Proposed changes to National Direction:

- Package (1) Infrastructure and Development
- Package (2) Primary Sector

1. This submission is made jointly by Seafood New Zealand (**SNZ**), the NZ Rock Lobster Industry Council (**NZ RLIC**) and the Pāua Industry Council (**PIC**) on behalf of our members who are quota owners, fishers and affiliated fishing industry personnel in the commercial finfish, rock lobster and pāua fisheries.

2. The fishing industry supports the need for clear national direction that facilitates appropriate development of infrastructure and the primary sector. However, increased development, whether on land or in the coastal marine area (**CMA**) should not, and need not, be accompanied by increased risk to the marine environment, wild fisheries resources or existing commercial fishing activity.

3. While the CMA is not a "pristine" environment to be preserved in all places at all times, neither is it simply a maritime extension of urban and rural terrestrial environments. Unlike the land, the sea is wild and largely unmodified and we know comparatively less about the potential adverse effects of development on its complex ecology. New infrastructure development in the CMA can have adverse effects on environmental values that are critical for the sustainable management of fisheries – for example:

   - Seabed mining can result in elevated levels of suspended sediments which affect the distribution and abundance of harvested fish species;
   - Energy infrastructure can increase the risk of ecologically damaging oil spills;
   - Waste water discharges can introduce harmful chemicals and pathogens to coastal waters; and
   - All types of infrastructure can destroy habitats that are important for fish lifecycles.

4. Marine and land-based developments that result in increased levels of sediment in the marine environment are a particular cause of concern because suspended and deposited sediment can harm vulnerable fish life cycle stages and important fish habitats. A NIWA review of land-based impacts on coastal fisheries and marine biodiversity concluded that sedimentation is the most important land-based stressor in marine environments throughout New Zealand.[1]

[1] Morrison, M. A., Lowe, M. L., Parsons, D. M., Usmar, N. R., & McLeod, I. M. (2009). A review of land-based effects on coastal fisheries and supporting biodiversity in New Zealand. *New Zealand Aquatic Environment and Biodiversity Report*, *37*, 100.

5. New infrastructure and aquaculture developments in the CMA also displace existing fishing activity, which can have ecological and economic consequences. Displaced catch concentrates fishing effort in neighbouring areas and can jeopardise the sustainable management of fisheries resources. It can also have direct consequences for affected fishers, owners of commercial fishing rights, and the economic contribution and value of the seafood sector.

6. Caution and care are therefore required when opening up the marine environment to increased levels of infrastructure and other development and when allowing land-based developments that may have adverse effects in the CMA.

7. In this context, we are concerned and disappointed that collectively the proposals in Package (1) and Package (2) encourage and facilitate infrastructure and other development in the CMA while reducing the weight given in decision-making to environmental considerations and existing uses and values of the CMA. We consider that the proposed changes fundamentally alter the balance of use and protection of the CMA under the Resource Management Act 1991 (**RMA**) and New Zealand Coastal Policy Statement (**NZCPS**) by weakening existing safeguards for sustainable management of the marine environment.

8. We do not believe that the urgent progression of the proposed changes in advance of the Phase 3 resource management reforms is justified, particularly in light of the recent announcement by the Minister for RMA Reform that the Government intends to stop new plan changes in advance of the anticipated new planning regime coming into force in 2027.[2]

9. SNZ, NZ RLIC and PIC's **primary recommendation** is that these fundamental changes to national direction, which could potentially result in irreversible harm to the marine environment, should not be made through a hurried "quick fix" process in advance of the more considered and strategic replacement of the RMA.

10. However, on the assumption that packages (1) and (2) will proceed, we have analysed each proposal in relation to the *status quo* in order to determine whether the changes are likely to:

    - Increase the risk of adverse environmental effects in the CMA, including adverse effects on fish habitats and fisheries resources; and/or
    - Increase the risk of adverse effects on the activity of fishing, primarily through spatial exclusion and displacement of fishing activity.

11. In this submission we highlight the proposals that increase risks to fisheries resources, fish habitats and fishing activity and recommend alternative approaches where possible.

Respecting existing use rights

12. Across all the proposals, no consideration has been given to addressing the consequences of the displacement of existing use rights in the CMA, including commercial fishing rights. These consequences include threats to the local abundance and sustainability of fisheries resources, and adverse effects on the economic value of the fishing industry. In the absence of transparent mechanisms to make tradeoffs between new and existing uses and property rights, New Zealanders cannot be confident that the best value is being obtained from the sustainable use of marine resources.

[2] https://www.beehive.govt.nz/release/government-stop-council-plan-changes

13. SNZ, NZ RLIC and PIC recommend that all national policy statements that facilitate the establishment of new activities in the CMA should include a new policy that directs councils to encourage or require developers to negotiate a compensation agreement with affected fisheries rights owners if their proposal will result in the material displacement of existing fishing activity. All national environmental standards that facilitate new activities in the CMA should contain a rule with the same effect.

14. As part of the Phase 3 resource management reforms, we recommend that consideration should be given to mandating the use of negotiated agreements to help resolve tensions between existing use rights and new developments in the CMA. This approach is consistent with the precedent provided by the aquaculture agreement and compensation provisions in Part 9A of the Fisheries Act and the Government's undertaking that the new resource management regime will be based on the enjoyment of property rights.

NPS Infrastructure

Lowering of environmental standards

15. Proposed new NPS Infrastructure (**NPS-I**) Policy P8 provides that:

> *Planning decisions must **enable** new infrastructure or major upgrades of existing infrastructure, provided that adverse effects on environmental values (not in section 6 or covered by national direction) are avoided **where practicable**, remedied **where practicable**, or mitigated **where practicable**.*

16. Under this policy it is more likely that infrastructure development or upgrades will give rise to adverse effects in the marine environment and displace existing fishing activity because:

    - Planning decisions must *enable* new infrastructure or upgrades, and the scope of 'infrastructure' covered by the NPS-I is extremely broad; and

    - The requirement to avoid, remedy or mitigate adverse effects is weakened by the qualifier *where practicable*, meaning that there is no threshold for adverse effects to be avoided (in other words, no maximum limit for environmental effects, including effects on existing uses).

17. In the CMA, the exclusions for environmental values in RMA s.6 or covered by national direction provide inadequate safeguards because the exclusions are:

    - Partial, as many parts of the CMA have environmental values or existing use values that are not covered by RMA s.6 or other national direction – e.g., the health of important fisheries resources or habitats of particular significance for fisheries management that are critical for achieving the purpose of the Fisheries Act 1996; [3]

    - Unclear, as it is not obvious what 'covered by national direction' may mean in particular circumstances. For example, NZCPS Policy 22 requires that development will not result in a

[3] The Fisheries Act requires all decision makers to take into account the principle that habitat of particular significance for fisheries management (**HPSFM**) should be protected (s.9). RMA s.66 requires councils to have regard to any HPSFM that has been identified pursuant to a fisheries plan approved under section 11A of the Fisheries Act or is protected from fishing-related threats using fisheries regulations. NZCPS Policy 5 requires councils to manage effects of activities on land or waters in the coastal environment held or managed under '*other Acts for protection purposes*' (i.e., potentially including HPSFM, but only where a site is identified and managed for protection purposes under the Fisheries Act).

significant increase in sedimentation anywhere in the CMA – it is not clear whether the control of sedimentation is an *environmental value* that is excluded from the 'where practicable' qualifier or whether the 'environmental values' are limited to spatially defined areas; and

- Weakened by proposed changes to the NZCPS in Package (2), which we respond to below.

18. SNZ, NZ RLIC and PIC therefore recommend that NPS-I Policy P8 should <u>not</u> apply to infrastructure in the CMA or infrastructure which has adverse effects in the CMA. In both of these situations, the current requirement to avoid, remedy or mitigate adverse effects on the environment should continue to apply. If this recommendation is not accepted, as a minimum we recommend that the scope of NPS-I Policy P8 should be <u>narrowed</u> so that it applies only to upgrades of existing infrastructure in the CMA.

19. We also recommend that the NPS-I should contain a policy relating to negotiated agreements with owners of affected fisheries rights, as described in paragraph 13 above.

NPS Renewable Energy Generation

Lowering of environmental standards

20. The proposed amendments to the NPS for Renewable Energy Generation (**NPS-REG**) include new Policy P2 which provides that:

> *Decision-makers must **enable** REG activities, provided that adverse effects on environmental values not in section 6 of the RMA or covered by national direction are avoided **where practicable**, remedied **where practicable**, or mitigated **where practicable**.*

21. This policy is substantially identical to NPS-I Policy 8. As described above, the policy makes it <u>more likely</u> that REG activities will give rise to adverse effects in the marine environment, including adverse effects on fisheries resources, fish habitats and existing fishing activity.

22. SNZ, NZ RLIC and PIC recommend that NPS-REG Policy P2 should <u>not</u> apply to REG activities in the CMA or which have adverse effects in the CMA. If this recommendation is not accepted, as a minimum we recommend that the scope of NPS-REG Policy P2 should be <u>narrowed</u> so that it applies only to upgrades of existing REG activities in the CMA.

23. We also recommend that the NPS-REG should contain a policy relating to negotiated agreements with owners of affected fisheries rights, as described in paragraph 13 above.

NPS Electricity Transmission

24. Two new policies relevant to the CMA are proposed to be inserted into the (renamed) NPS Electricity Networks (**NPS-EN**).

Operational need for location in CMA

25. Proposed new NPS-EN Policy P2 requires decision-makers to recognise that:

> *the **operational or functional need** of EN activities may include: a) the need for EN assets to convey electricity over long distances and in all locations and environments, including…*
> *ii. within the coastal environment, including the coastal marine area.*

26. In this policy, the new reference to 'operational need' is likely to result in a greater range of EN activities – and, therefore, more EN infrastructure such as submarine cables[4] – being located in the CMA when these would previously have been located on land if at all possible. The consequences include increased risk of harm to marine ecosystems and fisheries resources from new EN infrastructure, and increased risk of displacement of existing fishing activity from exclusion zones around new EN infrastructure.

27. These impacts are not trivial – fisheries exclusion zones around EN infrastructure, such as cable protection zones imposed under the Submarine Cables and Pipelines Protection Act 1996 (**SCPP Act**) can be large and some have had significant displacement effects on fishing (e.g., in the Hauraki Gulf and Cook Strait). Unlike more modern legislation, the SCPP Act contains no statutory tests or criteria to require decision-makers to consider or evaluate the adverse effects on the exercise of existing fishing rights.

28. SNZ, NZ RLIC and PIC therefore recommend that NPS-EN Policy P2 should be balanced by a new policy relating to negotiated agreements with owners of affected fisheries rights, as described in paragraph 13 above.

Lowering of environmental standards

29. Proposed new NPS-EN Policy P6 requires decision-makers to:

> ***enable*** *routine EN activities to occur in all locations and environments, provided adverse effects on the environment are avoided* ***where practicable****, remedied* ***where practicable****, or mitigated* ***where practicable****, acknowledging the existing nature of the assets*.

30. The qualifier 'where practicable' would enable routine EN activities in the CMA, with no maximum limit for environmental effects. While we appreciate that this policy would be considered and applied alongside more restrictive policies in other national direction such as the NZCPS, Package (2) proposes to weaken the weight given to the 'protection' policies in the NZCPS. Therefore, new NPS-EN Policy P6 and the proposed changes to the NZCPS will together increase the risk that routine EN activities will have adverse effects in the marine environment, including adverse effects on fisheries resources, fish habitats, and existing fishing activity.

31. SNZ, NZ RLIC and PIC recommend that NPS-EN Policy P6 should not apply to EN activities in the CMA. If this recommendation is not accepted, we recommend that NPS-EN Policy P6 should be rewritten to be consistent with proposed NPS-I Policy P8 – i.e., excluding values identified under RMA s.6 or other national direction from the 'where practicable' qualifier.

NES Electricity Transmission Activities

Signage in the CMA

32. The (renamed) NES Electricity Network Activities (**NES-ENA**) includes a proposal to expand Regulation 23 to permit Transpower to erect signage for ENA within the bed of a lake, river, stream or CMA and associated occupation without any conditions.

33. Signs erected in the CMA can have adverse effects on fishing, such as obstructing sea access to launching ramps or wharves, restricting navigation, or increasing the risk of damage to vessels or

[4] Proposed changes to the definitions in the NES-ENA make it clear that a submarine cable is considered to be a "transmission line".

injury to fishers. Depending on their location and construction, signs may also damage sensitive marine environments, including important fish habitats.

34. We are aware that Transpower has stated that it complies with standards and procedures for signs in waterways such as *AS/NZS 2416.1:2010 Water safety signs and beach safety flags – Specifications for water safety signs used in workplaces and public areas*. However, we are not able to assess the suitability of these standards because they are not publicly available free of charge. Asserted compliance with the AS/NZS standards therefore does not provide a transparent basis for permitting signage without conditions in the CMA.

35. SNZ, NZ RLIC and PIC recommend that additional controls for permitted ENA signs in the CMA are required in NES-ENA Regulation 23, including that the sign:

- Must not be located in a habitat of particular significance for fisheries management;
- Must be maintained in good condition;
- Must not obstruct access by water to any wharf, landing place, boat ramp, slipway, navigation channel or mooring;
- Must not restrict navigation; and
- Must not cause or have potential to cause loss of life or injury to any person or damage to any vessel or property.

Earthworks and sediment control

36. Various changes are proposed to Regulations 33, 34 and 35 in relation to earthworks for existing transmission lines (including submarine cables). We support the existing NES requirement that earthworks for existing transmission lines in the CMA cannot be permitted activities (Regulation 33(7)) and note that no changes are proposed in relation to this requirement. We also **support** the proposed amendment of Regulation 34(2) to add a new matter of control relating to any effects on water quality or the CMA.

37. The proposals also include changing the conditions for permitted earthworks by replacing the current requirement to *avoid the adverse effects of sediment on water bodies and the CMA* in Regulation 33(3) with a requirement for *sediment control measures to be implemented when the earthworks are located within 50 m of water bodies and the CMA*.

38. The proposed removal of the current unambiguous standard to avoid the adverse effects of sediment on the CMA will <u>increase the risk</u> of adverse effects of sediment in the CMA. The new requirement to implement sediment control measures for earthworks within 50m of the CMA is simply a procedural requirement and would still allow adverse effects of sedimentation in the CMA.

39. SNZ, NZ RLIC and PIC recommend that NES-ENA Regulation 33(3) should require *sediment control measures to be implemented when the earthworks are located within 50m of water bodies and the CMA in order to avoid any adverse effects of sediment on water bodies and the CMA*.

40. The Government is also seeking feedback on whether an alternative management plan approach for earthworks should be implemented through the NES-ENA to provide a permitted pathway for earthworks.

41. If the ‘permitted activity / management plan’ approach is adopted, SNZ, NZ RLIC and PIC recommend that earthworks in the CMA, or earthworks that may have adverse effects in the

CMA, should be excluded from this approach because of the adverse effects of elevated sediment levels in the marine environment.

42. SNZ, NZ RLIC and PIC also recommend that the NES-ENA should contain a rule relating to negotiated agreements with owners of affected fisheries rights, as described in paragraph 13 above.

NES Marine Aquaculture

43. Two main sets of amendments to the NES for Marine Aquaculture (**NES-MA**) are proposed to bring new matters into the scope of the NES-MA.

Changes of consent conditions for aquaculture activities

44. Proposed new regulations 29 to 35 make certain types of applications to change consent conditions controlled activities rather than restricted discretionary activities. The changes to consent conditions do not involve any expansion of a marine farm footprint. Therefore, the proposals will not increase the risk of spatial displacement of commercial fishing activity.

45. The proposed matters for control include matters relevant to managing potential adverse effects on fisheries resources, including effects on reefs and biogenic habitat (for changes of structures or species) and biosecurity risks, genetic effects, and use of antibiotics (for changes of species). We consider that the matters for control are appropriate and the specified types of applications to change consent conditions are, for the most part, unlikely to increase risks to fisheries resources or fish habitats.

46. However, the addition of *Undaria pinnatifida* to an existing marine farm should not be classified as a controlled activity unless *Undaria* is already established in the area. If *Undaria* is not already present in the vicinity of the marine farm, treating the species change as a controlled activity is likely to result in *Undaria* being introduced into the wild where it could out-compete indigenous seaweeds and alter marine habitat structure, ecosystems and food chains.

47. SNZ, NZ RLIC and PIC recommend that the addition of *Undaria* to an existing marine farm at a location where *Undaria* is not already present should be a restricted discretionary activity.

Aquaculture research and trial activities

48. SNZ, NZ RLIC and PIC support the intent of these proposals – i.e., to make it easier to conduct aquaculture research and trial activities.

49. We do not anticipate any significant adverse effects on fishing as a result of spatial displacement for the following reasons:

    - Research and trials in space that has already been consented for aquaculture will cause no additional displacement of commercial fishing because the space has already been subject to a 'UAE' assessment (i.e., aquaculture decision) under the Fisheries Act; and

    - Research and trials involving species in an area that has not already been consented for aquaculture ('new space') will be subject to an aquaculture decision under the Fisheries Act.

50. However, research and trials not involving species (i.e., structures only) in new space would <u>not</u> be subject to the Fisheries Act UAE assessment because it is not defined as aquaculture under the RMA. Therefore, additional spatial exclusion of commercial fishing could occur. The

maximum size of spatial displacement is small[5] and the duration of potential exclusion is relatively short[6] but, depending on the spatial dependency and intensity of affected fisheries, impacts on fishing could nevertheless be material in some cases.

51. SNZ, NZ RLIC and PIC therefore recommend that, for research and trials not involving species that are controlled activities, the degree of exclusive occupation should be a matter for control in order to minimise the risk of fisheries displacement impacts while still allowing the research or trial to proceed.

52. Research involving new species may <u>increase the risk</u> of adverse effects on nearby wild fisheries resources. For example, pāua could be farmed experimentally as a controlled activity at a site already consented for fed-aquaculture (but not currently used for pāua), with potential risks for wild pāua populations. We note that under the NES-MA councils are not allowed to consider any adverse effects on fisheries resources. However, the proposals are for councils to retain control or discretion over effects on reefs and biogenic habitats, genetic effects on wild populations, and management of biosecurity risks (among other matters). SNZ, NZ RLIC and PIC consider that the proposals for council control and discretion should be adequate for managing most types of risks to fisheries resources that may arise from aquaculture research or trials.

NES Commercial Forestry

53. Three proposed changes to the NES Commercial Forestry (**NES-CF**) are of interest in relation to impacts on the marine environment, fisheries resources and fishing.

Criteria for more stringent rules than the NES-CF

54. The proposals amend the criteria that allow councils to impose stricter rules than the NES-CF. We note (and support**)** that the Government does not propose to amend regulation 6(1)(b), which enables councils to make a rule in the plan that is more stringent than the NES-CF if the rule gives effect to any of policies 11, 13, 15 and 22 of the NZCPS.[7]

55. However, the proposals include replacing regulation 6(1)(a), which enables councils to make a rule in the plan that is more stringent than the NES-CF to give effect to the National Policy Statement for Freshwater Management (**NPS-FM**). In comparison to the *status quo*, the proposed replacement regulation <u>increases the risk</u> that forestry will cause adverse effects in the CMA, including adverse effects on fisheries resources and fish habitats.

56. The proposal allows councils to impose more stringent rules only where there is a risk of *severe erosion*, rather than where there are other types of risk, such as risks of erosion that are significant but not severe, risks that arise from the sensitivity of the receiving environment to sediment-related impacts, or risks that are not related to erosion – for example, risks associated with slash mobilisation (which can have devastating downstream effects in the CMA). Councils are further limited by the requirement that the severe erosion risk will have *significant adverse effects on receiving environments, including the coastal environment; downstream infrastructure; or property*. While the CMA is mentioned as a receiving environment, freshwater is not referred to as a receiving environment that may be affected by sedimentation or other adverse effects of

[5] A maximum of $20m^2$ for permitted activities and 0.5ha for inshore waters or 2ha for 'offshore waters' for controlled activities.
[6] A maximum of 12 months for permitted activities and 3 years for controlled activities.
[7] These NZCPS policies relate to biodiversity, natural character, natural features and landscapes, and sedimentation.

forestry. This omission will increase the risk of sedimentation from forestry entering the CMA via rivers and streams and having adverse effects on inshore fish and shellfish and their habitats.

57. SNZ, NZ RLIC and PIC support the reference of 'the coastal environment' as a receiving environment as this will allow councils to impose stricter rules if downstream effects on the coastal environment are anticipated as a result of forestry-related erosion. However, we recommend that the amended regulation should refer to the full set of potential adverse effects from forestry (not just 'severe erosion') and should include 'freshwater' as a potentially affected receiving environment.

Criteria for more stringent rules for afforestation

58. Currently councils have wide discretion in relation to afforestation (i.e., determining where new commercial forests may be planted) under NES-CF regulation 6(4A). This regulation is proposed to be replaced by a new regulation which gives councils the ability to make more stringent rules for afforestation only in specified circumstances, including in order to give effect to any of NZCPS policies (11) indigenous biodiversity, (13) preservation of natural character, (15) natural features and natural landscapes, and (22) sedimentation.

59. We agree that the current regulation creates uncertainty with respect to adverse effects in the CMA because council rules about afforestation could be more stringent or more lenient than those in the NES-CF. The proposed replacement is more certain and still enables more stringent rules to be made where the marine environment is at risk from forestry-related activities. However, councils are unable to make more stringent rules for afforestation when freshwater values are at risk, and this may have downstream impacts in the CMA.

60. SNZ, NZ RLIC and PIC support the ability for councils to make more stringent afforestation rules in order to give effect to the specified NZCPS policies, but we recommend that the replacement regulation should also enable councils to make more stringent afforestation rules where freshwater values may be adversely affected by afforestation.

New requirements for managing slash

61. The proposals require a slash mobilisation risk assessment (SMRA) to be prepared for all forest harvests as part of the existing harvest management plan, carried out in accordance with a 'slash mobilisation risk assessment template'. The template includes 'risk indicators', one of which is *connectivity to downstream infrastructure (roads, bridges, settlements) and sensitive areas such as beaches and **fisheries** used by people*.

62. We consider that the SMRA is more appropriate than the alternative approach proposed in the consultation document – i.e., regulatory amendment to require all slash above an identified size to be removed from the forest cutover – because the SMRA can be tailored to specific circumstances and risks and is therefore likely to be more effective than a blunt regulatory requirement.

63. SNZ, NZ RLIC and PIC support in principle the SMRA proposal, pending further development of the concept.

New Zealand Coastal Policy Statement

64. Of all the proposals in Packages (1) and (2), the fishing industry is most concerned about the proposed changes to the New Zealand Coastal Policy Statement (**NZCPS**). The intent of these proposals is to better enable the Government's 'priority activities' (i.e., infrastructure, renewable

electricity generation, electricity transmission, aquaculture and resource extraction) in the CMA, even if the activities have adverse effects on the marine environment and existing uses.

65. The consultation document refers extensively to 'priority activities' and to 'protected values' of the CMA but does not mention the potential impacts of the proposals on fish habitats, fisheries resources, or the activity of fishing. The disconcerting implication is that fishing is not considered to be a 'priority activity' in the CMA, and fisheries resources or fish habitats are not considered to be 'protected values' in the CMA.

66. The reality is that fishing is one of <u>the most important</u> existing economic, social and cultural uses of the CMA. Fishing activity is underpinned by customary fishing rights, valuable commercial property rights, and the Māori Fisheries Settlement. It is contrary to the stated approach of this Government – i.e., a resource management regime based on enjoyment of property rights – to disregard the important role that fishing rights play in the securing the fishing sector's economic contribution to New Zealand and ensuring the sustainable management of fisheries resources. Furthermore, fishing is indisputably an activity that can take place <u>only</u> in the CMA, yet the need to safeguard existing fishing rights (and the natural resources these rights depend upon) is completely overlooked in the proposed changes to national direction.

Policy 6, activities in the coastal environment

67. The two changes that are proposed for NZCPS Policy 6 are:

- Strengthening the language in Policies 6(1)(a) and 6(1)(g) to make it more directive with respect to enabling use and development for the Government's priority activities; and

- Providing that priority activities may have either a functional need or an operational need under Policies 6(1)(e) and 6(2)(c) and (d) to locate in the CMA.

68. The first of these changes will elevate the importance of priority activities in decision-making. All the policies in the NZCPS are designed to be read together by decision-makers. Therefore, by giving more weight to enabling an extremely wide range of 'priority activities', the proposals have the effect of weakening (relatively) the weight currently given to environmental protection and existing use rights under the NZCPS. The second change will considerably extend the range of activities that can take place in the CMA and make it easier for priority activities to be located in the CMA, even if they have no functional need to be located in the CMA.

69. The combined impact of the proposed changes to NZCPS Policy 6 (and parallel changes in other national direction) has significant implications for:

- Fish habitats and fisheries resources – i.e., <u>increased risk</u> of adverse environmental effects arising from (a) increased development activity in the CMA, and (b) downgrading of current environmental protections in decision-making; and

- Commercial fishing – i.e., <u>increased risk</u> of spatial exclusion as a result of more consented developments taking place in the CMA.

70. We note that the Resource Management (Consenting and Other System Changes) Amendment Bill confirms and embeds the post-*Motiti* interpretation of the RMA that enables councils to prohibit fishing in areas of significant biodiversity value or other valued places in the CMA. It is inconsistent and contradictory that the proposed changes to the NZCPS potentially negate any biodiversity-related benefits of using the RMA to prohibit fishing in an area. While the Amendment Bill legitimises council prohibitions on fishing in significant marine biodiversity

areas, the proposed changes to national direction make it more likely that a council would grant a resource consent for a priority activity – such as seabed mining – in those areas, even if the activity had adverse effects on the special values of the area that were used to justify the prohibition of fishing.

71. SNZ, NZ RLIC and PIC oppose all the proposed changes to NZCPS Policy 6. We acknowledge that there are fundamental tensions between the 'protection' policies and the 'activity' policies in the NZCPS that need to be resolved. However, the mechanism for resolution should be a careful policy process under Phase 3 of the resource management reforms rather than this 'quick fix' which is likely to result in (a) harm to valued attributes of the marine environment, including fish habitats and fisheries resources, and (b) additional displacement of fishing activity and adverse impacts on existing commercial fishing rights, including fisheries settlement rights.

NZCPS Policy 8, aquaculture

72. The proposed changes to NZCPS Policy 8:

- Give more recognition to the cultural and environmental benefits of aquaculture; and
- Direct decision-makers to provide for aquaculture activities within aquaculture settlement areas (**ASAs**).

73. The proposal to recognise the cultural and environmental benefits of aquaculture may tilt the balance of considerations somewhat in favour of new aquaculture developments. However, it is unlikely that the consideration of these matters would result in decisions that have adverse effects on the marine environment, fish habitats or fisheries resources.

74. The intent of the proposal to direct decision-makers to 'provide for' aquaculture activities within ASAs is unclear as the consultation document and accompanying documentation such as the Regulatory Impact Statement provide no description or evidence of a problem to be addressed.

75. The effect of the proposal is also very unclear. The words 'provide for aquaculture activities' are extremely directive. Where similar wording is used in RMA s.6 (matters of national importance), it has been interpreted to mean that decision-makers must *make actual provision* for the relevant matter. In the case of the proposed amendment to NZCPS Policy 8, this could mean that councils *must* grant a resource consent for aquaculture in an ASA, even if the activity may have adverse effects on other uses and values. In a planning context, it could mean that councils *must* amend their plans to make aquaculture a controlled activity in an ASA.

76. Even if a less 'directive' interpretation is adopted, at a minimum, councils would be required to place more weight on providing for aquaculture in ASAs and, as an inevitable consequence, relatively less weight on environmental considerations or impacts on existing uses and values. [8] In comparison with the *status quo*, this proposal therefore increases the risk that new aquaculture activities in ASAs will result in adverse effects on the marine environment, fish habitats and fisheries resources.

77. We consider that aquaculture activities in ASAs should be subject to the same environmental standards and other requirements as the consenting of aquaculture in other areas. We therefore

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[8] The consultation document states that *this change could* ***make it easier to consent*** *new aquaculture activities* in ASAs, and the RIS states that the new policy will *have* ***more influence in decisions*** *where aquaculture proposals are in* ***conflict with other interests*** *(e.g.,* ***an important public value or a competing activity****).*

recommend that further consideration is given to a more targeted and certain way of addressing the problems that we *assume* lie behind the proposal – i.e., that:

- In some cases, councils have not provided authorisations for aquaculture applications in gazetted ASAs, depriving iwi of the opportunity to apply for a consent;
- The work undertaken to support the gazettal of ASAs in areas 'suitable for aquaculture activities' is not always recognised in subsequent council planning or consenting decisions; and
- Because of the above, the purpose of the aquaculture settlement may not be achieved with respect to enabling new aquaculture opportunities for iwi.

78. SNZ, NZ RLIC and PIC oppose changes to Policy 8 that require councils to provide for aquaculture activities within ASAs. We recommend that councils should instead be directed to:
(a) provide authorisations within gazetted ASAs;
(b) take into account the purpose of the Māori Commercial Aquaculture Claims Settlement Act 2004 and any research and other work previously undertaken to determine the suitability of the space for aquaculture activities.

79. We are available to discuss any of the matters raised in this submission.

Lisa Futschek	Mark Edwards	Storm Stanley
CE	CEO	Chair
Seafood New Zealand	NZ Rock Lobster Industry Council	Paua Industry Council