



NZ ROCK LOBSTER INDUSTRY COUNCIL

Ka whakapai te kai o te moana

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Introduction

1. The NZ Rock Lobster Industry Council (NZ RLIC) welcomes the opportunity to submit on the Draft Conservation Services Programme (CSP) Annual Plan 2016/17.
2. The NZ RLIC is an umbrella organisation for the nine commercial stakeholder organisations, known as CRAMACs, operating in each of the rock lobster (CRA) management areas of New Zealand. CRAMAC membership comprises CRA quota owners, processors, exporters, and fishermen in each region. All nine CRAMACs hold a significant majority mandate of CRA quota shares owned in the regions.
3. Our submission focuses on the two projects with potential implications for commercial rock lobster fisheries – i.e., POP2016-01 *Seabird population research: Chatham Islands 2016-17* and MIT2016-02 *Entanglement of cetaceans in pot/trap lines and setnets and a review of potential mitigation methods*. However, our comments also have wider relevance to the strategic context in which CSP projects are planned and delivered.

POP2016-01 Seabird population research: Chatham Islands: 2016-17

4. POP2016-01 is a seabird population research project. The research objectives include estimating the size of the breeding population of Pitt Island shags (Objective 5) and Chatham Island shags (Objective 6).
5. NZ RLIC considers that POP2016-01 Objectives 5 and 6 do not meet the statutory definition of “conservation services” and should therefore be **deleted** from the CSP Annual Plan.
6. The definition of conservation services in section 2 of the Fisheries Act 1996 is tightly constrained. Outputs of conservation services must be related to the adverse effects of commercial fishing on protected species. Only two types of services are recognised – a) research and b) the development of a population management plan. Research outputs must relate to either a) adverse effects of commercial fishing on protected species or b) measures to mitigate adverse effects of commercial fishing on protected species.

7. In order for protected species population research to be a conservation service, there must be reasonable justification¹ to conclude that either commercial fishing is having an adverse effect on a protected species, or there is a reasonable risk of an adverse effect on the species from commercial fishing.
8. Lack of information on protected species population parameters is not equivalent to a reasonable risk of an adverse effect and does not justify including a project in the CSP Annual Plan. Justification must be framed in terms of adverse effects on a protected species from commercial fishing. In the case of rock lobster fisheries and Chatham Island and Pitt Island shags, no such justification has been provided.
9. The importance of justifying all CSP projects in relation to adverse effects was reinforced by the Office of the Auditor General in their 2002 report on the CSP. The Auditor General's report is as relevant today as when it was written – the legal framework governing the CSP has not changed. The Auditor General recommended that DOC should provide clear justification of the relationship between a research project and the effects of commercial fishing on the particular protected species, including by demonstrating:
 - The current or potential adverse effect that commercial fishing has on the protected species population;
 - The extent of that effect; and
 - How the research relates to that current or potential adverse effect, or measures to mitigate that effect.
10. None of these requirements have been fulfilled in relation to POP2016-01 Objectives 5 and 6. The project "rationale" provides no evidence of actual adverse effects or reasonable risk of an adverse effect on populations of Pitt Island or Chatham Island shags from rock lobster fishing. Instead, it simply references other DOC strategic documents, none of which provide evidence of an adverse effect or a reasonable indication that there may be an adverse effect. The referenced documents include:
 - The CSP Strategic Statement, which contains significant and pervasive errors of legal interpretation and application as to the valid scope of conservation services;²
 - The CSP Seabird Plan 2016, which was prepared by research scientists based on inadequate strategic guidance on the legal scope of conservation services; and
 - The National Plan of Action Seabirds, which states that "*historical captures of shags in pot fisheries have been reported from the Chatham Islands, but based on fisher interviews this is reported by WMI [2012] as having been mitigated by changes in pot design*".³

¹ Based on the best available information, as required in the information principles in section 10 of the Fisheries Act.

² See NZ RLIC submission on CSP Strategic Statement, March 2012.

³ [WMI 2012] is Wildlife Management International (WMI). 2012. Shag interactions with commercial rock lobster pot and trap fishing methods in the Chatham Islands. Unpublished report held by the Department of Conservation, Wellington. 24p.

11. The previous CSP project on Chatham Island and Pitt Island shags (referenced in the NPOA Seabirds) found no evidence that commercial fishing is having an adverse effect on the shag populations.⁴ Of the 22 current and former fishermen interviewed for the project, nine reported catching between 1-5 Pitt Island shags during their entire fishing career and none reported catching Chatham Island shags. All reported bycatch occurred at least five years ago and most over ten years ago. All fishermen considered that the current pot design and baiting method has completely eliminated shag bycatch. For further research, the report's author recommended in-depth studies on the breeding ecology, foraging behaviour and range of Chatham Island and Pitt Island shag "*aimed at **determining the cause of population decline in these species and mitigating against these***" (our emphasis).
12. NZ RLIC accepts that population studies, including bird counts and behavioural research, may be important for the management of threatened populations. However, a seabird census cannot possibly "*determine the cause of population decline*" – it can merely confirm a decline that has already been detected. Neither can the census inform any conclusions about whether, or the extent to which, commercial fishing is having an adverse effect on shag populations. Pitt Island and Chatham Island shags are potentially vulnerable to numerous threats, including invasive animal and plant pests at offshore island colonies, feral cats and weka, wild and domesticated dogs, roaming sheep, cattle and pigs in parts of Pitt and Chatham Island that are suitable for shag breeding colonies, and visitor impacts at nesting colonies.⁵
13. We do not oppose DOC undertaking population studies to learn more about the effective management of risks to protected species such as Chatham Island and Pitt Island shags – but not under the auspices of the CSP. If the proposed population census is undertaken it should be as Crown-funded public good research. A population project can only be included in the CSP Annual Plan if it evolves to the stage of assessing the adverse effects of commercial fishing on a protected species. POP2016-01 Objectives 5 and 6 are a long way from that point and – based on the outputs of DOC's own research in INT2011-02 – are unlikely ever to reach it.

MIT2016-02 Entanglement of cetaceans in pot/trap lines and setnets and a review of potential mitigation methods

14. MIT2016-02 is a desk-top study on the entanglement of cetaceans in various types of fishing gear including pot lines.
15. NZ RLIC considers that MIT2016-02 does not meet the statutory definition of "conservation services" and should therefore be **deleted** from the CSP Annual Plan.
16. As with POP2016-01, MIT2016-02 has not been, and cannot be, justified on the basis of adverse effects of rock lobster fisheries on cetacean populations. The project "rationale" relies entirely

⁴ Bell, M 2012. Shag interactions with commercial rock lobster and trap fishing methods in the Chatham Islands. Research report to the Department of Conservation [INT 2011-02]

⁵ Taylor, Graeme A. Action plan for seabird conservation in New Zealand. Part A, Threatened seabirds. Wellington, N.Z. Department of Conservation, Biodiversity Recovery Unit, 2000.

on flawed proxies for adverse effects such as spatial overlap between humpback whale migration routes and rock lobster fishing activity and a predicted increase in the number of whale entanglements as a result of increasing numbers of cetaceans. NZ RLIC emphasises that:

- Spatial overlap between commercial fishing activity and a protected species population is not evidence of an adverse effect and nor is it necessarily indicative of a reasonable risk of an adverse effect; and
- Reported incidents or interactions between commercial fishing activity and a protected species are not evidence of an adverse effect and nor are they necessarily indicative of a reasonable risk of an adverse effect.

17. No evidence of an adverse effect (or even of a reasonable risk of an adverse effect) on cetacean populations from rock lobster fishing is provided. In fact, the project description makes it clear that any threat to cetacean populations posed by rock lobster fisheries is unknown as the project aims to “*determine whether or not the current level of risk warrants ... improved mitigation*” and to recommend mitigation options “*if the risk to whales was deemed significant*”. As with the flawed proxies identified above, lack of information on risk is not evidence of an adverse effect and nor is it necessarily indicative of a reasonable risk of an adverse effect.
18. We also remind the Department that, in order to qualify as a legally valid CSP project, the adverse effect in question cannot be just on an individual bird or mammal of a protected species, but must be an adverse effect at the level of a species or population. The Fisheries Act definition of conservation services assumes the presence of adverse effects on species, not individuals. In addition, those aspects of the Wildlife Act 1953 and Marine Mammals Protection Act 1978 that address fishing-related mortality operate at the level of a species or population (e.g., population management plans and maximum allowable levels of fishing related mortality).
19. The broader context of the Fisheries Act also reinforces the significant scale of adverse effects that are under consideration. For instance, the purpose refers to avoiding, remedying or mitigating any adverse effects of fishing on ***the aquatic environment*** (section 8), and the environmental principles refer to maintaining associated or dependent species above a level that ***ensures their long-term viability*** and maintaining ***biological diversity*** (section 9). The reference to maintaining the long-term viability of associated or dependent species (which includes protected species) provides a threshold level for considering when an effect might be adverse – i.e., when the effect of commercial fishing on a protected species population prevents the long-term viability of the population from being maintained.
20. It is simply not credible to suggest that rock lobster fishing is jeopardising the long-term viability whale populations – or, to adopt the Vision of the CSP Strategic Statement, compromising the

protection and recovery of whale populations⁶ – especially as whale sightings are reportedly increasing in the areas where rock lobster fishing takes place.

21. Furthermore, the project description makes no mention of the comprehensive whale mitigation programme that the rock lobster industry has been developing and implementing over many years. This omission is careless and disappointing as NZ RLIC has previously supplied DOC with full documentation on *Whale_Safe*.
22. NZ RLIC's *Whale_Safe* programme builds on a local initiative developed by the CRA 5 Rock Lobster Industry Association in order to assist all pot and trap fishermen to avoid and/or mitigate the risk of entanglements. *Whale_Safe* comprises a booklet containing detailed information about cetacean movements and behaviour, a sequence of photos and illustrations to enable identification of the different cetacean species, and advice on how to set gear to avoid entanglements. The material in the booklet was commissioned from Dr Martin Cawthorn who is regarded internationally as an expert on cetacean biology and behaviour.
23. An important aspect of *Whale_Safe* is a forward warning protocol to alert lobster fishermen that whales are on the move. The forward warning system makes use of *Ocean_Snap* – a generic electronic recording and reporting tool backed up by a data base – which runs as an app on standard smartphone technology. *Ocean_Snap* is a secure system for fishermen to take digital photos of all types marine incidents including whale, dolphin and seabird sightings or strandings as well as unusual vessel activity, fish thieving, or maritime hazards. It includes detailed mapping of individual observations together with time and date, a species identification function, and links to information relevant to the report submitted by a fisherman. In the case of whale observations *Ocean_Snap* has the facility to immediately distribute email and/or SMS messages to every lobster fisherman in the general area of the reported observation.
24. The point is that the rock lobster industry is already fully aware of the risk of whale entanglements, has commissioned and continues to seek internationally-respected expertise on managing cetacean interactions, and is actively avoiding and mitigating the risk of entanglement. The desktop study proposed in MIT2016-02 is redundant.

Summary and way forward

25. POP2016-01 Objectives 5 and 6 and MIT2016-02 should be deleted from the CSP Annual Plan. Neither of the projects has been, or reasonably can be, justified on the basis of the adverse effects on protected species populations posed by rock lobster fishing. As the projects do not meet the statutory criteria for conservation services, we need not comment on the proposed allocation of project costs.

⁶ We note that this "Vision" has no basis in the statute as references to the "protection and recovery" of protected species go beyond the Fisheries Act requirement to ensure the long-term viability of associated or dependent species.

26. NZ RLIC wishes to emphasise the rock lobster industry's willingness to continue to proactively avoid, remedy or mitigate any adverse effects of our fishing activities on protected species populations. To that end NZ RLIC:
- Is continuing to work with the CRA 6 Industry Association to ensure that interactions between the Chatham Island rock lobster fishery and shags remain at levels that will not have an adverse effect on shag populations – including through the implementation and refinement of our Seabird Interaction Code of Practice (which is a world first for seabirds in any pot or trap fishery); and
 - Is continuing to refine and implement *Whale_Safe* and the *Ocean_Snap* technology for use in rock lobster and other inshore fisheries.
27. In our view, conservation outcomes are best served by the rock lobster industry working together with the Department and other interested parties (such as MPI and ENGOs) on these and other practical initiatives that directly reduce any impacts that our activities may have on protected species. This is a better use of the Department's and industry's time, money and resources than counting seabirds, paying for desktop reviews of matters that we are already well aware of, or getting bogged down in legal debates about the point at which an observed interaction becomes an adverse effect on a protected species population.

Yours sincerely

NZ Rock Lobster Industry Council

A handwritten signature in blue ink that reads "Gary R. Sykes". The signature is written in a cursive style with a large initial 'G'.

Executive Officer