



## ENVIRONMENT AND CONSERVATION ORGANISATIONS OF NZ INC.

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### **Submission on National fisheries plans for highly migratory species and deepwater fisheries**

## **1.0 Introduction**

The Environment and Conservation Organisations of NZ Inc (ECO) is the national alliance of about 45 groups with a concern for the environment and conservation. Some of these member bodies are themselves federations or multiple groups. Not all are conservation or environmental groups.

ECO has followed issues of conservation and environmental management and practice, law and policy since its formation in 1971-2 and we have member groups from all around New Zealand.

## **2.0 Key Submissions**

### **2.1 General Comments**

ECO is concerned that much of the key implementation details is in the operational plan which is developed mainly by industry and are in the annual operating plans. It is also difficult to assess whether the operational plans are meeting objectives in the management plans.

The plans themselves lack time based targets or goals which means that it is difficult to assess whether the plans are delivering on the issues. For example, over 20 years after the Fisheries Act was passed there is still no agreed consulted definition from officials on the “habitats of particular significance for fisheries management”. Making commitments to protect those habitats is a hollow commitment if it is an empty set.

There are considerable differences in the approach of the two plans and the HMS plan provides more details and objectives than the Deepwater Plan. ECO would support consistency of approach between the two plans. For example in the objectives:

- ) The HMS plan refers to “Protect, maintain and enhance fisheries habitat” while the deepwater plan refers to “protection of habitat of particular significance for fisheries management”. The Deepwater plan being closer to section 9(c) of the Fisheries Act;
- ) The Deepwater plan refers to “maintenance of biological diversity” there is no equivalent in the HMS. The Deepwater plan is closest to the requirements of section 9(b) of the Fisheries Act.
- ) The deepwater plan refers to the “needs of future generations” while there is no reference to it in the HMS plan. The Deepwater plan is closest to the requirements of section 8(2) of the Fisheries Act.
- ) The references to “associated and dependent species” are in reference to an “ecosystem approach” in the HMS and in regard to “avoid or minimise adverse effects” in the deepwater plan. The assumption in both is that will result in ensuring their “long-term viability”.

ECO is concerned that the plans are weak on implementation of:

- ) National Plans of Action on Seabirds – the HMS plan “support the objectives of the NPOA” in contrast the deepwater plan only notes them;
- ) National Plan of Action on Sharks – the HMS plan aims to “support the objectives of the NPOA”

There is also inconsistency in the approach of the Harvest Strategy. In most cases the plans use the default provisions in the harvest strategy. These include:

- ) No development of “modifications to the Harvest Strategy Standard to incorporate environmental and other considerations.”
- ) Default soft, and hard limits etc.

The strategy itself notes that” it is becoming increasingly difficult to justify stock targets less than 30-40% *B<sub>0</sub>* (or, equivalently, removing more than 60-70% of the unfished biomass).”

**Observers:** In both fisheries it is essential to achieve and retain high levels of observer coverage in the fishery. The Deepwater plan notes that “have not had sufficient observer coverage to allow for robust estimates of harvest levels for non-QMS species” (page19).

The HMS plan has a commitment to “plan observer coverage”, “specify target” and “meet target” page 24). The plan doesn’t say what that target should be (eg representative of the fishery and across seasons and areas, enable statistically robust estimates of by-catch with a 20%CV on the estimates, and at least 20% of effort monitored).

Observer information is crucial for stock assessments and the analysis of bycatch and discards, including bycatch of threatened or protected species. Observers provide information to MPI, Research Providers, and to DOC and is reported in some circumstances to working groups and plenaries. DOC produces an annual summary of information provided by observers: MPI should do the same.

Observers independent of industry are also important for high seas information and provide verification for other countries involved in highly migratory fisheries or other high seas or straddling-stock fisheries.

It will be essential to ensure that the IEMRS system has transparent reporting, analysis and regular auditing using MPI observers as controls and comparators to ensure the system works and is providing the information that researchers, enforcement officers and others think it is.

The plans need to recognise international obligations including those under UN convention on the Law of the Sea.

## 2.2 General Comments

### 2.2.1. Deepwater Plan

Bottom Trawling:

The plan does not consider the concern internationally about bottom trawling and other damaging fishing methods, nor does it acknowledge or discuss the commitments globally to protect vulnerable marine ecosystems (VMEs). These include UNCLOS, the Fish Stocks Agreement, the UNGA resolutions and the work by the FAO.

Of particular importance are the UNGA [resolutions 71/123](#) (2016), [64/72](#) (2009), particularly paragraphs 119<sup>i</sup> and 120,<sup>ii</sup> and [resolution 66/68](#) (2011),<sup>iii</sup> as well as [resolution 61/105<sup>iv</sup>](#) (2006) and the 2008 United Nations Food and Agriculture Organisation International [Guidelines for the Management of Deep-Sea Fisheries in the High Seas \(FAO Guidelines\)](#).<sup>v</sup> This includes ensuring the sustainability of deep-sea stocks and non-target species.

MPI needs to assess cumulative impacts of trawling, including impacts on biodiversity and VMEs, and consider past impacts from bottom fishing and impacts from other sources than bottom fishing, such as from ocean acidification and climate change and take further measures to protect VMEs accordingly

This should include the use of environmental assessments to assess the impact of fishing effort and catches on the marine environment.

The objectives should focus on reducing the environmental footprint of bottom fishing and moving to other methods – adding value should be a secondary objective of any new arrangement. The objectives should be to:

- ) Provide requirements, penalties and incentives to reduce the environmental footprint of the fishing method;
- ) Protect vulnerable marine ecosystems;
- ) Avoid catching protected or threatened species.
- ) Ensure enforceability is not compromised;
- ) Require publicly reviewable environmental assessment processes and processes to ensure that these are relevant, publicly available and reviewed.

The lost opportunities are the failure of the fishing industry to develop fishing techniques that avoid bottom fishing and reduce the overall impact of bottom fishing, and use methods that

don't require trawling.

## **Habitats**

The neither of the plans have identified “habitat of protection significance for fisheries management [that] should be protected”. This is a major flaw in implementing the requirements of the 1996 Fisheries Act, over 20 years after it came into force.

The reference to the BPA should not be relevant to this plan. They protect very little in the way of areas impacted by fishing as the vast majority of the areas either where not fished or are too deep to fish. It is time the Ministry had a great focus on protecting habitats in areas and depths which are currently fished.

### **2.2.2. Highly Migratory Species Plan**

ECO doubts that the requirement on “profitability” is relevant to the plan. The requirement in the Fisheries Act is only to “provide for utilisation of fisheries resources”. This has no requirement to ensure those fisheries are profitable.

The management of fisheries must ensure sustainability which includes consideration of future generations, and avoiding, remedying and mitigating the adverse effects of fishing on the aquatic environment. Those requirements plus section 9 principles should be the broader considerations. Section 1.1 should be deleted from the plan.

The provisions in 1.1, 1.2, 1.3, 1.4 and 10.1 seem to be more relevant and appropriate to the draft International Fisheries Policy that was consulted on over 5 years ago rather than the HMS plan. The plan should be clearer on how international obligations are managed in it rather than other issues which are not strictly the consideration of the Fisheries Act.

### **2.2.3. Obligations**

#### **International Obligations Relating to fishing**

There are a number of important international obligations that need to be considered in both plans:

**UNCLOS:** While the UN Convention on the Law of the Sea has been on the principle of “optimum utilisation” the obligations in article 192 should not be forgotten. Article 192 places an unqualified obligation on States, and section 5 extends this to the Minister and ALL others covered by Section 5 to “protect and preserve the marine environment.”<sup>1</sup>

There is clear case law on the question of “take account of” and it is not a mere gesture or momentary consideration. In relation to Article 192 of UNCLOS, there is no such semantic refuge. The obligation is clear and is unqualified. Thus the marine environment must be

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<sup>1</sup> Eg - Kimbell, L A (1995) The Law of the Sea: Priorities and Responsibilities in Implementing the Convention. Part I UNCLOS: A framework for marine conservation. IUCN. 119p.

protected. It must be preserved. It must be both protected and preserved. Article 192 is given force by section 5 of the Fisheries Act and must be observed. It becomes by this route justiciable in New Zealand domestic law.

The right to exploit marine resources is contained in Article 193 but is explicitly made subject to the protection of the marine environment and is subject to article 192. There are many other obligations within UNCLOS including those of article 61 for areas in the EEZ.

#### 2.2.4 Fisheries 2030

Fisheries 2030 is inconsistent with the provisions of the Fisheries Act and should not be included in the provisions of either plans.

#### 2.2.5 Compliance

The plans are weak in their consideration of compliance and enforcement. The nearest is in regard to the NPOA on Seabirds in the HMS plan which includes “compliance actions taken in cases where breaches have been identified”.

Each plan should have a generic compliance section looking at the different compliance arrangements and compliance priorities.

### 3. GENERAL COMMENTS

#### 3.1 Deepwater Plan

##### Management Objectives of the National Deepwater Plan

##### Use Outcome

#### 1. **Ensure the deepwater and middle-depths fisheries resources are managed so as to provide for the needs of future generations**

The foreseeable needs of future generations, including intrinsic and bequest values, have not been specified. So how is MPI going to meet the needs of future generations? So when is MPI going to deliver on this commitment? A date should be set within the plan.

#### 2. **Ensure excellence in the management of New Zealand’s deepwater and middle-depth fisheries, so they are consistent with, or exceed, international best practice**

MSC is not international best practice. The MSC itself provides information that process is biased in favour of applicants and that few submissions affect the scoring or outcome of the certification.

New Zealand needs to take greater action. So what does MPI consider is international best practice? Are you going to report on it?

New Zealand could look across the Tasman or on the high seas for some approaches which maybe better international best practice. These include for example the management of new and exploratory fisheries under SPRFMO or the management of benthic impacts under SPRFMO or CCAMLR.

This includes the consideration of the use of alternative fishing methods which have a lower environmental footprint eg jigging for squid versus trawling.

### **3. Ensure effective management of deepwater and middle-depth fisheries is achieved through the availability of appropriate, accurate and robust information**

There is currently no long-term research plan for deepwater and middle-depth fisheries – this should be reinstated. There should be a process of developing a 5 to 10 year research plan and this should be developed by the end of 2017.

Observer coverage should be sufficient to provide the harvest level of non-QMS species. This should be implemented by the end of 2017.

### **4. Ensure deepwater and middle-depth fish stocks and key bycatch fish stocks are managed to an agreed harvest strategy or reference points**

There is a broader problem with harvest control rules and reference points but these need to be developed in a transparent way. The current process does not meet that test.

The process should include both tier 1 and Tier 2 species with the aim to consult and finalise these by the end of 2018.

## **Environment Outcome**

### **5 Protect habitats of particular significance for fisheries management + biodiversity**

Habitats of particular significance need to be urgently defined in a transparent way. This means it needs to involve all stakeholders and the public. A discussion paper should be released by the end of 2017.

What does MPI envisage by ecosystem based approaches? Will there be a discussion paper by the middle of 2018?

How does MPI envisage maintaining biological diversity, in all its forms? How will genetic diversity be maintained?

### **6 Identify and avoid or minimise adverse effects of deepwater and middle-depth fisheries on associated or dependent and incidentally caught fish species**

So what is the timetable for risk assessments? This section refers to risk assessments on fish species and on benthic habitat.

When will the strategy be developed? What will be considered in the strategy and how will it be implemented? This needs clear performance targets – by the end of 2018?

**7 Manage deepwater and middle-depth fisheries to avoid, remedy or mitigate the impacts of deepwater fisheries on the benthic habitat**

So what is the timetable for risk assessments? This section refers to risk assessments on fish species and on benthic habitat.

When will the strategy be developed? What will be considered in the strategy and how will it be implemented? This needs clear performance targets – by the end of 2018?

MPI should look to the high seas for international best practice in managing benthic impacts in SPRFMO and CCAMLR.

**8 Manage deepwater and middle-depth fisheries to avoid or minimise adverse effects on the long-term viability of endangered, threatened and protected species**

Should include:

- ) Support the objectives of the National Plan of Action for Seabirds
- ) Support the objectives of the National Plan of Action for Sharks
- ) Support for threat management plans.

ECO consider the target should be for measures that move species from a threatened to a non-threatened state as soon as possible.

**Governance Outcome**

**9. Ensure there is consistency and certainty of management measures and processes in the deepwater and middle depths fisheries**

This should include the development of clear targets and timetables for management by the end of 2017. The development of a 5-10 year research plan, operational measures to maintain biodiversity and protect habitats of particular significance to fisheries management.

**10 Ensure New Zealand’s deepwater and middle-depth fisheries are transparently managed**

Transparency requires the development of clear targets and timetables and a commitment to implement all provisions of the Fisheries Act 1996, including international obligations.

**11. Ensure the management of New Zealand’s deepwater and middle-depth fisheries meets the Crown’s obligations to M ori**

It is unclear how Iwi Fisheries Plans or Forum Fisheries Plans are to be implemented. Is the intention to develop a strategy to implement the features of the plans that affect deepwater fisheries?

### **3.2 Highly Migratory Species Plan**

<b>OUTCOME</b>	<b>MANAGEMENT AND OPERATIONAL OBJECTIVES</b>
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Use

#### **1 Support viable and profitable commercial tuna fisheries in New Zealand**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

##### **1.1 Reduce administrative barriers to profitability in HMS fisheries**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

##### **1.2 Negotiate favourable country allocations for New Zealand fishers**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

##### **1.3 Support initiatives to add value to HMS fisheries**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

##### **1.4 Recognise importance of access to fisheries resources in New Zealand and the South Pacific region, and identify potential threats and opportunities**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

Use

#### **2 Maintain and enhance world class game fisheries in New Zealand fisheries waters**

##### **2.1 Maintain and enhance recreational catch rates for HMS game fisheries**

It is unclear whether this provision is referring to current or past catch rates – for performance to be measured this needs to be made clear. It may not be possible to “enhance catch rates” and better to refer to abundant game fish?



In the description there is a point of minimising conflict between sectors seems to be missing from the performance indicators.

Use

### **3 M ori interests (including customary, commercial, recreational, and environmental) are enhanced**

#### **3.1 Take into account the views of relevant iwi and hapu in management of HMS**

As in the Deepwater Plan it is unclear how Iwi Fisheries Plans or Forum Fisheries Plans are to be implemented. Is the intention to develop a strategy to implement the features of the plans that affect HMS fisheries?

#### **3.2 Ensure abundant HMS for customary use**

Is it unclear how the goal or descriptor of this measure is to be met by the performance indicators.

**Environmental**

### **4 Maintain sustainable HMS fisheries within environmental standards**

#### **4.1 Encourage management of HMS at specified target reference points**

There is a broader problem with harvest control rules and reference points but these need to be developed in a transparent way. The current process does not meet that test.

#### **4.2 Support the objectives of the National Plan of Action for Sharks**

This is an important NPOA for this plan.

There is no reference to the shark risk assessment process.

Digital monitoring (IEMRS) will not provide the information required to monitor shark catches and assess shark stocks. Observer coverage is essential for the monitoring of sharks.

#### **4.3 Promote sustainable management of HMS fisheries through RFMOs**

It is unclear which of the stocks New Zealand would provide more information. MPI should consider a domestic strategy to obtain assessments for all stocks New Zealand manages under the QMS.

Is this meeting the obligation to preserve and protect the marine environment.

## **Environmental**

### **5 Implement an ecosystem approach to fisheries management, taking into account associated and dependent species**

#### **5.1 Recognise value of HMS and their ecosystems, including predators, prey, and protected species**

The heading of this section does not fit with the discussion or KPIs.

How is plan meeting international obligations?

#### **5.2 Improve the quality of information available on the capture of protected species**

While the monitoring and observer coverage and targets are welcome they should have criteria or numerical values and target dates. Observer coverage should be sufficient to provide the required information. This should be implemented by the end of 2017.

#### **5.3 Avoid, remedy, or mitigate the adverse effects of fishing on associated and dependent species (including protected species), using a risk assessment approach**

Firstly 5.3 and 5.4 includes some duplication so there could be some merging of these two sections while retaining the clear requirements of the NPOA on Seabirds.

When a non-seabird risk based assessments to be carried out and completed. What level of assessments (eg level 1, 2 or 3) is intended to be carried out.

#### **5.4 Support the objectives of the National Plan of Action for Seabirds**

Firstly 5.3 and 5.4 includes some duplication so there could be some merging of these two sections while retaining the clear requirements of the NPOA on Seabirds.

This should have a broader engagement with RFMOs including WCPFC, CCSBT and IATTC.

## **Environmental**

### **6 Protect, maintain, and enhance fisheries habitat**

#### **6.1 Identify and, where appropriate, protect habitats of particular significance to HMS, especially within New Zealand waters**

Habitats of particular significance need to be urgently defined in a transparent way. This means it needs to involve all stakeholders and the public. A discussion paper should be released by the end of 2017.

How does MPI envisage maintaining biological diversity, in all its forms? How will genetic diversity be maintained?

## **Governance**

### **7 Maintain an effective fisheries management regime**

#### **7.1 Ensure transparency by providing stakeholders with relevant information and performance indicators for HMS fisheries**

A goal of transparency and engagement is welcomed.

## **Governance**

### **8 Recognise and provide for Deed of Settlement obligations**

#### **8.1 Implement Deed of Settlement obligations as they relate to HMS**

In regard to performance indicators, how does 3.1 and 8.1 interact?

## **Governance**

### **9 Ensure New Zealand interests are taken into account internationally**

#### **9.1 Influence international fora and ensure New Zealand interests are taken into account**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

What is missing is:

1. How New Zealand will implement international obligations relating to fishing;
2. How New Zealand will ensure international obligations are met by RFMOs;
3. How compliance issues are managed.

#### **9.2 Build and maintain strong relationships with other fishing nations, in order to influence international fora**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

What is missing is:

1. How New Zealand will implement international obligations relating to fishing;
2. How New Zealand will ensure international obligations are met by RFMOs;
3. How compliance issues are managed.

## **Governance**

### **10 Contribute to Pacific capacity development**

#### **10.1 Contribute to the implementation of MPI's MOU with NZ Aid on Pacific capacity development**

This section seems more relevant to the Draft International Policy than the HMS Fisheries Plan and should be deleted from here.

#### **4.0 Conclusion**

Finally, ECO is grateful for the opportunity to have input into this policy and for the consideration that you give to this submission. ECO would welcome an opportunity to discuss this submission with MPI.

Best regards,

Barry Weeber,

ECO Co-Chair.

## Background

**Table 3: Categorisation of deepwater species by Tier**

Tier	Species <sup>2</sup>
1	Hoki, hake, ling, southern blue whiting, jack mackerel, orange roughy, oreo, scampi, and squid
2	Alfonsino, silver warehou, barracouta, cardinal fish, frostfish, ribaldo, rubyfish, spiny dogfish, white warehou, lookdown dory, pale ghost shark, blue mackerel, prawn killer, redbait, gemfish, deepwater crabs, dark ghost shark, and sea perch.

### Annual Review Report (ARR)

A formal annual review process is used to monitor the delivery of the tasks identified in the current AOP as well as overall performance of the fisheries in relation to some of the wider HMS management objectives.

### Annual Operational Plan (AOP)

While the fisheries plan provides a multi-year, overarching framework for the management of HMS fisheries, details of the day-to-day operational objectives that will be implemented for each individual fishery are specified in the AOP. The AOP also outlines the required services, delivery mechanisms, and service prioritisation issues for the upcoming financial year

### 11A Fisheries plans

- (1) The Minister may from time to time approve, amend, or revoke a fisheries plan.
- (2) A fisheries plan approved under subsection (1) may relate to 1 or more stocks, fishing years, or areas, or any combination of those things.
- (3) Without limiting anything in subsection (2), a fisheries plan may include—
  - (a) fisheries management objectives to support the purpose and principles of the Act;
  - (b) strategies to achieve fisheries management objectives, which may include—
    - (i) sustainability measures set or varied under any of sections 11, 13, 14, and 15;
    - (ii) rules to manage the interaction between different fisheries sectors;
  - (c) performance criteria to measure the achievement of the objectives and strategies;
  - (d) conservation services or fisheries services;
  - (e) contingency strategies to deal with foreseeable variations in circumstances.

<sup>i</sup> UNGA Resolution 64/72 (2009) paragraph 119(a): Conduct the assessments called for in paragraph 83 (a) of its resolution 61/105, consistent with the Guidelines, and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out.

<sup>ii</sup> UNGA resolution 64/72 paragraph 120: "Calls upon flag States, members of regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries and States participating in negotiations to establish such organizations or arrangements to adopt and implement measures in accordance with paragraphs 83, 85 and 86 of its resolution 61/105, paragraph 119 of the present resolution, and international law, and consistent with the Guidelines, and not to authorize bottom fishing activities until such measures have been adopted and implemented."

<sup>iii</sup> A/RES/66/68 - Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the

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Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (to be issued).

<sup>iv</sup> At <http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/105>.

<sup>v</sup> FAO, International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (2009). At <http://www.fao.org/docrep/011/i0816t/i0816t00.htm>.