

**IN THE MATTER** of the Resource Management Act 1991  
**AND**  
**IN THE MATTER** of the proposed Te Tai o Poutini Plan  
**AND**  
**IN THE MATTER** of a submission by the  
**WEST COAST FISH & GAME COUNCIL**

**Legal Submissions on behalf of  
WEST COAST FISH & GAME COUNCIL  
Topic 1 Introduction / General Provisions**

Dated: 12 October 2023

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## INTRODUCTION

1. These legal submissions are filed on behalf of the West Coast Fish and Game Council (WCF&G) in relation to the proposed Te Tai o Poutini Plan. (pTTPP).
2. They cover general introductory matters relating to WCF&G, and WCF&G's interest in the pTTPP, and also specific relief sought in relation to Topic 1.

## SUBMISSION

3. WCF&G has been largely supportive of the overall intent and thrust of the pTTPP. That support, however, is contingent on the substantive matters raised in the WCF&G submission being addressed. It is WCF&G's position that matters relating to the management and utilisation of the sports fish and gamebird resources of the three districts must be appropriately addressed within the pTTPP, if it is to assist the district councils to provide for and promote sustainable management as defined in the Resource Management Act (**the Act**). The statutory purpose of a district plan, of course, is *to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act*<sup>1</sup>. I will return to this purpose statement, later in these legal submissions.

## STATUTORY CONTEXT

### Part 2

4. Before turning to the specific outstanding matters raised in the WCF&G submission, I want to discuss how the interests of WCF&G relate to the sustainable management purpose of the Act.
5. The purpose of the Act, of course, is set out in s 5, and Part 2. This is referred to as the 'engine room' of the RMA, driving all decisions made under the Act<sup>2</sup>. It sets out the statutory purpose, and any statutory discretion under the Act needs to be exercised in a way that is consistent with and promotes this statutory purpose. Sections 6, 7 and 8 inform, and add context to the sustainable management purpose, by respectively describing matters of national importance that must be recognised and provided for,

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<sup>1</sup> Section 72 RMA.

<sup>2</sup> See *Auckland City Council v John Woolley Trust* [2008] NZRMA 260, at [47].

other matters to which particular regard must be had, and Treaty of Waitangi principles that must be taken into account, in achieving the purpose of the Act.

6. The critical point, for the purposes of these submissions, is the integral way in which matters relating to the interests of WCF&G, and the protection of sports fisheries and the habitat of trout and salmon, are incorporated into Part 2, and sections 5, 6 and 7.

#### **5 Purpose**

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

7. Trout, salmon and gamebirds, and their habitats, are natural and physical resources. Their use, development and protection is to be managed in a way or at a rate that enables people and communities to provide for their social, economic and cultural wellbeing.
8. This is to occur while sustaining the ability of the sports fish and game resource to meet the reasonably foreseeable needs of future generations, and safeguarding the life supporting capacity of land and water which sports fish and game inhabit, and the ecosystems which sports fish and game are part of.

#### **Matters of national importance**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

9. Matters such as public access to and along lakes and rivers, the preservation of the natural character of lakes and rivers and their margins, and the protection of those that have outstanding natural character, again are integral to the interests of Fish and Game. They are also identified as matters of national importance, which must be recognised and provided for in achieving sustainable management.

#### **Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (e) *[Repealed]*
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

10. Similarly, the Act identifies other matters to which particular regard must be had in achieving sustainable management. These include the maintenance and enhancement of amenity values, the intrinsic values of ecosystems – which includes ecosystems which include sports fish or game, and, importantly, the protection of the habitat of trout and salmon.

11. It has been said that sections 6, 7 and 8 of the Act articulate those aspects of the physical and natural environment which have a particularly Aotearoa / New Zealand aspect. They give a national focus to the international concept of sustainable development. We are, it is often said, an outdoor and sporting nation. Accordingly, it is no surprise that matters relevant to sports fish and game management and their enjoyment by all Kiwis have such a central place within Part 2 of the Act.

12. The protection of the habitat of trout and salmon has specifically been identified as a matter to which decision makers under the RMA must have *particular regard*. This is said to impose a “high test” and “creates a duty to be on inquiry”. The matters in s 7 must be recognised as “important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion”.<sup>3</sup>

#### Functions of territorial authorities

13. Under s 31 of the Act, the functions of territorial authorities include *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district*.<sup>4</sup>

14. Territorial authority functions also include *the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes*.<sup>5</sup> And *the control of any actual or potential effects of the use, development, or protection of land*.<sup>6</sup>

15. How these functions are exercised, and how the pTTPP regulates the use, development or protection of land, and activities on the surface of water in lakes and rivers can have a profound impact on the sustainable management of fish and game resources.

16. As the Topic 1 evidence of Mr Kelly for WCF&G explains, the three districts of Te Tai Poutini, contain significant fish and game resources, which the Act requires be sustainably managed.

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<sup>3</sup> See *Gill v Rotorua DC* 919930 2 NZRMA 604(PT), *Marlborough DC v Southern Ocean Seafoods Ltd* (1995) NZRMA 220 and 336 (PT). and commentary at Westlaw Resource Management online. In the *Southern Oceans* case the Court held; (at pg 12)

The duty to have particular regard to these matters has been described in one case as "a duty to be on enquiry " *Gill and Others v Rotorua DC* 2 NZPTD 1993 2 NZRMA 604. With respect in our view it goes further than the need to merely be on enquiry. To have particular regard to something in our view is an injunction to take the matter into account, recognising it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion .

<sup>4</sup> Section 31(1)(a) RMA.

<sup>5</sup> Section 31(1)(e) RMA.

<sup>6</sup> Section 31(1)(b) RMA.

## Matters to be considered in preparing District Plan

17. Section 74 of the Act sets out the matters which a territorial authority must prepare and change its district plan in accordance with. These requirements apply notwithstanding that the pTTPP is a combined district plan, as provided for by s 80(3) of the Act, with the responsibility for preparing that plan having been transferred to the West Coast Regional Council by the Local Government Reorganisation Scheme (West Coast Region) Order 2019.
18. When preparing the pTTPP, regard must be had to any management strategies or plans prepared under other Acts.<sup>7</sup> These will include the West Coast Fish and Game Council Sports Fish and Gamebird Management Plan, Te Mana o Te Taiao / NZ Biodiversity Strategy, and the West Coast Tai Poutini Conservation Management Strategy.
19. The pTTPP must also give effect to;<sup>8</sup>
  - Any national policy statement
  - The New Zealand Coastal Policy Statement
  - A national planning standard
  - The West Coast Regional Policy Statement.
20. The pTTPP also must not be inconsistent with any water conservation order (**WCO**).<sup>9</sup>
21. There are two water conservation orders in place on the West Coast, the National Water Conservation (Grey River) Order 1991 and the Water Conservation (Buller River) Order 2001. The Buller WCO expressly recognises the outstanding trout fishery values within a number of rivers and lakes within the Buller catchment.
22. While the Buller WCO is the only WCO in the region that recognises (and requires the protection) of trout fishery values, it does not follow that the only outstanding or significant trout fishery values in the region are those described in that WCO. The evidence of Mr Kelly provides an overview of the internationally, nationally and regionally significant trout and salmon fishery values located on the West Coast.

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<sup>7</sup> Section 74(2)(b) RMA.

<sup>8</sup> Section 75(3)(a)-(c). RMA.

<sup>9</sup> Section 75(4)(a) RMA.

23. The requirements of ss 74 and 75 of the Act will be referred to in more detail where relevant, in submissions below in relation to specific relief sought in this Topic 1, and in forthcoming submissions on further TTPP topics.

#### **TOPIC 1 RELIEF SOUGHT**

Add WCF&G to the list of entities to be given specific consideration when deciding whether any person is affected.

24. Page 18 of the Notified Version of the pTTPP includes a list of entities, with responsibility for natural or physical resources, to whom the District Councils will give specific consideration when deciding whether any person is affected in relation to an activity for the purposes of s 95E RMA.

*When deciding whether any person is affected in relation to an activity for the purposes of section 95E of the RMA, the District Councils will give specific consideration to the following entities with responsibility for any natural or physical resources which may be affected by the activity, including:*

- 1. In relation to infrastructure, the network utility operator that owns or operates that infrastructure;*
- 2. In relation to historic heritage, Heritage New Zealand Pouhere Taonga;*
- 3. In relation to natural resources and the coastal environment, the Minister of Conservation;*
- 4. In relation to sites or areas of significance to Māori, Poutini Ngāi Tahu; and*
- 5. In relation to a rule which addresses reverse sensitivity effects, the operator of the activity which is protected by the rule from such effects.*

25. WCF&G is the statutory entity with responsibility for the sports fish and gamebird resources of the West Coast.

26. As described in the evidence of Mr Kelly, WCF&G is established and operates under the requirements of the Conservation Act. It reports to the Minister of Conservation, and is statutorily responsible for the management of the sports fish and gamebird resource on the Coast.

27. WCF&G seek that the list on page 18 be amended by adding, “In relation to the habitats of sports fish or game birds, the West Coast Fish and Game Council.”

28. The s 42A report writers response to this submission point is as follows.<sup>10</sup>

*The West Coast Fish and Game Council (S302.001) seek that they be recognised as being an entity that should be given specific consideration when deciding whether any person is affected. There is not a specific section of the Plan that identifies who might be affected parties, as this is decided in relation to individual resource consent. The Plan highlights only that in relation to Statutory Acknowledgement Areas, and due to the Treaty of Waitangi relationship, Ngāi Tahu are affected parties in relation to activities in this area. While the West Coast Fish and Game Council has an important role, which is supported by statute, there are many other organisations which have the potential to be affected parties in different circumstances. I therefore do not consider it appropriate to specifically list just the West Coast Fish and Game Council as a potentially affected party in relation to certain areas.*

29. For the report writer to state “There is not a specific section of the Plan that identifies who might be affected parties”, is incorrect. The Introduction Section of the Notified Version of the pTTPP includes a list of entities who might be considered affected parties, at pg 18.

30. As the report writer notes, WCF&G has an important role, which is supported by statute. In that context, WCF&G’s omission from the list on pg 18 is noteworthy, and inappropriate.

31. Section 95E of the RMA requires that a consent authority must decide that a person is an affected person in relation to an activity, if the adverse effects on the person are minor or more than minor (but are not less than minor). This is not a high or onerous test.

32. Adverse effects on WCF&G can arise as a direct result of the adverse effects of proposed activities on the on the habitats of sports fish or game birds.

33. Additionally, adverse effects on WCF&G can also arise through reverse sensitivity, where development activities are proposed in close proximity to existing areas used by game bird shooters, and where those developments have the potential to give rise to conflict with hunting activities which may have been occurring at that location for generations.

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<sup>10</sup> S 42A report Topic 1, para 235.



34. Furthermore, s 7(h) of the Act requires functionaries when deciding on notification of a consent application, to have particular regard to the protection of the habitat of trout and salmon.
35. Effectively, in my submission, this requires the District Councils to give specific consideration to WCF&G, when deciding who is adversely affected, when activities have potential effects on habitats of sports fish.
36. In summary, the s 42a report writers recommendation to reject this submission point is based on an erroneous understanding of the pTTPP, and has not give due consideration, or any consideration, to the requirements of s 7(h) of the Act. That recommendation should not be accepted. The amendment sought by WCF&G is consistent with the existing structure of the introductory section of the TTPP which includes a list of entities to be given specific consideration in relation to notification decisions, and will better give effect to s 7(h) and Part 2 of the Act, thereby promoting the purpose of sustainable management.

Amend definition of conservation activities.

37. The WCF&G submission seeks an amendment to the definition of ‘Conservation Activities’, so that it is clear, and unambiguous, that activities undertaken for the purposes of enhancing the lawful utilisation of the sports fish or game bird resource are ‘conservation activities’.
38. The evidence of Mr Kelly details how the statutory management of sports fish, and game birds, is embedded within conservation legislation, in particular the Conservation Act 1987, and Wildlife Act 1953. From a legislative perspective, the management of sports fish, and game birds, is clearly a conservation activity.
39. Relevantly, the term ‘conservation’ is defined in the Conservation Act as meaning;  
*“the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.*

40. Sports fish and game bird species are naturalised species in Aotearoa New Zealand. They are a natural resource.<sup>11</sup> “All kinds” of plants and animals are a ‘natural resource’, as defined in the Conservation Act.

41. Specifically in this context, conservation includes providing for the recreational enjoyment of natural resources (such as land, sports fish, or gamebird species) by the public. Accordingly, the recreational use and enjoyment of stewardship land by anglers and hunters is a conservation value.

42. The s 42A report writers comments in relation to this submission point, demonstrate an unfortunate lack of understanding of the statutory role of Fish and Game, and the place of valued introduced species in the environment of Aotearoa New Zealand. The report writer states<sup>12</sup>

*When considering the submission of West Coast Fish and Game Council, I do not consider that the inclusion of activities to support to support sports fish and game bird resources should be part of the definition. Many sports fish species and game birds are exotic, rather than native species, and activities to support the exploitation of these resources may not always be appropriately defined as a Conservation Activity. For example, the introduction of an exotic sports fish or the promotion of it as a recreational resource could have negative impacts on other ecological values. Similarly maintaining a game bird population such as mallard ducks may be counter to efforts to protect native species such as grey duck.*

43. The district plan does not manage, or regulate the *introduction* of sports fish, or the *promotion* of sports fish as a recreational resource. These are the statutory responsibilities of the WCF&G Council, duly mandated under the Conservation Act, and authorised by the Minister of Conservation. However, the district plan does regulate a range of activities that can impact on the proper, efficient, and lawful management of the sports fish and game resource. These activities can range from the use of motorised boats on the surface of particular lakes and rivers, the taking off or landing of aircraft in particular locations, the control or management of indigenous vegetation, the creation of

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<sup>11</sup> The term “natural resources is defined in s 2 of the Conservation Act to mean, inter alia, “plants and animals of all kinds and the air, water and soil in or on which any plant or animal lives or may live ...”

<sup>12</sup> S 42A report, Topic 1, at para 343.

access tracks for habitat management or public access purposes, or the building of small temporary structures (maimai) for recreational hunting.

44. Mr Kelly's Topic 1 evidence highlights, in a practical sense, how the activities of Fish and Game are very much 'conservation activities'.
45. In my submission, Te Mana o Te Taio / The NZ Biodiversity Strategy sums up the position well.<sup>13</sup>

*Non-indigenous species are also a part of nature*

*As well as the unique biodiversity found in Aotearoa New Zealand, there are also more recent arrivals. Many species have been introduced to Aotearoa New Zealand over the last 800 years. These include livestock and crops, trees that make up the forestry industry, garden plants, animals and fish that are hunted for sport or food, and many more. Many of these species are critical to our everyday lives and to the primary sector, while others provide recreational and commercial opportunities and avenues for conservation efforts – and some are considered mahinga kai by Māori. These species are considered valued introduced species. However, a number of introduced species can threaten indigenous species, valued introduced species and ecosystems through predation, browsing, disease, competition and habitat degradation.*

*The value placed on trout provides an avenue for strong habitat conservation advocacy. Many keen trout anglers, as well as those who hunt other game species, also spend time taking part in protection and restoration projects to keep freshwater resources and wetlands healthy through involvement in community conservation groups or initiatives led by organisations such as Fish & Game New Zealand. To date, Fish & Game has secured 12 out of 15 Water Conservation Orders, including one in the Nevis River to explicitly protect the indigenous Gollum galaxias, and has also undertaken countless cases under the Resource Management Act to protect Aotearoa New Zealand's freshwater environments.*

*12.3.2 Freshwater fisheries are being managed sustainably to ensure the health and integrity of freshwater species and ecosystems while retaining cultural and recreational values, including for valued introduced species.*

46. The 12.3.2 extract is taken from Te Mana o Te Taio's 2030 goals, so corresponds closely with the timeframes of the TTPP.

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<sup>13</sup> Te Mana o Te Taio, pgs 31 – 32, and 54.

47. Non indigenous species are now part of nature in Aotearoa New Zealand, and some species such as sports fish and gamebirds are hugely valued by a considerable part of our community. Their management is a conservation activity.
48. The operative West Coast Conservation Management Strategy also emphasises the close correlation between the management of sports fish and game birds, and conservation activities. For example;<sup>14</sup>

*Recreational fishing*

*Recreational fishing for sports fish is managed by the West Coast Fish and Game Council. Every recreational fisher or angler who intends to fish for sports fish must hold a valid licence issued by a Fish and Game Council. Every fishing guide wishing to access public conservation lands and waters must hold a guiding concession under the Conservation Act 1987 (see Section 3.6.4.6).*

*Policies*

- 1. The Department will work with the West Coast Fish and Game Council in its management of sports fish goals and seek solutions to points of difference.*
- 2. Licensed anglers will be allowed access to appropriate public conservation lands and waters.*

*Recreational hunting of game birds*

*Game bird species are defined in Schedule 1 of the Wildlife Act 1953. Some of these game birds are native to New Zealand (such as the paradise shelduck and pukeko), while others are introduced species. Fish and Game New Zealand has statutory responsibility for the sport of game bird hunting. A hunting permit from the Department and valid licence issued by a Fish and Game Council are both required in order to hunt game birds in public conservation lands. Hunting guides wishing to operate in public conservation lands must hold a guiding concession under the Conservation Act 1987 (see Section 3.6.4.6).*

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<sup>14</sup> WC CMS pgs 141 – 143.

*Policies*

1. *The Department [of Conservation] will work with the West Coast Fish and Game Council to avoid or otherwise minimise any effects of game birds on absolutely protected species and populations of indigenous species.*
2. *The Department [of Conservation] should issue hunting permits to licenced game bird hunters to hunt on public conservation lands and waters where compatible with land status and protection of conservation values. Hunting dogs may only be used if they are properly trained, under the control of their handler and authorised by a hunting permit (however, dogs are not permitted within national parks).*
3. ...

49. Amendments are recommended to the definition of conservation activity, by the s 42A report writer. Those amendments are as follows;

*‘Conservation Activities’ means the use of land or buildings for any activity undertaken for the purposes of protecting and/or enhancing the natural, historic and/or ecological values of a natural or historic resource. It includes ancillary activities which assist to enhance the public’s appreciation and recreational enjoyment of the resource, including weed and pest control and the intermittent use of aircraft for conservation purposes and excludes commercial activities.*

50. WCF&G is supportive of those amendments, but considers that they do not go far enough, and that further amendments should be made. The additional amendments sought are as follows (highlighted in bold).

*‘Conservation Activities’ means the use of land or buildings for any activity undertaken for the purposes of protecting and/or enhancing the natural, historic and/or ecological values of a natural or historic resource. It includes ancillary activities which assist to enhance the public’s appreciation and recreational enjoyment of the resource, including weed and pest control, **species population management activities**, and the intermittent use of aircraft for conservation purposes and excludes commercial activities.*

51. Addition of the words ‘species population management activities’ will clarify the definition, and avoid ambiguity in relation to how WCF&G’s activities fit within the proposed definition. A number of permitted activity rules hinge of this definition. Without clarity, those rules will be void for uncertainty. It is not appropriate for the application of permitted activity rules to be dependent on a vague and ambiguous definition, or an interpretation of conservation activities which ignores the statutory and

regulatory scheme whereby sports fish and game bird resources are administered by and through conservation legislation.

## **CONCLUSION**

52. WCF&G's submission is broadly supportive of the thrust of the pTTPP, subject to the pTTPP appropriately recognising and providing for the role of WCF&G in managing the sustainable utilisation of the considerable sports fish and game bird resources of the three districts. There are significant values associated with both the sports fishery and game bird resources of the West Coast, whether viewed at international, national, regional or district levels of assessment. The West Coast sports fishery provides an important contribution to the West Coast economy, bringing in external revenue, particularly to more remote parts of the rural community. And there is significant opportunity to grow that economic contribution over the life of the TTPP provided the sports fish and game resource is able to be sustainably managed, and the TTPP does not frustrate or hinder WCF&G in carrying out its statutory role.

**Continued Over**

53. The specific further relief that WCF&G seeks in relation to Topic 1 is;

Amend the list on pg 18 of the Introductory Section, by adding “**In relation to the habitats of sports fish or game birds, the West Coast Fish and Game Council**” to the list of entities to be specifically considered when deciding who is an affected party.

Amend the definition of Conservation Activities, as follows;<sup>15</sup>

*“Conservation Activities’ means the use of land or buildings for any activity undertaken for the purposes of protecting and/or enhancing the natural, historic and/or ecological values of a natural or historic resource. It includes ancillary activities which assist to enhance the public’s appreciation and recreational enjoyment of the resource, including weed and pest control, species population management activities, and the intermittent use of aircraft for conservation purposes and excludes commercial activities.”*



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12 October 2023

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<sup>15</sup> Amended relief is without prejudice to the relief sought in original submission, if this amended relief is not granted.