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**SUBMISSION ON THE IMPLEMENTATION OF THE ENVIRONMENT CHAPTER OF THE NZ-UK FREE
TRADE AGREEMENT**

on behalf of

**THE ENVIRONMENTAL DEFENCE SOCIETY, ROYAL FOREST & BIRD PROTECTION SOCIETY, WWF-NEW
ZEALAND, GREENPEACE AOTEAROA & PURE ADVANTAGE**

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To:

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Introduction

1. This is a joint submission to the Environment and Climate Sub-Committee (**Sub-Committee**) on the Implementation of the Environment Chapter of the NZ-UK Free Trade Agreement (**FTA**) on behalf of the Environmental Defence Society (**EDS**), Royal Forest & Bird Protection Society (**F&B**), WWF-New Zealand (**WWF-New Zealand**), Greenpeace Aotearoa (**GP**) and Pure Advantage (together, 'we').
2. EDS is a not-for-profit, environmental non-governmental organisation. It was established in 1971 and seeks to improve environmental outcomes in Aotearoa New Zealand through law and policy change. EDS has extensive experience advocating for the protection of New Zealand's indigenous biodiversity and freshwater health.
3. WWF-New Zealand is a not-for-profit, environmental non-government organisation, and part of the international environmental organisation WWF (World Wide Fund for Nature). WWF is the world's leading conservation organisation, and is active in over one hundred countries and has more than five million supporters globally. Its mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature. It brings together individuals, communities, businesses, and government to develop and implement innovative, evidence-based solutions.
4. Globally WWF has been a leading voice on the development of tools and approaches to support a nature-positive future, particularly through the negotiation of the Kunming-Montreal Global Biodiversity Framework, as a co-founder of the Taskforce on Nature-related Financial Disclosures, and as a member and convenor of the Nature Positive Initiative.¹ In New Zealand, WWF-New Zealand advocates for the establishment of the enabling conditions required to support our domestic transition to a nature-positive future, and supports the uptake of nature-positive practice by industry with tools like the WWF Biodiversity Risk Filter.²
5. Forest & Bird, also known by its formal name as the Royal Forest and Bird Protection Society of New Zealand, is an environmental organisation specialising in the protection and conservation of

¹ <https://www.naturepositive.org/news>

² <https://riskfilter.org/biodiversity/home>

New Zealand's indigenous flora and fauna and unique wild places and natural ecosystems. It is New Zealand's largest conservation organisation and has just celebrated its 100 year anniversary.

6. Greenpeace Aotearoa is an independent campaigning organisation. We use peaceful, creative confrontation to expose global environmental problems, and develop solutions for a green and peaceful future. Our goal is to ensure the ability of the earth to nurture life in all its diversity. That means we want to protect biodiversity in all its forms, prevent pollution and abuse of the earth's ocean, land, air, and freshwater, end all nuclear threats, and promote peace, global disarmament and non-violence. Greenpeace recognises Te Tiriti o Waitangi signed in Te Reo Māori on 6 February 1840 as the foundation for the relationship between the Crown (and so the New Zealand Government) and the indigenous hapū of Aotearoa. Greenpeace recognises that Te Tiriti o Waitangi affirmed the sovereignty of tangata whenua.
7. Pure Advantage is a registered charity led by business leaders and supported by a collective of researchers and writers who investigate, communicate and promote opportunities for Aotearoa New Zealand to fulfil its potential for green growth.
8. WWF and Greenpeace have a presence in both parties to the FTA via WWF-New Zealand and WWF-UK and Greenpeace Aotearoa and Greenpeace UK and are interested in the implementation of the FTA from the perspective of that presence in both parties. Forest & Bird is a member of the BirdLife International network of NGOs and its UK partner is the Royal Society for the Protection of Birds and so has an interest in implementation of the FTA from its own perspective and also from a BirdLife network perspective.

Summary of submission

9. Chapter 22 of the FTA outlines the commitments made by New Zealand and the United Kingdom (**Parties**) in areas such as climate change, sustainable fisheries, conservation of biodiversity, sustainable agriculture, deforestation and the transition to clean energy. It affirms their commitments to multilateral environmental agreements (Art 22.5(2) and Art 22.6(2)), including the Paris Climate Change Agreement and the Convention on Biological Diversity, acknowledging the Parties' pivotal roles in addressing climate change and safeguarding biodiversity.
10. We submit that the actions of New Zealand's recently elected coalition Government are inconsistent with its obligations under the FTA, or that it is otherwise failing to carry out its obligations under the agreement. These breaches are set to continue with the Government's signalled changes to environmental law and policy.
11. The New Zealand Government has repealed key environmental Acts under urgency and intends to replace and amend evidence-based national policies that were collaboratively designed to protect nature. It is proposing law that will enable Ministers to unilaterally approve development and infrastructure projects with uncertain environmental safeguards. It has stopped a review of New Zealand's key emissions reduction tool which would have incentivised gross emissions reductions. It has scrapped several emission reductions and clean energy schemes and redirected emissions reductions funding to tax cuts. It plans to exploit the oceans and has failed to implement commitments under international agreements to protect ecologically sensitive seamounts from damaging bottom contact fishing methods.
12. In combination, the New Zealand Government's climate change and environmental law and policy changes, and those set to come, constitute a 'war on nature'. We submit that the Government's agenda to 'cut red tape' for industry and the primary sector is to give New Zealand

producers a market advantage and enhance New Zealand's export competitiveness at the expense of the climate and the environment. In short, it is creating an implicit subsidy for New Zealand exports.

13. This submission details the following obligations in Chapter 22 that we consider the New Zealand Government's actions are inconsistent with or are failing to meet:
 - Art 22.4 Commitment to environmental protection
 - Art 22.6 Commitment to addressing climate change with carbon pricing
 - Art 22.8 Commitment to reforming fossil fuel subsidies and transition to clean energy
 - Art 22.9 Commitment to sustainable fisheries
 - Art 22.10 Commitment to promote sustainable agriculture
 - Art 22.12 Commitment to conserve biological diversity
14. Consequently, we ask that the Sub-Committee report to the Joint Committee that the New Zealand Government is not acting consistently with the obligations of the FTA or is otherwise failing to carry out its obligations therein.
15. We also note that the consultation offered to date in relation to the adoption of new policies and legislation fails to meet the expectations laid out in Chapter 29, including the requirements for consultation in Art 29.2 and 29.5.

Background comment and context of the development of the FTA

16. The FTA presents a significant opportunity for New Zealand to secure free trade deals with the UK. The agreement allows for the export of a diverse range of products free from customs duties and, over time, facilitates the liberalisation of other products. We strongly support New Zealand's trade relationships, recognising that they are a fundamental aspect of New Zealand's culture and critical to the national economy.
17. The FTA sets high standards to safeguard the interests of both countries. It is grounded in the key principles of *Trade for All*, emphasising economic sustainable development while taking into account the impact on the environment.³ Inclusion of protections for New Zealand's water, climate change mitigation and enhancement of biodiversity were key themes in the public submissions on the proposal to create a *Trade for All* policy. Notably, 69% of total respondents highlighted that commitments to environmental and labour standards are of utmost importance to New Zealand's trade agreements.⁴
18. The FTA contains one of the most far-reaching Trade and Environment chapter New Zealand has ever negotiated, including commitments to take steps to eliminate fossil fuel subsidies, promote sustainable agriculture and address climate change.⁵ It includes clear obligations that the Parties must comply with. The commitments canvassed in this submission all use the directive term "shall", which indicates a mandatory requirement to be consistent with or carry out the obligation.

³ New Zealand Foreign Affairs and Trade, *Trade and Sustainable Development*, <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Trade-and-sustainable-development-0.pdf>

⁴ Public Voice, *Trade for All - Summary of feedback*, December 2018, at 24 and 33, <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-Summary-of-Feedback.pdf>

⁵ New Zealand Foreign Affairs and Trade New Zealand-United Kingdom FTA Key Outcomes, at 10

19. Consumer preferences and supplier climate change reporting obligations (including of Scope 2 and 3 emissions) are driving these environmental obligations.
20. It is essential that the New Zealand Government complies with its obligations set out in the FTA, by retaining and implementing New Zealand's environmental laws and policies that have been designed to protect nature, including those relating to freshwater, indigenous biodiversity and climate change.

Overview of New Zealand Government's agenda

21. Since its formation in November 2023, New Zealand's new coalition Government's agenda has been one of reducing environmental protection and climate action to instead encourage trade and increase New Zealand's exports markets, including to the United Kingdom.
22. The plethora of environmental and climate law and policy changes already undertaken or proposed by the New Zealand Government are detailed in this submission. In summary, they include:
 - (a) Repealing the country's most recent environmental laws and returning to a former resource management law that is widely accepted to no longer be achieving sustainable environmental outcomes or adequately facilitating development.
 - (b) Pausing implementation of national policy on the protection of indigenous biodiversity and limiting its future application.
 - (c) Repealing and replacing national policy on freshwater management, including by removing the priority provided to freshwater ecological health in favour of commercial uses.
 - (d) Signaling the introduction of a law which will enable Ministers to green-light individual infrastructure and development projects, including export industries such as mining and aquaculture, with minimal environmental safeguards.
 - (e) Ceasing a review of New Zealand's main emissions reduction tool, the Emissions Trading Scheme (ETS), which will enable continued reliance on offsetting and planting exotic carbon forests to meet climate change commitments.
 - (f) Reversing New Zealand's ban on offshore oil and gas exploration and potentially providing an undefined government guarantee to explorers.
 - (g) Repealing the Clean Car Discount for low emission vehicles and applying road user charges on electric vehicles and plug-in hybrids.
 - (h) Stopping work on several public transport initiatives.
 - (i) Redirecting funds for climate mitigation into tax relief.
 - (j) Removing aquaculture regulations.
 - (k) Failing to implement international commitments to limit the environmental impact of bottom trawling in the South Pacific.
 - (l) Delaying pricing agricultural emissions and reviewing methane targets based on dubious 'science'.
23. Many of these changes are an unapologetic attempt by the New Zealand Government to expand the value of domestic exports by reducing barriers to higher production. In essence, the ability to make and sell more low-cost products (lamb and dairy particularly to the UK market).

24. For example, the newly elected Prime Minister campaigned on ‘turbocharging’ the primary sector⁶ and boosting growth through trade.⁷ The National Party’s ‘Getting back to farming’ pre-election policy (much of which has been retained post-election) explicitly seeks to deregulate agricultural activities to increase productivity and consequently exports.⁸
25. Since forming Government, Minister of Regional Development and Oceans and Fisheries, Hon Shane Jones, regularly comments on his desire to expand the New Zealand economy at the expense of the environment and climate change action:

*“This time around as the Fisheries Minister I’m keen to ensure that number one, we’re looking after our own people, looking after jobs and opportunities for economic development to benefit New Zealand”.*⁹

*“Now of course, the perfidy didn’t just stop with ETS. We’ve got the significant natural areas; we’ve got the national policy statements pertaining to biodiversity—they’re gone. They will no longer have any legal impact in our rural economy, on our farmers, on our landowners—squashing the bejesus out of people’s property rights. **Similarly, we will no longer have onerous, unworkable water regulations; not only unworkable, but completely destructive of the viability of the very industry that is our key contributor in terms of export earnings.** ... I am the Minister for Resources. I look forward to leading the debate changing the law, enabling gas and oil exploration, wealth development, to take place yet again in New Zealand”.*¹⁰

26. The New Zealand Government’s environmental and climate law and policy changes amount to using the commons / public good to subsidise the primary sector. For example, for more than three decades the Government’s failure to adequately manage the impact of agricultural intensification (dairying particularly) on New Zealand’s freshwater bodies has subsidised farmers by allowing them to externalise their environmental effects. This is a price that the New Zealand public is now paying for through significant freshwater degradation. National policy direction on freshwater management is an opportunity to turn that around and require farmers to internalise their environmental effects. However, the current Government is proposing to repeal it before it can be implemented.
27. The Government has also signalled an unwillingness to regulate to reduce the ecological footprint of commercial fisheries in New Zealand (including by failing to require best practice bycatch mitigation and delaying transparency measures because of cost concerns raised by industry). This amounts to efforts to enable New Zealand commercial fisheries to expand their export of low-cost seafood to the UK market.

Art 22.4 Commitment to environmental protection

28. Under Art 22.4(2) each Party “shall” endeavour to ensure that its environmental law and policies provide for and encourage a high level of environmental protection and to continue to improve its

⁶ <https://www.stuff.co.nz/marlborough-express/133087645/luxon-gifted-national-party-wine-as-trade-policy-announced-in-marlborough>

⁷ <https://www.rnz.co.nz/news/political/499827/watch-christopher-luxon-holds-media-briefing-on-trade-policy>

⁸ New Zealand National Party, *Getting back to farming*, https://www.national.org.nz/getting_back_to_farming

⁹ <https://newsroom.co.nz/2024/02/05/govt-kills-proposed-south-pacific-trawling-restrictions/>

¹⁰ Jones, 12 December 2023, ‘Parliamentary Debates (Hansard) for Address in Reply Debate, *New Zealand Parliamentary Debates*, 772 https://www.parliament.nz/mi/pb/hansard-debates/rhr/document/HansS_20231212_057225000/jones-shane

respective levels of environmental protection. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, *the parties “shall not” waive or otherwise derogate from their environmental laws in a manner that weakens or reduces the protection afforded in that law in order to encourage trade or investment (Art 22.4(3)).*

29. We submit that the New Zealand Government’s actions are clearly inconsistent with its obligations in Art 22.4 for the following reasons:

(a) The Government has repealed the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023

Within weeks of taking office, the Government repealed the Natural and Built Environment Act 2023 (**NBEA**) and the Strategic Planning Act 2023 (**SPA**) under urgency and without formal public consultation. The result has meant a return to the Resource Management Act 1991 (**RMA**) as the principal law governing environmental protection and development in New Zealand.

There is broad consensus across a wide range of stakeholders, industry sectors, environmental organisations and Māori that the RMA has, amongst other things, failed to protect the environment and promote a low-carbon economy. Its effects-based regime, coupled with the inability to manage cumulative effects, has resulted in the degradation of ecosystems, loss of biodiversity and ongoing deterioration in freshwater quality. This is evidenced in successive State of the Environment reports produced by the Ministry for the Environment and Stats NZ.¹¹

While the NBEA and SPA were not perfect, they represented the culmination of many years’ work, and signified a major stride forward in environmental protection.

The NBEA had key provisions that would have provided a higher level of environmental protection, including:

- A purpose that prioritised the health of the natural environment.
- A shift from managing effects to focusing on outcomes.
- The requirement to establish environmental limits, beyond which environmental harm cannot occur.
- Mandatory targets for environmental restoration and improvement.
- A stronger framework for water conservation orders.
- A clear allocation of responsibility for contaminated land.

Equally, it provided a more efficient system to enable renewable electricity projects, indispensable to speed the transition to net-zero by 2050.

The SPA was designed to work alongside the NBEA, requiring each region to develop a long-term regional spatial strategy for developing land and infrastructure, integrating growth with the protection of areas with significant environmental values.

¹¹ <https://environment.govt.nz/facts-and-science/environmental-reporting/>

Repealing both Acts is a clear failure by the Government to improve the level of environmental protection in New Zealand. Rather, it is a step backwards to a regime that is not currently fit-for-purpose.

(b) The Government plans to repeal and replace environmental policies on freshwater management and the protection of indigenous biodiversity

The Government has confirmed that it intends to repeal and replace the National Policy Statement for Freshwater Management 2020 (**NPS FM**) and the National Policy Statement for Indigenous Biodiversity 2023 (**NPS IB**). Deregulating freshwater management and the protection of indigenous biodiversity will make it easier for the primary sector to produce more and cheaper exports whilst externalising their environmental effects.

National Policy Standard for Freshwater Management 2020

The NPS FM sets a national framework for how freshwater is to be managed across the country. It is founded on the principle of Te Mana o te Wai, which establishes a hierarchy whereby the health and well-being of water bodies and freshwater ecosystems is prioritised above the needs of people and commercial enterprises.

Recent reports have found that the state of New Zealand's freshwater system is under significant pressure.^{12 13} Land-based human activities (agriculture, forestry and urban expansion) are contributing to excess nutrients and sediment in waterways. This has severely impacted indigenous freshwater fish and birds with many threatened with extinction or at risk of becoming threatened. Moreover, public health has been affected by contaminants and water borne diseases in water used for recreation and drinking.

Regional councils are now in the process of implementing Te Mana o te Wai via freshwater plans. This has the potential to turn around the current state of our freshwater and the decline of freshwater species.

The Government has signalled its intention to amend the NPS FM by:

- Rebalancing Te Mana o te Wai to give greater priority to commercial freshwater uses.
- Replacing the National Environmental Standards for Freshwater.
- Allowing councils more flexibility in how they meet environmental limits.

These changes will set freshwater management back decades and ultimately result in more pollution for longer.

National Policy Statement for Indigenous Biodiversity 2023

The NPS IB was promulgated after a long process of stakeholder engagement and compromise, including with farming interests. Key to its implementation is identification of Significant Natural Areas (SNAs) which are areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Aotearoa New Zealand has the highest proportion of threatened species in the world, with around 4,000 species considered threatened with extinction or at risk of becoming threatened. The vast majority of these species are endemic to New Zealand, meaning that if they are lost here, they will be lost forever.

The main drivers for biodiversity losses are decline and fragmentation of natural habitats due to land use change and intensification through urbanisation or agricultural development and impact of introduced species.

Much of our remaining native biodiversity is found on private land. Identifying SNAs is critical for safeguarding species in these areas as adverse effects on SNAs must be avoided.

The Government has signalled its intention to:

- Pause implementation of the NPS IB and its requirement to map SNAs.
- Undertake a broad review of the NPS IB.

These changes will weaken protection of indigenous biodiversity, particularly on private land.

¹² Ministry for the Environment and Stats NZ, *Our freshwater 2023*, April 2023

¹³ LAWA, *Freshwater health monitoring results from all regions of New Zealand*, LAWA River Health – National Picture 2023, 24 October 2023 www.lawa.org.nz/explore-data/river-quality/ and LAWA Lake Health – National Picture 2023 www.org.nz/explore-data/lakes/

We have expressed our opposition to these intentions.¹⁴ Regulation is essential to protect the environment from degradation. Both the NPS FM and the NPS IB were developed to provide a higher level of protection to two environmental domains that are currently in critical condition: freshwater and indigenous biodiversity.

- (c) The Government has signalled that it will shortly introduce new a fast-track consenting law which will enable Ministers to unilaterally approve development and infrastructure, with as yet unknown environmental safeguards and limited public engagement. That includes mining and aquaculture projects which are being progressed to grow New Zealand's economy.
- (d) The Government does not have any plans to improve levels of environmental protection; quite the opposite as detailed in this submission.

Art 22.6 Commitment to addressing climate change with carbon pricing

- 30. Under Art 22.6(2c), in pursuit of limiting average global temperature increase to 1.5°C and achieving net zero by 2050, the Parties *"shall" promote carbon pricing as an effective policy tool for reducing greenhouse gas emissions efficiently.*
- 31. The ETS is New Zealand's primary tool for mitigating greenhouse gas emissions. New Zealander's Prime Minister has repeatedly stated that he wants the ETS to do more of the 'heavy lifting' in terms of achieving emissions reductions. However, current ETS settings are not modelled to achieve significant gross emission reductions, largely because there is no cap on removals. Its current settings prioritise net emissions reductions over gross emissions reductions and enable unlimited offsetting to achieve emissions reductions targets.
- 32. To address this issue, New Zealand's independent Climate Change Commission recommended a review of the ETS which the previous Government initiated and we submitted on.¹⁵ That review proposed changes to the ETS to cap removals, which would drive greater gross emissions reductions. The current Government has stopped that review.¹⁶
- 33. Without amendment, the ETS is predicted to flood the market with removals credits by the mid 2030s, thereby tanking the carbon price and removing any incentive to reduce gross emissions. No alternative process has been initiated by the current Government to address this issue.
- 34. We submit that the New Zealand Government's actions are therefore inconsistent with its obligations in Art 22.6.

¹⁴ See, Environmental Defence Society, *Briefing for Incoming Minister for the Environment and Minister for Resource Management Reform*, December 2023, https://eds.org.nz/wp-content/uploads/2023/12/EDS-Briefing-Doc_Environment.pdf, Environmental Defence Society, *Briefing for the Incoming Minister of Conservation*, December 2023, https://eds.org.nz/wp-content/uploads/2023/12/EDS-Briefing-Doc_Conservation.pdf, media releases see, <https://newsroom.co.nz/2023/12/01/new-government-crashes-environment/> and <https://newsroom.co.nz/2023/12/20/more-pollution-for-longer-govt-rebalances-towards-commerce/>

¹⁵ Climate Change Commission, *2023 Advice on the direction of policy for the Government's second emissions reduction plan*, 22 November 2023, at 171

¹⁶ <https://consult.environment.govt.nz/climate/nzets-review/#:~:text=From%2019%20June%20to%2011,ETS%20review%20has%20now%20ceased.>

Art 22.8 Commitment to reforming fossil fuel subsidies and transition to clean energy

35. Under Art 22.8(2) each Party “shall” take steps to eliminate harmful fossil fuel subsidies and encourage the transition to clean energy, including by ending direct financial support.
36. We submit that the New Zealand Government’s actions are inconsistent with its obligations in Art 22.8 because:

- (a) The Government has repealed the country’s current ban on offshore oil and gas exploration.

Increasing oil and gas production is at odds with action to reduce greenhouse gas emissions and limit warming to 1.5°C. The scientific evidence is unequivocal - reducing the use of fossil fuels is imperative if we are to limit global temperature to 1.5°C above pre-industrial levels.

Furthermore, reversing the ban on oil and gas exploration will slow New Zealand’s transition away from fossil fuels and make it increasingly difficult to achieve net zero by 2050. The New Zealand Climate Change Commission has emphasised that achieving the country’s net zero 2050 target will require a steady transformation of the energy system, where fossil fuel use is phased down and the supply and efficient use of renewable energy is maximised.¹⁷

Some contend that more gas is required as a ‘transition fuel’. We refute that assertion for the reasons set out in EDS’s recent submission on the previous Government’s Gas Transitions Plan.¹⁸

- (b) The Government is considering providing government guarantees to the oil and gas sector to achieve its goal of reviving the sector.¹⁹
- (c) The Government has repealed the ‘Clean Car Discount’²⁰ which subsidised the purchase of electric vehicles. Electric and hybrid car sales have since decreased.²¹ The discount scheme was predicted to save between 1.1 and 2.2 million tonnes of carbon dioxide emissions from now until 2050,²² which will need to be made up somehow by other emission reduction policies if New Zealand is to meet its net zero by 2050 goals.

¹⁷ Climate Change Commission, *2023 Advice on the direction of policy for the Government’s second emissions reduction plan*, 22 November 2023, at 293

¹⁸ Environmental Defence Society, *Submission on the Gas Transitions Plan Issues Paper*, 2023, <https://eds.org.nz/wp-content/uploads/2023/11/EDS-Submission-.pdf>

¹⁹ <https://businessdesk.co.nz/article/policy/shane-jones-explores-guarantees-for-gas-sector>

²⁰ B, Simeon, *Bill to repeal ‘Ute Tax’ passed*, 14 December 2023, <https://www.beehive.govt.nz/release/bill-repeal-%E2%80%98ute-tax%E2%80%99-passed>

²¹ <https://newsroom.co.nz/2024/02/07/ev-sales-plummet-after-clean-car-discount-scrapped/>; <https://www.1news.co.nz/2024/02/09/electric-hybrid-vehicle-numbers-drop-after-clean-car-discount-scrapped/>

²² <https://www.1news.co.nz/2024/01/19/scrapping-clean-car-discount-will-cost-twice-what-it-saves-transport-officials/>; <https://newsroom.co.nz/2024/01/18/ending-ev-subsidies-equal-to-extra-year-of-huntly-coal-burning/>

- (d) The Government has introduced Road User Charges for light electric vehicles and plug-in hybrids,²³ further challenging the transition of New Zealand’s vehicle fleet away from fossil fuels.
- (e) The Government has cancelled public transport projects promulgated under the previous Government that were well into development phases, including Auckland’s Light Rail project and the Let’s Get Wellington Moving project, to “reduce expenditure on cycleways”.²⁴
- (f) The Government has determined to defund the Climate Emergency Response Fund (CERF) to underwrite tax relief.²⁵ CERF funds the implementation of New Zealand’s Emissions Reduction Plan by supporting a programme of work across government and in cooperation in industry. The defunding of at least \$2.5b of emissions reduction work strongly suggests this Government is resiling from New Zealand’s Nationally Determined Contributions under the Paris Agreement and wider climate commitments.
- (g) The Government has moved to actively encourage mining activities in New Zealand, including environmentally damaging activities on public conservation land. It has committed to changing the Crown Minerals Act so that the Government will actively ‘promote’ prospecting, exploration, and mining of minerals like fossil fuels. This means that New Zealand will have a net zero goal in one law and a requirement in another to promote mining fossil fuels that takes us away from that goal.

Art 22.9 Commitment to sustainable fisheries

37. Under Art 22.9(4) each Party “shall” operate its fisheries management system to prevent overfishing, reduce by-catch, promote recovery of overfished stocks and minimise adverse impacts on marine ecosystems. The management system “shall” be based on best scientific evidence, the precautionary approach, an ecosystem-based system and internationally recognised best practice.

38. We submit that the New Zealand Government’s actions are inconsistent with its obligations in Art 22.9 because:

- (a) Over 90% of New Zealand’s seafood is exported. With a view to enabling further growth in seafood exports to key markets, including the United Kingdom, the New Zealand Government has committed to removing barriers to unlimited potential of commercial fisheries.
- (b) The National and New Zealand First Coalition Agreement (2023) signals the Government’s clear intent to remove regulations that “impede the productivity and enormous potential of the seafood section.”²⁶ In some cases, this is expected to come at the expense of marine mammals and seabirds. In New Zealand, 90% of seabirds and 30% of marine mammals are threatened or at risk of extinction.

²³ <https://www.rnz.co.nz/news/political/506844/evs-plug-in-hybrids-to-pay-road-user-charges-from-1-april>

²⁴ Coalition Agreement between the National Party and the New Zealand First Party <https://www.nzfirst.nz/coalition-agreement>

²⁵ <https://www.rnz.co.nz/news/political/496899/greens-act-cry-foul-over-national-s-climate-dividend>

²⁶ Coalition Agreement between the National Party and the New Zealand First Party <https://www.nzfirst.nz/coalition-agreement>

For example, Government Ministers have repeatedly intimated that an open ocean salmon farm near Stewart Island/Rakiura should be approved, notwithstanding that consent for it was declined by an independent panel of experts who determined that the proposal raised significant adverse effects on protected marine species.²⁷ It is our understanding that this proposal may even be listed as an approved project in the Government's incoming 'fast-track' consenting Bill discussed above.²⁸

- (c) The Government recently blocked the implementation of a conservation measure to restrict bottom trawling in the South Pacific, despite the South Pacific Regional Fisheries Management Organisation having taken the decision on the measure by consensus in 2023.²⁹
- (d) The Government still does not require the application of all three best practice seabird bycatch mitigation steps prescribed under the Agreement on the Conservation of Albatrosses and Petrels in its domestic fisheries, even though 90% of New Zealand's seabirds – many of which are endemic – are at risk of extinction.

Art 22.10 Commitment to promote sustainable agriculture

39. Under Art 22.10(3), the Parties *"shall" take measures to promote efforts to reduce greenhouse gas emissions from agricultural production and promote sustainable agriculture and associated trade.*

40. We submit that the New Zealand Government's actions are inconsistent with its obligations in Art 22.10 because:

- (a) The Government has decided not to price agricultural emissions until 2030, despite agricultural emissions accounting for 49% of New Zealand's emissions. It is the only sector in New Zealand that does not account for its emissions.
- (b) The Government has undertaken to review the methane science and targets in 2024 for consistency with no additional warming from agricultural methane emissions.

'No additional warming' is not a suitable target for agricultural methane. It is a misreading of the science and economic drivers to conclude that real emissions reductions of methane are not required. They are required if New Zealand is to meet its emissions reductions obligations, maintain its reputation as a good global citizen and retain market access.

In New Zealand, 91% of biogenic methane emissions are from the agricultural sector. The reduction of agricultural methane emissions is paramount for mitigating New Zealand's contribution to global warming.

²⁷ <https://www.epa.govt.nz/news-and-alerts/latest-news/hananui-aquaculture-project-fast-track-consent-declined/>

²⁸ Jones, 12 December 2023, 'Parliamentary Debates (Hansard) for Address in Reply Debate, *New Zealand Parliamentary Debates*, 772, https://www.parliament.nz/mi/pb/hansard-debates/rhr/document/HansS_20231212_057225000/jones-shane

²⁹ <https://newsroom.co.nz/2023/12/21/nz-to-propose-catching-three-years-worth-of-fish-in-one-year/>; <https://newsroom.co.nz/2024/02/01/jones-to-make-nz-jobs-no-1-to-dismay-of-ocean-conservation-allies/>; <https://newsroom.co.nz/2024/02/05/govt-kills-proposed-south-pacific-trawling-restrictions/>

If the agricultural sector does not pull its weight, that burden will fall on other sectors of the economy and on taxpayers. It would be a massive subsidy.

- (c) As detailed above, the Government intends to repeal and replace national direction on freshwater management which would have (if left to be implemented) required transformation of New Zealand's agriculture sector, towards more sustainable practices.

Over the last three decades, New Zealand has witnessed a surge in agricultural intensification. As water underpins primary production, especially dairying, this land use change has significantly impacted the health of the country's rivers, lakes, aquifers, and freshwater species. Regulation is required to address these historical issues but it is being cut for export and trade benefits.

Article 22.12 Commitment to conserve biological diversity

41. Under Art 22.12, the Parties "shall":

- Take appropriate measures to protect and conserve native wild fauna and flora that it has identified to be at risk ... including by taking measures to conserve the ecological integrity of specially protected natural areas.
- Promote and encourage the conservation and sustainable use of biodiversity.
- Promote the conservation of marine ecosystems and species, including those in the areas beyond national jurisdiction.

42. We submit that the New Zealand Government's actions are inconsistent with its obligations in Art 22.12 because:

- (a) The Government repealed the NBEA which included biophysical (ecological) bottom lines which development had to adhere to.
- (b) The Government is proposing to pause implementation of the NPS IB and review it. The NPS IB is crucial policy that responds to New Zealand's biodiversity loss. It provides direction to councils to map areas of ecological significance and manage the adverse effects of human activities on flora and fauna within these areas, thereby protecting and restoring indigenous biodiversity. The NPS IB has a particular focus on protecting and avoiding adverse effects on species listed as Threatened or At Risk in New Zealand's Threat Classification System. New Zealand's flora and fauna is unique and highly endemic and some 4,000 species are threatened or at risk across multiple domains. Without the NPS IB, protection of indigenous flora and fauna on private land will be *ad hoc*, patchy and ineffective.
- (c) The Government's decision to review and replace the NPS FM and change the hierarchy of obligations comprised in Te Mana o te Wai undermines the protection of freshwater indigenous biodiversity. The NPS FM requires limits on contaminant loading and water takes to ensure that water bodies can support healthy ecosystems. This includes providing appropriate habitat of indigenous freshwater species and ensuring there is an abundance and diversity of biota living in the water body, including microbes, invertebrates, plants, fish and birds.

- (d) The Government blocked the implementation of a decision taken by consensus at an international fisheries forum to protect at least 70% of ecologically vulnerable seamounts in the South Pacific from the destructive impact of bottom trawling.

Transparency

43. Chapter 29 (Transparency) of the FTA contains provisions that commit both parties to the promotion of transparency in government decision-making, and encourage the participation of the private sector and civil society in these pursuits. We consider that the provisions of this chapter have been infringed by New Zealand's changes to environmental and climate law and policy.
44. First, the Government has suspended Regulatory Impact Statements (**RIS**) for some proposals in its 100-day plan, meaning the changes will not be subject to proper process before becoming law. For other proposals in the 100-day plan, where RISs are preserved, their quality assurance requirement has been removed.
45. The purpose of the RIS system is to ensure Ministers and the wider public are aware of key consequences of proposed changes, including costs, benefits and other impacts. This shift has meant that the repeal of the NBEA and SPA was not subject to an appropriate level of regulatory scrutiny.
46. Second, the pace at which the Government is seeking to action its programme of environmental deregulation is such that there is insufficient opportunity for meaningful participation during the genesis of the policy by the private sector or civil society (for example, the proposed fast-track consenting law).
47. The consequence of these two actions by the New Zealand Government is that the requirements of Art 29.2.2 to publish at an early-stage consultation documentation to enable the UK Government and any interested parties to have a reasonable opportunity to comment has not been fulfilled for the removal of the electrical vehicle incentive, the removal of the Auckland regional fuel tax or for changes to domestic planning law.
48. Where a party seeks to make changes to policy, law or regulations that affect the operation of environmental provisions of the FTA there should be sufficient time allowed to enable the other party to consult the civil society organisations of the other party on the implications of the change. Where these changes are likely to result in an increase in the externalisation of the environmental cost of production the party seeking to make changes to law, policy and regulation should allow sufficient time to also seek input from companies with a presence in the other party that may be adversely affected by unfair competition arising from lowered environmental standards. This is particularly important to enable an effective and appropriate implementation of Art 19.5 on consultation between parties.

Repercussions of failing to uphold commitments

49. Failure to comply with obligations of the FTA can lead to various consequences for the Parties, from procedural issues to potential impacts on trade relations between countries.
50. Should the Parties fail to fulfill their obligations and commitments, the Joint Committee will take the necessary actions to address the differences between them, including resorting to Dispute

Settlement procedures. The Environment Chapter is enforceable through the FTA's dispute settlement provisions.

51. Failure to comply with the FTA not only poses the risk of Dispute Settlement but also has the potential to create diplomatic tensions, prompt legal action and lead to economic consequences. Both Parties must uphold their environmental obligations to avoid the risk of damaging trade relationships, eroding trust among market participants and citizens, and calling into question the Parties' international reputation.

Conclusion

52. For the reasons set out in this submission, we submit that the New Zealand Government is not acting consistently with the obligations of the FTA or is otherwise failing to carry out its obligations therein, specifically in relation to Articles 22.4, 22.6, 22.8, 22.9, 22.10 and 22.12. We ask that the Sub-Committee report to the Joint Committee accordingly. If there are opportunities to be heard in support of this submission, we seek to do so.