



Proposal to protect the oceanic whitetip shark: Initial Position Paper

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Contents	Page
<u>Proposal to protect the oceanic whitetip shark</u>	<u>1</u>
Executive summary	1
The issues	1
Oceanic whitetip stock status	1
Catches of oceanic whitetip sharks by New Zealand fishing vessels	2
Decisions adopted by WCPFC to address stock status	2
New Zealand's obligations to implement WCPFC decisions	3
Summary of proposals	3
Prohibit the taking of ocean whitetip sharks through Fisheries Act and Wildlife Act	3
Require reporting of incidental captures	4
Rationale for management proposals	4
New Zealand has an obligation to implement protection measures adopted by WCPFC	4
Relevant objectives: National Fisheries Plan for Highly Migratory Species	5
Other management issues	5
Customary considerations	5
Recreational considerations	5

Purpose

The Ministry for Primary Industries (the Ministry) seeks feedback from stakeholders on a proposal to prohibit the taking of oceanic whitetips within New Zealand fisheries waters and from New Zealand flagged vessels fishing on the high seas.

Copies of the Initial Position Paper are available on the Ministry's website

<http://www.mpi.govt.nz/news-resources/publications.aspx>

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Please note: The closing date for submissions is 4pm Wednesday 22 August 2012.

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Proposal to protect the oceanic whitetip shark: Initial Position Paper

EXECUTIVE SUMMARY

1. New Zealand currently manages oceanic whitetip sharks through the Fisheries Act 1996 (Fisheries Act), although the species is not within the quota management system (QMS).
2. Occasional incidental captures of oceanic whitetips are known to occur in New Zealand's surface longline fisheries. Information from reported commercial landings shows an estimated three shark captures have occurred in New Zealand's longline fisheries in the 1995/96 to 2010/11 fishing years, however catches are likely to be underestimated.
3. To provide protection for oceanic whitetips within New Zealand fisheries waters and captures from New Zealand flagged vessels fishing on the high seas, it is proposed that a combination of the following legislation be used to prohibit the taking of this species and its products:
 - a) The Wildlife Act 1953 (Wildlife Act) – The primary legislation for protection of wildlife in New Zealand, the powers under which are limited to within New Zealand fisheries waters (which includes New Zealand's Territorial Sea and exclusive economic zone (EEZ)).
 - b) The Fisheries Act – Regulations promulgated under the Fisheries Act apply to all fishing vessels operating within New Zealand fisheries waters, and can apply to all New Zealand flagged vessels operating on the high seas.
4. Specifically, this proposal is considering the following regulatory changes:
 - a) Order in Council to add oceanic whitetip shark to Schedule 7A of the Wildlife Act;
 - b) drafting of new Fisheries (Oceanic Whitetip Shark – High Seas Protection) Regulations 2012; and
 - c) amendment to Part 2C of Schedule 3 to the Fisheries (Reporting) Regulations 2001 (Reporting Regulations), to include oceanic whitetip sharks.
5. The proposal to protect oceanic whitetip sharks has arisen because of New Zealand's obligation under the Western and Central Pacific Fisheries Commission (WCPFC), not because there is evidence indicating New Zealand fisheries pose a sustainability risk to the local oceanic whitetip shark population.

THE ISSUES

Oceanic whitetip stock status

6. Oceanic whitetip shark (*Carcharhinus longimanus*) is a highly migratory shark species with a circumglobal distribution in tropical and warm-temperate open waters. It is primarily oceanic and has historically been considered one of the two most abundant oceanic sharks, along with blue shark. Oceanic whitetip sharks have been one of the

most common bycatch species in offshore tropical tuna longline fisheries and are also targeted in small-scale fisheries.

7. More recently, however, substantial concerns have been raised about the status and abundance of oceanic whitetips. The International Union for the Conservation of Nature (IUCN) gave oceanic whitetip sharks a precautionary global assessment of 'vulnerable'.
8. Oceanic whitetips were proposed for listing on Appendix II of the Convention on International Trade in Endangered Species (CITES) at the 15th Conference of the parties in Doha, Qatar in 2010, based in part on their IUCN status of 'vulnerable.' The listing was supported by the Food and Agriculture Organisation (FAO) Expert Advisory Panel and the New Zealand delegation. The proposal did not proceed.
9. The International Commission for the Conservation of Atlantic Tuna (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC) banned the retention of oceanic whitetip sharks in 2010. The Indian Ocean Tuna Commission (IOTC) adopted a similar measure in 2012.

Catches of oceanic whitetip sharks by New Zealand fishing vessels

10. Temperate water limits the distribution of oceanic whitetip around New Zealand. No target oceanic whitetip shark fishery has operated in New Zealand, but incidental captures have occurred in the Kermadec and Central (East) fishery management areas. The catch landing records of oceanic whitetips in New Zealand show that only three captures have been reported in the surface longline fisheries between 1995-96 and 2010-11. Observer records from surface longline vessels show 19 specimens from 11 trips during which oceanic whitetip catch was recorded. Since May 2008 there has been only one recorded specimen. The commercial captures were landed as fins, while for the 19 observed sharks, nine were discarded, four were finned, five were retained, and one was lost.
11. It is important to note that the catch records of oceanic whitetip from within New Zealand fisheries waters are limited, in part because the species has no code defined under the Reporting Regulations. Oceanic whitetip sharks that are reported are generally assigned to the generic code 'other sharks and dogs' (OSD) and therefore the actual number of oceanic whitetip captures may be higher than reported here.
12. Catch records also exist for New Zealand-flagged vessels fishing outside of New Zealand fisheries waters, and show moderate catches particularly in the tropical purse seine fishery.

Decisions adopted by WCPFC to address stock status

13. Oceanic whitetip sharks are listed as a highly migratory species on Annex 1 of the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS requires regional cooperation for ensuring conservation and optimal utilisation of listed species both within and beyond exclusive economic zones. In the western and central Pacific oceanic whitetip (and other migratory shark species) are managed through the WCPFC.
14. Oceanic whitetip sharks are included on the WCPFC list of 'key shark species' in the most recent Conservation and Management Measure for sharks (CMM 2010 - 07). Outside of New Zealand's EEZ, high seas permit conditions require fishers to land fins only if attached to the trunk, in line with CMM 2010 - 07.

15. The WCPFC's scientific committee considered several papers at its last meeting in August 2011 on the status and trends of oceanic whitetips. All standardised catch rate trends from longline and purse seine fisheries showed a clear, steep and downward trend. Oceanic whitetips have rarely been recorded in more recent datasets, despite the once-common status of this species. Catch estimates based on observer data indicate removals have dropped by approximately 70% in the past decade. Analysis of length data showed a significant and consistent decline in the median size of this species in all regions of WCPFC for both sexes and in both the longline and purse seine fisheries until samples became too scarce for analysis.
16. In response to these concerns, the United States proposed a draft conservation and management measure to prohibit any landings or sale of oceanic whitetip sharks within the Convention area, effective from 1 January 2013. The proposed measure was adopted at WCPFC's annual meeting in March 2012 (CMM 2011 - 04).

New Zealand's obligations to implement WCPFC decisions

17. As a member nation of the WCPFC, New Zealand has an obligation to implement the above measure both within our waters, and for New Zealand vessels fishing on the high seas. While the obligation arises from the WCPFC measure which only applies to the Convention area for this commission (including New Zealand fisheries waters), the measure applies to the high seas for all other regional organisations charged with managing highly migratory species.

SUMMARY OF PROPOSALS

Prohibit the taking of ocean whitetip sharks through Fisheries Act and Wildlife Act

18. In cases such as this, where international concerns dictate action, the taking of a marine species can be prohibited through the use of two statutes currently in force:
 - a) The Wildlife Act can be used to prohibit the taking and utilisation of species in New Zealand fisheries waters.
 - b) The Fisheries Act provides for the protection of marine species, including highly migratory species, through regulation. Fisheries Act regulations can be applied to vessels operating within New Zealand fisheries waters, and can apply to all New Zealand vessels fishing on the high seas (under the Fisheries Act).
19. The Wildlife Act is the primary legislation for wildlife protection, and provides for both full and partial protection of a species, either through its listing on the Schedules to the Act or its recognition as wildlife in the Act itself. The Wildlife Act is administered by the Department of Conservation (DOC).
20. Using only the Wildlife Act, it would only be possible to prohibit the taking of oceanic whitetip sharks by commercial and recreational vessels operating within New Zealand fisheries waters, but would leave New Zealand flagged vessels operating on the high seas unregulated.
21. Retaining the Fisheries Act alone to prohibit the taking of oceanic whitetip sharks would enable implementation of regulations applicable to New Zealand flagged vessels on the

high seas, as well as within New Zealand fisheries waters. However, the defence provisions for any incidental taking of oceanic whitetips as part of fishing operations under the Fisheries Act are stringent, and the penalty regime is severe. Given the risk of bycatch, MPI and DOC believe the defence under the Wildlife Act is more appropriate.

22. MPI and DOC believe a more appropriate option would be to create new regulations using the Fisheries Act in conjunction with the Wildlife Act. The Wildlife Act provides sufficient protection to be used as the primary legislation for management of whitetip sharks within New Zealand fisheries waters, through listing oceanic whitetip sharks on Schedule 7A.
23. Regulations promulgated under section 297(1)(o) of the Fisheries Act may be used to give effect to provisions of a convention to which New Zealand is a party and can then be applied to New Zealand flagged vessels beyond the outer limits of New Zealand's fisheries waters.
24. A combination of the two statutes was used to prohibit the taking of the white pointer shark and basking shark, after these species were listed on Appendices I and II of the Convention on Migratory Species (CMS). Consequently the MPI and DOC's preferred option is that the same measures be taken for the protection of the oceanic whitetip shark.

Require reporting of incidental captures

25. Should oceanic whitetip shark be listed on Schedule 7A of the Wildlife Act, an amendment to the Fisheries (Reporting) Regulations 2001 would be required, to include oceanic whitetips on Part 2C of Schedule 3. Part 2C lists those fish species that are absolutely protected under the Wildlife Act.
26. Incidental captures of protected species must be reported. This is also a requirement of the WCPFC and New Zealand will need to report any interactions annually to the WCPFC.
27. Adopting this proposal will require amending Reporting Regulations to include an oceanic whitetip shark code and to require the species inclusion on non-fish and protected species catch returns.

RATIONALE FOR MANAGEMENT PROPOSALS

New Zealand has an obligation to implement protection measures adopted by WCPFC

28. New Zealand has an obligation to implement protection measures for oceanic whitetip sharks given the measures adopted by the WCPFC. The measures indicates concern for the conservation status of oceanic whitetip sharks and, as a member state of the WCPFC, New Zealand has an obligation to prohibit all utilisation of this species and require release of any specimens caught. The proposal to protect oceanic whitetip sharks has arisen because of New Zealand's obligation under the WCPFC, not because there is evidence indicating New Zealand fisheries pose a sustainability risk to the local oceanic whitetip shark population.

Relevant objectives: National Fisheries Plan for Highly Migratory Species

29. The Minister of Fisheries approved a National Fisheries Plan for Highly Migratory Species under Section 11A of the Fisheries Act in September 2010. The fisheries plan outlines various management objectives for HMS, along with strategies for achieving the objectives, including:
- a) Minimise unwanted bycatch and maximise survival of incidental catches of protected species in HMS fisheries, using a risk management approach
 - b) Increase the level and quality of information available on the capture of protected species
 - c) Recognise the intrinsic values of HMS and their ecosystems, comprising predators, prey, and protected species

OTHER MANAGEMENT ISSUES

Customary considerations

30. Shark species historically formed an important food source for Maori, however cultural prohibitions on the killing of large sharks are widespread throughout Polynesia and Melanesia, and reflect the beliefs that these animals are reincarnated ancestors, and/or guardians (kaitiaki) of particular tribes or coastal features. Shark kaitiaki occur in a number of areas but generally the species of shark kaitiaki is not specified.
31. MPI and DOC would like to invite stakeholders to comment on customary fisheries interactions with oceanic whitetip sharks, through the consultation process.

Recreational considerations

32. There is currently little information available on the recreational use of oceanic whitetip sharks in New Zealand. There is no recreational bag limit for this species, and MPI are unaware of any recreational targeting of oceanic whitetip shark. Incidental captures of oceanic whitetip sharks occur in New Zealand's surface longline fisheries, therefore recreational game fishers could potentially "take" an oceanic whitetip shark. In this case the defence provisions under the Wildlife Act would be applicable.
33. MPI and DOC would therefore like to invite stakeholder comment on any evidence of recreational use, through the consultation process.