



## Proposals for how FNZ will take Habitats of Significance into account when developing fisheries management advice

### 1. When will FNZ take into account HoS should be protected?

Fisheries Act 1996 (The Act) requires that *all persons undertaking duties relating to utilisation of fisheries resources or ensuring sustainability under the Act must take into account the principle that HoS should be protected*. Protect in this context means taking measures that would avoid, remedy or mitigate the adverse effect of a decision that could undermine the function the habitat provides for the fisheries resource. In drafting legislation, the Parliamentary Counsel Office generally uses the phrase ‘take into account’ when the decision-maker is required to address each matter and give it some weight.<sup>1</sup>

#### *Pending management decisions*

Advice FNZ prepares for pending fisheries management decisions, such as sustainability round reviews, or reviews of existing closures, will take account that HoS should be protected. In making that consideration FNZ will identify the ways in which management settings and options might adversely affect the habitats. This may result in modifying our advice, such as proposing alternative or additional measures to avoid, remedy or mitigate the adverse effect on HoS under s11 of the Act.

#### *Identification of adverse effects*

Following FNZ sign-off to establish areas as HoS, FNZ will identify potential adverse effects on the habitat. As outlined in the draft guidelines, taking account of protection of these habitats does not create an obligation to protect them. The decision to avoid, remedy or mitigate adverse effects on the habitat will be made under s 8 of the Act. FNZ will consider the risk of adverse effects of fishing to the HoS based on HoS sensitivity, exposure to adverse effects, and habitat resilience to fisheries impacts. This will inform advice on options, such as sustainability measures under s 11 of the Act to avoid, remedy or mitigate adverse effects of fishing while providing for sustainable utilisation.

#### *Science planning processes*

There will be imperfect knowledge of species’ habitat dependence, including during critical life stages. We will use our understanding of knowledge gaps to help us plan and prioritise where we focus future information gathering efforts. Other factors may influence prioritisation of research on HoS, for example research on HoS to support stock rebuilding measures.

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<sup>1</sup> Taken from the Parliamentary Counsel Office “Principles of clear drafting” - <http://www.pco.govt.nz/clear-drafting/>



## *Other considerations*

We are considering how HoS could inform interpretation of the results of stock assessments and the consequent management responses.

Adverse effects on and risks to habitats of particular significance for fisheries management can arise from single, short-term effects or from the cumulative effects of multiple stressors acting together and/or over time. Where these arise from non-fishing activities, we will ensure the appropriate authorities are aware of these when making their decisions. We will also proactively discuss HoS with councils to encourage them to avoid, remedy or mitigate impacts under councils' control through their planning processes, particularly when they are making or changing their regional plans.

Our work with other agencies, such as the Department of Conservation, the Ministry for the Environment and regional councils, will support HoS being taken account of during spatial planning processes (MPA, aquaculture, biodiversity) to support maintaining HoS ecosystem function for fisheries resources.

***Question for consultation: what are your views on the tools available that could provide protection to HoS?***

## **2. Matters that will influence our advice**

### *Risk assessment*

Not all decisions made under the Act will result in adverse effects on HoS. Our advice will be informed by an assessment of risks to HoS, which will consider the HoS sensitivity, exposure to adverse effects, and habitat resilience to impacts that could result from the fisheries management decision in question and/or existing fishing or other activity. Non-fishing related activities, such as land-based pressures, would be discussed with agencies responsible for managing those impacts.

When taking into account that HoS should be protected, our obligations under s 8 of the Act to provide for utilisation while avoiding, remedying or mitigating adverse effects of fishing will be the driver for advice for decision makers on whether and what measures to take to manage adverse effects of fishing on HoS.

Advice will depend on:

- The decision pending and an understanding of the likelihood and consequences of adverse effects on HoS, short and long term;
- The scale at which the HoS functions and the scale at which the adverse effect on the HoS occurs;
- How species utilise the HoS, for example the habitat may be particularly significant because of its function and connectedness to other functionally significant habitat.



A likelihood vs consequence approach, following the Australian/New Zealand Risk Assessment Standard AS/NZS 4360 (2004) will be a component of the assessment of risk of adverse effects on the HoS. This follows a four-step process:

1. Establish the context. Our context is assessing risk to identified marine/aquatic habitats and associated attributes that are of particular significance for fisheries management.
2. Identify the stressors and risks to HoS from activities, comprising:
  - fishing – adverse effect of fishing gear on habitats and their attributes
  - other activities – factors like pollution, sedimentation, and other activities
3. Assess the risk. This step is broken into four sub-steps.
  - a) Determine likelihood - typically the probability of an event occurring. Qualitative or quantitative data can be used at this point. We have good data on where, when, and how often fishing events by method occur and this assists in determining likelihood for threats from fishing. This will include a consideration of existing protection measures in place. Determining the likelihood of adverse effects arising from other activities may require information from appropriate sources.
  - b) Determine consequence. This step assesses the magnitude of the adverse effect of the activity on the environmental variables of interest. Those 'variables' are the habitats and attributes that are of particular significance for fisheries management. Assessing the consequence of adverse effects will depend on the source/mechanism of impact and consideration of potential impacts, including cumulative impacts. Where data are not available or suitable, expert opinion will be important.
  - c) Determine risk. Risk is determined as a combination of the estimated likelihood and consequence.
  - d) Assess and state uncertainties. These include measurement error, natural variation, and lack of knowledge. Determining likelihoods is expected to be quite certain, particularly for fishing impacts, while less so for the consequences.



The assessment criteria are shown below.

Likelihood	Criteria
Almost certain	<ul style="list-style-type: none"> <li>&gt;90% chance of occurring</li> <li>Expected to occur multiple times in next 12 months</li> </ul>
Likely	<ul style="list-style-type: none"> <li>&gt;60% chance of occurring</li> <li>Could occur in next 12 months</li> </ul>
Possible/likely as not	<ul style="list-style-type: none"> <li>40 to 60% chance of occurring</li> <li>Expected to occur in next two years</li> </ul>
Unlikely	<ul style="list-style-type: none"> <li>&lt;40% chance of occurring</li> <li>Expected to occur once in next two to five years</li> </ul>
Rare	<ul style="list-style-type: none"> <li>&lt;10% chance of occurring</li> <li>Expected to occur in five years or more</li> </ul>

Consequence	Criteria
Insignificant	No detectable effect on habitat and attributes.
Minor	Minimal impact on habitat and attributes.
Moderate	Actual, or potential for, unsustainable medium to long term impact on habitat and attributes (limiting population increase).
Major	Serious unsustainable impacts now occurring, with relatively long time period likely to be needed to restore to an acceptable level (e.g. serious decline in productivity).
Severe	Would eliminate habitat and all attributes? Widespread and permanent/irreversible damage or loss will occur.

Risk assessed

		Consequence				
		Insignificant	Minor	Moderate	Major	Severe
Likelihood	Almost certain	Medium	High	High	Extreme	Extreme
	Likely	Medium	Medium	High	High	Extreme
	Possible	Low	Medium	Medium	High	Extreme
	Unlikely	Low	Low	Medium	High	High
	Rare	Low	Low	Medium	Medium	High

4. Treat and/or mitigate the risk (if warranted) – the tools available under the Fisheries Act 1996 provide for management of the spatial and temporal scale of fishing threats as well as modifications to and controls on the use of fishing methods. For non-fishing threats, Fisheries New Zealand will rely on engagement with relevant authorities to make them aware of risks that should be mitigated or removed. The assessed risks will determine the degree of mitigation or threat reduction needed.

### Information principles

The section 10 information principles in the Act must be taken into account when preparing advice and making decisions in relation to the utilisation of fisheries resources and ensuring sustainability. The best available information must be used to inform decisions, while



considering uncertainty, and caution used when the information is uncertain, unreliable or inadequate. The principles also reflect that to achieve the purposes of the Act the Minister may need to act on uncertain information.

In some cases, only limited scientific and other information will be available, but that does not preclude a reasonable analysis of habitat, threats, and any adverse effects of various management options. Uncertainty on spatial distribution of the habitats should not exclude these habitats from being taken account of in fisheries management decisions. In general, the level of analysis and the need for information will depend on the assessed severity and likelihood of effects.

Determining the interaction between fishing and HoS is key to understanding where HoS may be at risk of damage from fishing. The introduction of electronic catch and position reporting in 2018/19 has significantly improved the level of detail about where fishing is occurring. This combined with better information on the spatial distribution of HoS and an understanding of the sensitivity of these habitats to fishing impacts will inform the identification of where these habitats may be at risk.

Spatially explicit decision support tools, such as 'Zonation', may be helpful in undertaking this work.

#### *Views of tangata whenua and stakeholders*

We will engage with tangata whenua and stakeholders to consider options for managing adverse effects of fishing on HoS, if measures are needed. Any measures proposed under s 11 of the Act that may be considered necessary to avoid, remedy or mitigate adverse effects of fishing on HoS will also require public consultation to inform the Minister's decisions.

***Question for consultation: what are your views on matters we should consider when taking into account that HoS should be protected?***

## **5. How will non-fishing impacts on HoS be addressed?**

The Act does not provide measures to manage land-based impacts on HoS or impacts of non-fishing marine activity such as seabed mining or dumping at sea. FNZ works with other agencies to identify land-based impacts on fisheries resources and influence them to manage these.

When identifying HoS FNZ will consider non-fishing stressors the HoS may be exposed to, such as land-based pressures and climate related change.

The FNZ Coastal Planning Team engages with Regional Councils, Unitary Councils, Local Government New Zealand, the Department of Conservation, and others on Resource



Management Act (RMA) coastal planning processes as they relate to achieving integrated management of inshore fisheries at a local scale.

The FNZ Coastal Planning team will engage with these agencies on the HoS register, identifying locations and potential impacts, and discuss with agencies how they will consider the register of HoS to inform their decision making to manage impacts. We will bring to the Regional Councils' attention impacts on these habitats that are within their management control. We will support and encourage Regional Councils to have regard to HoS when making decisions to control the impacts of activities under their control on HoS and the effect this has on inshore fisheries resources.

We will notify HoS to other agencies responsible for managing other activities in the marine space so they can have regard to these when undertaking their work.

If, following review of the process proposed in the draft guidelines to establish habitat areas as HoS, HoS are included in fisheries plans established under the Act, Regional Councils will be required to have regard to these when creating or changing regional plans.

***Question for consultation: what are your views on options for considering non-fishing impacts on HoS?***

DRAFT