

**BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY
AT WELLINGTON**

IN THE MATTER of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**)

AND

IN THE MATTER of an application for marine consent under section 38 of the EEZ Act by Trans-Tasman Resources Limited to undertake iron ore and processing operations offshore in the South Taranaki Bight

BETWEEN **Trans-Tasman Resources Limited**
Applicant

AND **Environmental Protection Authority**
EPA

AND **Fisheries Inshore New Zealand Limited, New Zealand Federation of Commercial Fishermen Inc, Talley's Group Limited, Southern Inshore Fisheries Management Company Limited and Cloudy Bay Clams Limited**
Fisheries Submitters

MEMORANDUM ON BEHALF OF FISHERIES SUBMITTERS

Dated: 7th March 2017

Counsel Acting
ROBERT MAKGILL
BARRISTER

Instructing Solicitor
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MAY IT PLEASE THE DECISION-MAKING COMMITTEE:

1. Counsel acts for Fisheries Inshore New Zealand Limited, The New Zealand Federation of Commercial Fishermen Inc, Talley's Group Limited, Southern Inshore Fisheries Management Company Limited and Cloudy Bay Clams Limited (**Fisheries Submitters**).
2. This memorandum:
 - (a) Refers to the DMC Minute 28 inviting parties to provide further comment on the scope of the definition of adaptive management approach as set out in section 64 of the EEZ Act, and seeks permission to address this matter in closing submissions; and
 - (b) Refers to the hearing schedule for day 17 (20 March 2017) and seeks permission from the DMC to extend the amount of time allocated to Counsel for the Fisheries Submitters to make closing submissions.

Addressing adaptive management in closing submissions

3. In Minute 28, dated 21 February 2017 the DMC invited parties to provide further comment on the scope of the definition of adaptive management approach as set out in section 64 of the EEZ Act. In particular, the DMC sought comment on the distinction – in a legal and/or practical sense – between conditions 'that together amount or contribute to an adaptive management approach', and conditions that do not.
4. Counsel for the Fisheries Submitters provided comment on adaptive management in his opening submissions on 16 February 2017. Counsel respectfully requests permission to address this matter further in closing submissions as time and financial considerations prevent Counsel from preparing separate a legal memorandum on the issue.

Time allocated for closing submissions.

5. We refer to the hearing schedule version dated 4 March 2017 and in particular the 30-minute time slot allocated to Counsel for the Fisheries Submitters to make their closing statements on 20 March 2017.
6. The Fisheries Submitters is a group made up of five separate entities that

have each made a submission opposing the application by TTR to mine in the South Taranaki Bight. Representatives of each of the entities comprising the fisheries submitters also filed evidence and appeared before the DMC during the hearing. Additionally, the Fisheries Submitters engaged several experts to give written and oral evidence and attend the relevant expert caucusing sessions held during February and March.

7. Collectively, the Fisheries Submitters and their experts have addressed a wide range of legal and factual issues prior to and during the hearing. Accordingly, Counsel for the Fisheries Submitters respectfully submits that the 30 minutes allocated to present closing statements is an inadequate allocation of time to adequately present the Fisheries Submitters' closing submissions, and leave time for interaction with the DMC on the legal issues.
8. Counsel therefore requests that an additional one hour be allocated to the Fisheries Submitters to present their closing submissions.

DIRECTIONS SOUGHT

9. Counsel for the Fisheries Submitters respectfully request that they:
 - (a) be permitted to address the issue of adaptive management in closing submissions; and
 - (b) be allocated 1.5 hours to make closing statements on 20 March 2017.

Dated this 7th day of March 2017



Robert Makgill / Peter Dawson
Fisheries Inshore New Zealand
Limited, New Zealand Federation
of Commercial Fishermen Inc,
Talley's Group Limited, Southern
Inshore Fisheries Management
Company Limited and Cloudy Bay
Clams Limited