 The evidence ORLIA has collected in support of this submission shows there is no decline or pressure on the kōura/rock lobster fishery which might suggest a need for any limits. There has been no assessment of the need for or the merits of removing kōura/rock lobster fishing in any of the documentation supporting the network 1 proposals or in the consultation documents prepared at this stage of the SEMPA process.

18. The Department of Conservation | Te Papa Atawhai (**DOC**) summarised all 4,056 submissions in a 2023 report to the Minister of Conservation titled *Report to the Minister of Conservation on the southeast marine reserve application: Assessment of application and analysis of views received* (the **DOC Report**).

19. In respect of the boundaries for Site D1, the DOC Report relevantly:

19.1 Proposed in section 6.3.6.4, at pp 94-96, to amend the boundaries for Site D1 to what was described by officials in the Report as "**Site D1-A**".

19.2 Stated at pp 94-95 as justifications for that boundary amendment:

> As part of Rōpū discussions on this issue, Kāi Tahu tabled three alternative boundaries to be considered by Te Papa Atawhai (which we have labelled D1-A, D1-B and D1-C; shown in Figure 8-2, chapter 8) for the proposed Te Umu Koau marine reserve. All three proposed amendments avoid an area of deep reef (referred to locally as 'The Church') which is particularly important to commercial Kōura fishing in CRA7. ...
> ...
>
> In summary, Te Papa Atawhai has concluded that it recommends amending the boundary in line with the proposed boundary of D1-A, but it does not recommend a larger boundary amendment to boundaries D1-B or D1-C as requested by Kāi Tahu. ...
>
> This conclusion is linked to Te Papa Atawhai's assessment of objections received under the statutory process in relation to impacts on commercial kōura fishing. ... Based on the objections received, Te Papa Atawhai considers the level of interference with commercial fishing, specifically the commercial kōura fishery, is likely to be undue. However, Te Papa Atawhai considers that this interference would be significantly reduced to a point that it is no longer 'undue' by amending the boundary of the proposed marine reserve in line with boundary amendment D1-A. The recommended boundary amendment would exclude key kōura fishing habitat (including the area referred to locally as 'The Church') while maintaining the ability of the site to provide protection to the significant values it contains...
> ...
>
> Our full reasoning for this is set out in 8.3.1.2. In summary, the D1-A boundary will result in a significant reduction in economic impact on the commercial kōura industry (including Kāi Tahu interests) as opposed to the original boundary (the estimated catch would be an annual average of 5.1% compared to 13.1%). Our assessment is that a decision to progress this boundary would give effect to the Treaty principles of partnership and active protection. ...

19.3 In section 8.3.1 headed "Boundary amendment to the proposed Te Umu Koau marine reserve" addressed s 5(6)(c) of the 1971 Act at pp 218-219:

> In summary, our advice under section 5(6)(c) in respect of objections... is that we consider the level of interference with commercial fishing is likely to be undue but that the interference would be significantly reduced by excluding a key kōura fishing area from the proposal (reef habitat in the northeastern part of the site, including the area known as 'The Church'), as suggested by some submitters and by Kāi Tahu. Te Papa Atawhai considers that a boundary amendment in line with the initial proposal put forward by Kāi Tahu (D1-A) would reduce the level of interference on the commercial fishery sufficiently for it to no longer be undue. ...
> ...

> ... The proportion of kōura catch affected by the proposed marine reserve would drop from an annual average of 13.1% to 5.1% with the D1-A boundary amendment – a reduction of 8.0%. ...

19.4 Went on at p 220 to set out the following comparison table:

Table 8-1 *Comparison of the effects of alternate boundaries for proposed Te Umu Koau marine reserve (annual average from 2020/21, 2021/22 and 2022/23 CRA7 fishing years)*

	Original site as proposed in Application	**D1-A**	**D1-B**	**D1-C**
Habitat information				
Area of deep reef	7.3 km^2	3.7 km^2	0.3 km^2	0.1 km^2
Proportion of Forum region deep reef	4.5%	2.3%	0.2%	0.1%
Area of proposed marine reserve	~ 96 km^2	~ 87 km^2	~ 70 km^2	~ 61 km^2
CRA 7 electronic reporting data (annual average)				
Estimated landings greenweight	14,273 kg	5,575 kg	1,751 kg	1,660 kg
Estimated proportion of affected catch	13.1%	5.1%	1.6%	1.5%
Annual port value of estimated affected catch	$1,237,975	$490,673	$153,030	$144,569
Annual export value of estimated affected catch	$1,620,556	$632,986	$198,808	$188,476

19.5 Stated in further support of Site D1-A at p 222:

> ... Te Papa Atawhai's view is that it is not necessary to investigate alternative sites at this stage because for the reasons set out above we consider the recommendation for the D1-A boundary amendment represents an appropriate outcome that would be consistent with your obligations under the Treaty. As an additional procedural point, we note that consideration of an alternative site would require a decision to reject the existing Application and for a new application to be initiated. This is because **no alternative sites were proposed as part of the current Application. Section 5 of the Marine Reserves Act requires the Minister to make a decision on the Application, and the Act makes no provision for another area to be 'substituted' during the process. While in no way seeking to advise on the outcome should an alternative process be initiated, Te Papa Atawhai's current view is that there would be considerable uncertainty in undertaking a new process and no guarantee that an appropriate alternative site would be identified.** ...
>
> [bold emphasis added]

19.6 Stated in section 8.5.4 headed "Section 5(6)(c) commercial fishing" at p 226:

> ... In summary, we consider the interference with the commercial kōura fishery with the current proposed boundary would likely be undue. We consider it is possible to reduce this interference to a level that would not be undue by amending the boundary of the proposed marine reserve... The recommended boundary excludes a key kōura fishing area from the proposed marine reserve (the reefs in the northeastern part of the site, including the area known as 'The Church'). It aligns with boundary D1-A as identified through the engagement with Kāi Tahu.

19.7 Elaborating on the above points at pp 236-241, relevantly stated at p 238:

> Secondly, due to its high value, the kōura catch from this proposed marine reserve makes a disproportionately greater contribution to the overall financial value of commercial fishing of all species at this site; i.e. it comprises only 26.1% of the total volume caught but accounts for 90.5% of the total value based on port prices. ... Therefore, the potential economic effects on individual fishers, the fishery, and the wider industry are more pronounced than if considering just the level of catch alone. This is particularly so when considering the export value of kōura, with the majority of the CRA7 catch exported. ...
>
> Thirdly, the specific reef habitat in the proposed marine reserve appears to have a strong influence on the catch per unit effort of the fishery (i.e. a greater amount of catch is caught at these reefs for the same effort compared to elsewhere). The reefs in the northeastern part of the proposed site, including 'The Church', have been specifically highlighted as important. ... This information, along with catch information provided by Tini a Tangaroa [Fisheries New Zealand], indicates that these reef structures are a 'hotspot' for the fishery, and contribute disproportionately to the overall landings for CRA7. ... Displacement of fishing from these reefs, therefore, may result in a reduced catch per unit effort for the fishery overall, and subsequently a potential reduction in total allowable catch in subsequent fishing years. It may also increase the operating costs for fishers because of the ability to catch high value kōura at this site with less effort than in other areas.

20. Kāi Tahu was not able to, and it did purport to, speak for or on behalf of ORLIA and its membership in its engagement as that is referred to in the DOC Report.

21. Notwithstanding that, and despite ORLIA's representative status as set out at [**2.2**] above and ORLIA's written submission as quoted at [**17.1**] above, ORLIA was not consulted on the boundary amendments that were proposed for Site D1.

22. As a result ORLIA was, to its prejudice, not able:

22.1 To submit on the boundary amendments proposed for Site D1.

22.2 To assist officials and, through them, the Ministers, to accurately map the location of relevant reef structures (including 'The Church') for the purposes of analysing the boundary amendments proposed for Site D1 and/or for excluding those reefs from Te Umu Koau marine reserve.

22.3 Ultimately to achieve an appropriate preservation of CRA7 rights.

23. In respect of conditions permitting ongoing takings, the DOC Report relevantly:

23.1 Proposed in section 6.3.6.6, at pp 101-102, to include a condition for the retrieval of dead marine mammals and marine mammal parts:

> Te Papa Atawhai acknowledges that the ability to retrieve dead marine mammals and their parts for possession and use is a matter of cultural significance to Kāi Tahu.
>
> Under ordinary circumstances (i.e. where a marine reserve is not in place) the Marine Mammals Protection Act provides a permitting system under which any person may be authorised to retrieve dead marine mammals and marine mammal parts. Additionally, the Act allows detached parts to be taken without a permit so long as Te Papa Atawhai is notified. The starting point is that the Marine Reserves Act would over-ride these provisions. That is because the Marine Reserves Act prohibits 'taking' of marine life alive or dead. Te Papa Atawhai acknowledge that maintaining the ability of a discrete group of people (Kāi Tahu) to continue accessing dead marine mammals and their parts in the circumstances provided for under the Marine Mammals Protection Act would not interfere with the purpose of the Marine Reserves Act. On that basis, Te Papa Atawhai considers that allowing these activities to continue is appropriate in order to give effect to the Treaty principle of active protection. A similar provision was included in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

23.2 Set out wording for this proposed condition in section 6.8.1 at p 170.

24. Despite ORLIA's submission quoted at [**17.2**] above, the DOC Report failed to consider whether to additionally include a condition permitting (subject to regulatory safeguards and limits set through the Fisheries Act 1996) ongoing fishing by CRA7 quota and ACE holders within the proposed marine reserves.

25. As a result ORLIA was, to its prejudice, not assisted by officials as it should have been in achieving for its membership an appropriate preservation of CRA7 rights (and associated economic value) within the proposed marine reserves.

26. On or about 16 August 2023 the Minister of Conservation:

    26.1 Considered the Report and a further document prepared by Te Papa Atawhai titled *Briefing: Decision to approve six marine reserves in the southeast of the South Island (SEMP)* (**DOC's Briefing Paper**).

    26.2 Relying on officials' advice in those two documents, agreed that:

        (a) The process requirements in ss 4-5 of the 1971 Act were met.

        (b) No objections should be upheld under s 5(6) generally.

        (c) No objections should be upheld under s 5(6) for the proposed Te Umu Koau marine reserve specifically, with the boundaries of this marine reserve being established as per Site D1-A.

        (d) All six proposed marine reserves should be established, with four of them (i.e. Waitaki, Te Umu Koau, Ōrau, and Hākinikini marine reserves) including a condition permitting ongoing Kāi Tahu retrieval of dead mammals and marine mammal parts.

27. The Minister of Conservation in making her decision:

    27.1 Followed the approach recommended in DOC's Briefing Paper of considering the benefits and impacts of each proposed marine reserve "in the context of the overall proposed Network" (quoting from [35], at p 25 of DOC's Briefing Paper), with the consequence that the Minister's decision on Site D1-A informed, and it was also informed by, the Minister's decision on all of the other proposed marine reserves.

    27.2 Failed to give any consideration to whether to include a condition permitting (subject to regulatory safeguards and limits set through the Fisheries Act 1996) ongoing fishing by CRA7 quota and ACE holders within any of the proposed marine reserves.

28. In or about September 2023 the Ministers of Transport and Fisheries provided their concurrence, in terms of the requirement in s 5(9) of the 1971 Act, with the Minister of Conservation's decision to establish the six marine reserves (including the Te Umu Koau marine reserve at Site D1-A, with a condition permitting the retrieval of dead mammals and marine mammal parts).

29. Like the Minister of Conservation, the Ministers of Transport and Fisheries:

    29.1 Followed the approach recommended of considering the benefits and impacts of each proposed marine reserve in the context of the overall proposed Network, with the consequence that their ministerial concurrence decision on Site D1-A informed, and it was informed by, the Ministers' decisions on all of the other proposed marine reserves.

    29.2 Failed to give any consideration to whether to include a condition permitting (subject to regulatory safeguards and limits set through the Fisheries Act 1996) ongoing fishing by CRA7 quota and ACE holders within any of the proposed marine reserves.

D. DECISIONS AMENABLE TO REVIEW

30. The Minister of Conservation's decision, and the concurrence decision of the Ministers of Transport and Fisheries (collectively, the **reviewable decisions under the 1971 Act**) involved exercises of statutory powers or statutory powers of decision in terms of the Judicial Review Procedure Act 2016 or (further or in the alternative) the exercise or purported exercise of public authority amenable to judicial review under Part 30 of the High Court Rules.

E. JUDICIALLY REVIEWABLE FLAWS

31. The reviewable decisions under the 1971 Act are legally flawed. In particular:

Duty to authorise ongoing CRA7 fishing within reserves

    31.1 The Ministers owed, and breached, legal duties in the circumstances:

        (a) Procedurally, to consider including a condition permitting (subject to regulatory safeguards and limits set through the

Fisheries Act 1996) ongoing fishing by CRA7 quota and ACE holders within the proposed marine reserves; and

(b) Substantively, to include that condition for the marine reserves.

No power to substitute a new marine reserve area

31.2 There was no power under the 1971 Act to substitute Site D1-A for Site D1 during the statutory process for establishing a marine reserve.

31.3 In the alternative that there was a power to substitute a different marine reserve area to the one that had been notified:

(a) ORLIA had a right to be consulted on the proposal to substitute Site D1-A for Site D1 (which right arose under the 1971 Act, and/or at common law, and/or pursuant to s 27(1) New Zealand Bill of Rights Act 1990), and that right was breached; and

(b) The Ministers owed, and breached, a duty that arose in the circumstances to accurately map the location of relevant reef structures (including 'The Church') for the purposes of excluding those structures from Te Umu Koau marine reserve.

Mistake of fact as to location of important reef structures

31.4 Site D1-A as it is mapped by officials inaccurately records the location of relevant reef structures including 'The Church'. Officials' inaccurate mapping of these reef structures has meant that 'The Church' in fact falls within, rather than outside of, the mapped boundaries of Site D1-A; and, consequently, the reduction in interference with commercial fishing that was hoped for by excluding reef structures will not in fact be achieved.

Acting for improper purpose and/or considering irrelevancies

31.5 In making their decisions in part on the basis that it told in favour of the decisions that there was no guarantee that an appropriate alternative site to D1 would be identified if a new process was undertaken (refer to

[**19.5**] above), the Ministers acted for an improper purpose and/or considered a factor that was legally irrelevant to their decisions.

Mistake of law in not upholding objections under s 5(6)(c)

31.6 The Minister of Conservation erred in law in concluding, under s 5(6) and under s 5(9), that no objections should be upheld under s 5(6)(c).

Mistake of law in s 5(9) concurrence with Minister of Conservation

31.7 The Ministers of Transport and Fisheries erred in law in concluding, under s 5(9), that it was appropriate for them to concur with the Minister of Conservation's decision to establish a marine reserve at Site D1-A.

Overall unreasonableness

31.8 The reviewable decisions under the 1971 Act are unreasonable.

F. APPROPRIATE RELIEF

32. **Wherefore** the following relief is sought:

32.1 A declaration that the reviewable decisions under the 1971 Act are unlawful for one or more of the reasons set out at [**31**] above.

32.2 An order setting aside the decision to establish all six marine reserves or, alternatively, the decision to establish the Te Umu Koau marine reserve.

32.3 Such further or other relief as the Court considers just.

32.4 The costs of and incidental to this proceeding.

This statement of claim is filed by Sam Guest, solicitor for ORLIA.

The address for service of ORLIA is GHP Law, Level 6, ASB House, 248 Cumberland St, Dunedin.

Documents for service on ORLIA may be left at the address for service or may be:

(a) Posted to the solicitor at PO Box 5543, Dunedin 9054; or
(b) Emailed to the solicitor at sam@ghplaw.co.nz, and copied in all cases to counsel at matthew.smith@chambers.co.nz.