

# NEW ZEALAND SUBMISSION TO THE INFORMAL CONSULTATIONS OF STATE PARTIES TO THE UNITED NATIONS FISH STOCK AGREEMENT (ICSP-15)

## Implementation of an ecosystem-based approach to fisheries management

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New Zealand is a Party to the United Nations Fish Stock Agreement and a participant in the United Nations Informal Consultations of State Parties to the Fish Stock Agreement (ICSP). The United Nations ICSP-15 has invited the Parties to submit reports on their views on the topic 'implementation of an ecosystem-based approach to fisheries management' (EAFM) in their respective national and high seas fisheries.

New Zealand is responsible for one of the largest and most biodiverse marine areas in the world. Our maritime zones (comprising the territorial sea, exclusive economic zone and the extended continental shelf) extend more than four million square kilometres - 21 times the size of our land area. It covers much of the sunken continent of Te Riu-a-Māui/Zealandia that New Zealand sits on and is recognised as the world's eighth continent.

Ecosystem-based management is considered to be a more effective way of addressing complex environmental challenges in the marine area. The ecosystem-based approach is important as it relates to the 'management' of the entire marine ecosystem, including fisheries. In this report, we focus on the ecosystem-based approach for 'fisheries management' as a subset of the wider ecosystem-based approach and discuss how an ecosystem-based approach to fisheries management is gradually being incorporated into New Zealand's regulatory and institutional frameworks.

### **Introduction**

This report introduces New Zealand's incremental adoption of an ecosystem-based approach to fisheries management through i) New Zealand's legislative reforms, ii) governance systems, iii) examples of work programmes that demonstrate how we are working to adopt this ecosystem-based approach to fisheries management, and iv) participation in relevant international processes.

## **I. Legislative reform**

### **International legal frameworks**

The United Nations Convention on the Law of the Sea (UNCLOS), ratified by New Zealand in 1996, provides the definitive legal framework within which all activities in the oceans and seas must be carried out. UNCLOS creates an overarching obligation on states parties to “protect and preserve the marine environment” (Article 192) both within and beyond their national jurisdiction.

The Fish Stocks Agreement 1995 details further obligations relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. These include the requirement to adopt, where necessary, conservation and management measures for species belonging to the same ecosystem as the target stock (Article 5(e)) and to apply the precautionary approach widely to conservation, management and exploitation of such stocks (Article 6).

### **Domestic legislation and legislative reform**

New Zealand has three pieces of domestic legislation that provide the main framework for fisheries and marine management in New Zealand: The Fisheries Act 1996, Resource Management Act 1991, and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the latter two are less relevant in this context so are not discussed in this report).

In addition, the Crown has obligations to Māori including for fisheries resources. The Treaty of Waitangi/te Tiriti o Waitangi and the Māori – Crown relationship have a significant impact on New Zealand’s approach to fisheries management.

#### **i) Fisheries Act 1996**

The Fisheries Act 1996 and its supporting regulations give customary, recreational, and commercial fishers access to resources while ensuring fish stocks are managed sustainably. The Fisheries Act includes provisions about the application and administration of New Zealand’s Quota Management System i.e. the measures that contribute to the sustainability of fisheries resources and avoid, remedy, or mitigate any adverse effects of fishing on the marine environment. While the Fisheries Act does not explicitly mention an ecosystem-based approach to fisheries management, a number of provisions in the Act enable aspects of EAFM. For instance, section 9 of the Fisheries Act states that:

*All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:*

*(a) associated or dependent species should be maintained above a level that ensures their long-term viability:*

*(b) biological diversity of the aquatic environment should be maintained:*

*(c) habitat of particular significance for fisheries management should be protected.*

## **ii) Māori and Crown Partnership: Te Tiriti o Waitangi (Treaty of Waitangi)**

New Zealand domestic law increasingly recognises the importance of the Treaty of Waitangi 1840 – the founding agreement between the Crown and Māori. The rights guaranteed to Māori in the Treaty of Waitangi and the Treaty principle of partnership are central to New Zealand’s approach to improving the sustainability and the resilience of our fisheries. The customary rights of Māori in the marine environment have yet to be fully worked through, influencing broader legislative reform.

Māori now collectively own around 40 percent of quota, and have diversified interests across the sector, including catching, processing, marketing, and food services. This income stream makes an important contribution to the economic, social and cultural wellbeing of some iwi. The Fisheries Settlement also settled customary fisheries claims by requiring the responsible Minister to recognise and provide for non-commercial customary food gathering by Māori and the special relationship between tangata whenua and important customary food gathering areas. Māori also have rights and interests relating to the management of the environmental effects of fishing.

The Fisheries Act recognises that the exercise of fisheries rights and interests by Māori are an integral part of the fisheries management framework. The Crown and Māori have agreed how these rights should be given effect to in a Deed of Settlement agreed in 1992, and subsequently legislated through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (Settlement Act). Persons making decisions under the Fisheries Act must act consistently with the provisions of the Settlement Act.

## **iii) The Fisheries Amendment Bill**

New Zealand is progressing amendments to the Fisheries Act to strengthen its fisheries management regime. Public and industry expectations about how New Zealand’s fisheries are managed have changed significantly since the Act’s introduction in 1996. Amendments to the Fisheries Act are required to bring our fisheries legislation into line with these expectations and to ensure New Zealand continues to be a champion of sustainable fisheries management.

The Fisheries Amendment Bill will update the Fisheries Act 1996: to tighten commercial fishing rules for which fish must be landed and which fish can be discarded at sea; improve transparency,

accountability, and responsiveness in the fisheries system; and establish a graduated approach for offences and penalties. In addition, the changes will enable more efficient and responsive decision-making for commercial and recreational management measures and facilitate the use of on-board cameras on fishing vessels.

## **II. Governance reform**

New Zealand's efforts to implement an ecosystem-based approach to fisheries management have been strengthened recently, with the creation of a new Oceans and Fisheries Ministerial portfolio – expanded from the Minister of Fisheries' portfolio. This signals the Government's commitment to a more holistic and integrated approach to managing the ocean, including through explicitly incorporating an ecosystem-based approach.

The vision for the new Oceans and Fisheries portfolio is ensuring the long-term health and resilience of ocean and coastal ecosystems including the role of fisheries. The objectives are:

- i) to promote an ecosystem-based approach to research, monitoring, and management;
- ii) to establish a spatial planning framework that optimises protection and use of marine space and resources; and
- iii) to support the development of a high value economy that provides equitable wellbeing benefits.

See Annex A for the principles and work programmes leading towards an ecosystem-based approach to fisheries management in the Oceans and Fisheries portfolio.

Implementation of the Oceans and Fisheries portfolio is overseen by a high-level Oceans and Marine Ministers Group (OMMG) involving the Ministers for Oceans and Fisheries (Chair), for Environment, and of Conservation, and the Parliamentary Under-Secretary for Oceans and Fisheries. Other relevant portfolio Ministers are invited to participate as required. The purpose of this group is to enable issues in the marine area to be dealt with in an integrated way.

An interagency Oceans Secretariat has been established to support this Ministers group, which includes New Zealand's Ministry for Primary Industries (MPI), Ministry for the Environment, the Department of Conservation and Ministry of Foreign Affairs and Trade. Other agencies with marine interests, such as the Ministry of Business, Innovation and Employment and the Ministry of Transport, are called upon for support as required.

### **III. Work programmes of the Oceans and Fisheries portfolio being undertaken to implement an ecosystem-based approach to fisheries management**

New Zealand has already implemented aspects of an ecosystem-based approach in a range of fisheries management and related marine conservation activities. The desired outcome is that resources are used in a manner that provides greatest overall cultural, economic, and social benefit while ensuring the integrity of the aquatic environment, habitat and species.

#### **(a) Aquatic Environment Medium-Term Research Plan, 2022-26**

New Zealand is finalising the Aquatic Environment Medium-Term Research Plan. It sets out the research required by MPI to progress an ecosystem-based approach to fisheries management over the next five years; provides an overarching direction for ecosystem-based approach to fisheries management related research; and identifies projects in core Aquatic Environment Science Programmes that will inform this management approach. The plan identifies the research needed to progress towards multi-species and holistic fisheries management approaches over the next five years, following a continuum with identifiable steps along the way.

#### **(b) Habitats of Particular Significance in Fisheries Management**

The Fisheries Act sets out environmental principles to be considered when making decisions on the utilisation of fisheries and/or ensuring sustainability (as above). One of these is that 'habitats of particular significance for fisheries management' should be protected.

MPI provided guidance on the identification of these habitats with a focus on those important for fish reproduction, such as spawning areas and juvenile nursery grounds. Consideration of these habitats in decision making supports New Zealand's efforts to embrace an ecosystem-based approach to fisheries management.

The best available information is being used to guide the identification of these habitats, threats to their health and sustainability, and the management advice for decision makers. Research projects are being undertaken that characterise habitats and their potential as 'habitats of particular significance for fisheries management' and will help with understanding the complex relationships between habitats and species. This knowledge will, in turn, inform the identification of 'habitats of particular significance for fisheries management' and support fisheries management decisions on sustaining and enhancing ecosystems of these habitats.

### **(c) Seachange Tai Timu Tai Pari/the Hauraki Gulf**

The Hauraki Gulf is an area of special significance and designated as a marine park under the Hauraki Gulf Marine Park Act 2000. Adjacent to New Zealand's largest city Auckland, on the north-east coast, it is one of New Zealand's most valued and intensively used coastal spaces where significant pressure, including from the land, is placed on the marine environment.

In response to calls for action from the Hauraki Gulf community ('the Sea Change-Timu Tai Pari project'), the New Zealand government has developed a strategy, titled *Revitalising the Gulf: Government Action on the Sea Change Plan*. This strategy outlines actions for fisheries management, marine protection, active habitat restoration, protected species, marine biosecurity, aquaculture and Ahu Moana (collaborative management of the local coastal marine environment).

An ecosystem-based approach to management is to be undertaken for each of the strategy's outputs to achieve an outcome of effective kaitiakitanga (guardianship and protection) in the Hauraki Gulf and healthy functioning ecosystems. They will also be supported by an ongoing research, monitoring, and reporting programme that will enable eventual adaptive management.

The key deliverable for the fisheries management component of this work is New Zealand's first area-based fisheries plan for the Hauraki Gulf. The Hauraki Gulf Fisheries Plan reflects MPI's intent to adopt an ecosystem-based approach to fisheries management in the Hauraki Gulf. The relevant focus areas involve:

- increasing our understanding of aquatic ecosystem functioning, including the trophic interactions among species;
- improving the environmental performance of fishing, with a focus on protecting benthic habitats from the adverse impacts of bottom-contact fishing, reducing bycatch and waste, and supporting the long-term viability of protected species;
- facilitating Māori and stakeholder participation in regional and local fisheries management, to ensure their perspectives are heard; and
- considering the interdependencies between specific outcomes for fisheries management and broader environmental, social, and economic outcomes.

Framing fisheries management within this context will lead to more inclusive engagement and governance processes, and a more holistic focus on maintaining ecosystem integrity within the Hauraki Gulf.

#### **(d) Inshore Finfish Fisheries Plan**

New Zealand is finalising the National Inshore Finfish Fisheries Plan (the Plan). It sets out how New Zealand's inshore finfish fisheries are to be managed for the next five years. The Plan provides an overarching strategic framework and identifies focus areas to guide inshore fisheries management.

In developing this Inshore Finfish Fisheries Plan, New Zealand continues to take an ecosystem-based approach to fisheries management. We do this by considering the management of fish taken in mixed fisheries, giving attention to habitats critical to our fish stocks, and working closely with communities to support arrangements to ensure better outcomes at a local level. We build on the strong focus of managing key commercial fish stocks and addressing potential impacts of fishing.

#### **(e) Threat Management Plans**

Threat management plans for protected species are developed jointly by MPI and the Department of Conservation. While the Department of Conservation is responsible for managing the protected species populations, MPI is responsible for managing the impacts of fishing on the species.

##### *Hector's and Māui dolphin Threat Management Plan 2020 (TMP)*

The government administers the Hector's and Māui dolphin Threat Management Plan 2020 (TMP), which is a non-statutory plan to manage human-induced threats to the dolphins. The main anthropogenic threats are set-net and trawl fishing, and the parasitic disease toxoplasmosis. The TMP sets out a range of goals and population outcomes guiding our efforts to allow the dolphins to recover from historical impacts and thrive in the future. Ministers have agreed to a set of objectives and management actions to reduce threats to the dolphins from fishing, toxoplasmosis, seismic surveying, and seabed mining, to achieve the population outcomes of the TMP. The management actions in the TMP are informed by a multi-threat risk assessment that allows decision-makers to understand the nature and location of threats to the dolphins, and the level of impact on different dolphin populations from threats caused by humans.

New Zealand has launched a Toxoplasmosis Action Plan to investigate and trial solutions to reduce or eliminate the transfer of the parasite to the marine environment. In addition, the total area protected by five Marine Mammal Sanctuaries was doubled. Within these areas, restrictions on seismic surveying and seabed mining apply. New permits in the expanded protection areas are prohibited and a code of conduct for existing activities is now mandatory in those areas.

## *Sea lion Threat Management Plan 2017 – 2022*

The New Zealand sea lion Threat Management Plan 2017 – 2022 was developed to halt the decline of the sea lion population within five years (approximately 12,000 individuals) and to ensure the population is stable or increasing within 20 years. The Sea Lion is listed as ‘nationally vulnerable’ under New Zealand’s Threat Classification. The ultimate goal is for the sea lion population to recover and achieve a ‘not threatened’ status. The objectives of the plan are supported by site-specific measures of success for four sea lion breeding locations, and the pressures each sub-population faces. A key management measure of the plan is to ensure trawl vessels that may encounter sea lions deploy ‘sea lion exclusion devices’.

### **(f) The National Plan of Action for Seabirds and Sharks**

The Fisheries Act requires responsibility be taken to ‘avoid, remedy or mitigate any adverse effects of fishing on the aquatic environment’. Associated or dependent species should also be maintained above a level that ensures their long-term viability. New Zealand has two National Plans of Action (NPOAs), for seabirds and sharks respectively, which are developed in line with the Food and Agriculture Organization of the United Nations (FAO) framework for International Plans of Action (IPOAs).

- i) The National Plan of Action for Seabirds 2020 sets out New Zealand’s commitment to reducing fishing-related captures and associated mortality of seabirds. As a nation with particularly diverse and abundant seabirds, New Zealand is committed to acting in accordance with the FAO IPOA for Seabirds. The 2020 NPOA-Seabirds is New Zealand’s third NPOA-Seabirds, with the others adopted in 2004 and 2013. It has goals and objectives that centre around bycatch avoidance, seabird population health, research and monitoring and international engagement. It takes a risk-based approach to the management of interactions between commercial fishing and seabirds. When fishing, fishers must deploy devices and practices to mitigate against the accidental capture of seabirds.
- ii) The National Plan of Action for the Conservation and Management of Sharks 2013 guides how we manage sharks. MPI is in the process of updating this NPOA for 2022, with input from a multi-stakeholder group. Key issues in the management of shark fisheries, both in New Zealand and internationally, include the overall sustainability of shark fishing, and issues related to the use of sharks. In response to these concerns, New Zealand has protected several species of shark identified as particularly vulnerable. Since 2014, it has been illegal in New Zealand for fishers to remove fins from sharks and then discard the bodies into the sea.



## IV. International fisheries

New Zealand is active in international processes to progress the implementation of an ecosystem-based approach to fisheries management.

New Zealand is a Party to a number of international agreements that relate to the management of international fisheries or areas of the ocean. Of particular relevance is New Zealand's membership of four regional fisheries organisations:

- Western & Central Pacific Fisheries Commission (WCPFC);
- South Pacific Regional Fisheries Management Organisation (SRFMO);
- Commission for the Conservation of Southern Bluefin Tuna (CCSBT); and
- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Each of these intergovernmental organisations have their own Convention provisions and conservation measures that relate to ecosystem-based management in fisheries. These can be viewed in further detail in the ICSP-15 reports submitted by regional fisheries management organisations.

New Zealand is actively involved in the Intergovernmental Conference on an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

New Zealand works more broadly through its foreign and trade policy to progress fisheries sustainability, including the ecosystem-based approach. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement involving Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The Environment Chapter includes fisheries management commitments, and prohibitions and transparency requirements in relation to fisheries subsidies that contribute to overfishing and overcapacity and illegal, unreported and unregulated (IUU) fishing.

On 28 February 2022 New Zealand signed a high quality, comprehensive free trade agreement with the United Kingdom. This Agreement includes the most far-reaching free trade agreement commitments New Zealand has ever negotiated on trade and the environment. It includes fisheries management and subsidies commitments that build on those in the CPTPP, including basing fisheries management on an ecosystem-based approach. New Zealand continues to work to build off these in negotiating other trade agreements, including with the European Union with which New Zealand has a commitment to promote the implementation of an ecosystem-based approach to fisheries management in its 2016 Partnership Agreement on Relations and Cooperation.

## **Conclusion**

New Zealand considers that an ecosystem-based management approach is vital to protecting the marine environment and ensuring the sustainability of fisheries. While an ecosystem-based approach for fisheries management in New Zealand's marine areas is yet to be fully realised, recent legislative reform, the development of a new Oceans and Fisheries ministerial portfolio and initiatives that are looking to manage fisheries and supporting ecosystems in an integrated way have placed this approach at the heart of New Zealand fisheries management.

## Annex A

The principles of the Oceans and Fisheries portfolio are:

1. Precautionary approach and adaptive management
2. Equitable allocation of costs and benefits
3. Give effect to the principles of Te Tiriti o Waitangi/Treaty of Waitangi, including through fisheries settlement and other legislation
4. Decision-making based on sound science and traditional knowledge
5. Consistency with international commitments
6. Transparent, inclusive, and effective public participation processes

Key programmes working towards ecosystem-based approach to fisheries management within the Oceans and Fisheries portfolio include:

- *Fisheries system reform*: to strengthen and modernise New Zealand's fisheries management system, in part to enable more sustainable fishing methods
- *Improved fisheries monitoring – on-board cameras*: to install cameras on inshore fishing vessels
- *Open ocean aquaculture*: to improve the management framework to facilitate the development of open ocean aquaculture
- *Marine protected areas reform*: to create a more strategic, nationally coordinated framework for marine protection with modernised legislative tools and processes that improve integration with wider marine use
- *Government Hauraki Gulf Sea Change Strategy*: to implement an integrated marine management strategy for the Gulf including marine protection, restoration, and fisheries management measures
- *Rangitāhua/Kermadec Ocean Sanctuary*: to set up an ocean sanctuary in the northeast of New Zealand's EEZ
- *South-East Marine Protection*: to implement a proposed network of marine protected areas in the south-eastern South Island coastal marine area
- *Hector's and Māui dolphin threat management plan*