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Submission on Management Options for Basking Sharks

Introduction

1. This submission is from Te Ohu Kaimoana in its role as corporate trustee of Te Ohu Kai Moana Trust (Te Ohu) and responds to the joint Initial Position Paper (IPP) titled "*Management Options for Basking Sharks to Give Effect to New Zealand's International Obligations*" from the Ministry of Fisheries (MFish) and the Department of Conservation (DoC). In making this submission, Te Ohu does not seek to undermine any submission that you may have received from individual iwi or iwi collectives.

Summary

2. The IPP contains two options. Management option 1 is the status quo which involves a prohibition on targeting basking shark, but allows them to be utilised if they are caught as a consequence of fishing commercially for other species.
3. Option 2 is preferred by MFish and DoC which entails use of a combination of measures under the Wildlife Act 1953 and the Fisheries Act 1996 to prohibit the "taking" of basking shark and the utilisation of basking shark products. While MFish and DOC define "taking" as encompassing any commercial or recreational targeting of listed species, as well as the deliberate killing of any basking shark accidentally taken (para 13). They also argue that a prohibition on utilisation is necessary for New Zealand to comply with its international obligations under the *Convention on the Conservation of Migratory Species of Wild Animals (CMS)*.
4. Te Ohu holds a number of reservations about the IPP including:
 - (i) whether basking shark in southern hemisphere waters is endangered
 - (ii) whether it is premature to regulate the taking of basking shark on the high seas
 - (iii) whether – if basking shark is endangered – it is appropriate to ban the utilisation of those that are caught incidentally.

5. Te Ohu is of the view that irrespective of whether or not utilisation is prohibited the right of tangata whenua to target basking shark for customary non-commercial use must be retained. A more detailed explanation of these points is contained below.

The Convention

6. In 2000, New Zealand became a signatory to the CMS which prohibits the taking of basking shark (*Cetorhinus maximus*) except in a limited number of circumstances. Basking shark was included in the CMS list of animals for protection primarily due to it being endangered in the Northern Hemisphere particularly the north Pacific and north-east Atlantic where it is a targeted species. The targeting of basking sharks in the Northern Hemisphere is driven by economic returns. The MFish IPP quotes prices of up to US\$57,000 for large single basking shark fins however we understand prices are normally much lower at somewhere between \$2,000 and \$10,000. The topic of shark harvest is an emotive one because of the practice of cutting the fins off sharks and discarding the rest of the carcass. There are unsubstantiated reports that this practice is sometimes carried out while the shark is still alive, a practice that is frowned upon by many consumers of fish and the public in general.
7. The situation in New Zealand is different. Here basking sharks are not part of the Quota Management System and the targeting of the species by commercial vessels is not permitted. However, fishers are legally entitled to utilise incidental catches. We note that the practice of finning sharks while still alive is also prohibited by law in New Zealand.
8. The species is grouped into distinct northern and southern hemisphere zones and while New Zealand signed the CMS, there is no evidence to show that the basking shark is endangered in the southern hemisphere zone where New Zealand is located. Deepwater and middle-depth trawl incidental catches of basking shark in New Zealand total an estimated 66 catches per year. MFish and DOC do not know whether the current level of incidental catch in New Zealand is a sustainability risk to the population.¹ We would assume that as this species is not targeted in New Zealand, the pressures on the population will have been far less than those in Northern Hemisphere waters and we are not fully convinced that the listing of basking shark under the CMS is warranted.

Management Option 2: Protection under the Wildlife Act and Fisheries Act

9. Management option 2 – *Prohibiting utilisation using the Wildlife and Fisheries Act* in the IPP proposes use of the Wildlife Act 1953 and the Fisheries Act 1996 for a full prohibition of taking and utilisation of basking sharks. Option 2 proposes to list basking shark under Schedule 7A of the Wildlife Act which would make it an offence under section 63A to buy or process for sale or sell or otherwise dispose of or have in your possession a basking shark or any part thereof. As is the case now, a defence would be provided where the accidental taking of basking shark is part of lawful fishing operations. However unlike now, a dead animal would not be permitted to be utilised.
10. Option 2 would apply both in New Zealand waters and from New Zealand vessels fishing in the high seas (international waters). MFish and Doc argue that the proposal is necessary to bring the present New Zealand management

¹ Para 16, page 3 of CMS.

framework for basking sharks into alignment with New Zealand's international obligations under the CMS. They argue that New Zealand has an obligation as a signatory to the CMS and under Article III to prohibit all taking of basking sharks.² A regime is required to regulate taking within New Zealand's Exclusive Economic Zone and by New Zealand flagged vessels operating on the high seas. As far as high seas are concerned, it is envisaged that management will require cooperation between countries, provided for in this region by the establishment of Regional Fisheries Management Organisation (RFMOs) which New Zealand is involved in helping to establish.

11. A hierarchy of international and domestic documents influence the management of basking sharks in New Zealand. The CMS is at the top followed by the *International Programme of Action (IPOA)* on sharks and then the *National Programme of Action on sharks (NPOA)*. The NPOA specifically identifies two action points relating to sharks. These are: *iii) Protect Basking Shark* (due 2009) and *iv) Develop and implement a prohibited utilisation process standard* (due 2011).³ The NPOA refers to the fact that that full utilisation of incidentally caught sharks is encouraged in 4 of the 10 objectives in the IPOA.⁴ Therefore, it could be argued that option 2 in the IPP is inconsistent with the pro-utilisation objectives of the IPOA. On the other hand, the NPOA qualifies this statement by also referring to the "general conservation ethic expressed in the desire to maximise the use of natural resources", and "concern over the inherently wasteful practice of shark finning".⁵ The NPOA then proposes the use of Codes of Practice to ensure that live shark finning does not occur.

Customary Use

12. The taking of basking sharks for customary non-commercial purposes is a noted exception to the general prohibition to taking under the CMS.⁶ Although the level of customary catch, if any, in New Zealand is unknown there is ample evidence showing that many species of shark are considered kaitiaki (guardians / kin) of significant importance to some iwi and hapu. We also know that sharks were generally targeted by Maori fishermen as a food source, for oil and for various parts that were used to make traditional ornaments.
13. For these reasons some iwi and hapu may support the full protection of basking sharks while others may support targeting and utilisation. Until we can quantify customary non-commercial catch levels it would be prudent to avoid any legislative changes that would have the effect of prohibiting the right of tangata whenua to take sharks for customary non-commercial use. The customary exception could be reviewed once better information is obtained.

Matters to Consider

14. Te Ohu wishes to highlight the following points as part of its submission:
 - a. We support the sustainable management of all fish stocks in the EEZ and by New Zealand vessels fishing on the high seas.

² Para 14, page 3.

³ Para 211 at page 45 of NPOA.

⁴ Chapter 3.3.2, page 41 of NPOA.

⁵ NPOA, p 42, para 195

⁶ The specific terminology used in the CMS is that "the taking is to accommodate the needs of traditional subsistence users of such species".

- b. Paragraph 30b) of the IPP states that management option 1 – status quo (ie. enables utilisation in limited circumstances) would mean that New Zealand would not fulfil its obligation to the CMS. Furthermore an assertion is made that the CMS states *“all utilisation of species listed on Appendix 1 to the Convention should be prohibited by range states of that species.* However we were unable to find any such reference to this statement in the CMS.
- c. We support a more integrated international approach to the management of vessels on the high seas – as suggested by SeaFIC. We believe that RFMOs – which are in the process of being established in this region - provide the appropriate opportunity and mechanisms to address the issue of conservation measures for the basking shark outside of national jurisdictional limits. We also believe that it is pre-emptive to instigate unilateral measures to “manage” basking shark outside the EEZ until such international agreements have been reached. Management within this framework would also provide an appropriate context to reconsider whether basking shark in southern waters are endangered and whether they should continue to be listed on the CMS.
- d. We also wish to note that it is pre-emptive to prohibit the utilisation of basking shark until the development of the standard identifying marine species where no level of utilisation is considered sustainable. This is a specific action in the NPOA – action (iv).
- e. We support in principle the utilisation of protected species that are landed dead or that are injured to the extent they are unlikely to survive if returned to the sea where that species is caught as a consequence of legal fishing operations. We suggest that utilisation could only be permitted where an observer is on board at the time of capture. The observer’s role would be to attest that all correct procedures were followed. This should ensure that the ability for fishers to utilise that species does not create incentives to target them. Again in principle, we consider that utilisation in these limited circumstances is an efficient use of an economic resource that would otherwise be unnecessarily foregone.
- f. We support the retention of the right of tangata whenua to target and utilise basking shark for customary non-commercial use where tangata whenua choose to do so. We note that this right is explicitly recognised in the CMS and its application would be entirely consistent with the CMS. Changes to the Fisheries and Wildlife Acts must be implemented in a manner that does not prohibit the taking of basking shark for customary non-commercial use.

Recommendations

- 15. As noted above, we consider that as a matter of principle, protected species that are caught incidentally – as a consequence of legal fishing operations – ought to be able to be utilised subject to appropriate checks. However in the case of basking sharks we do not believe that the benefits of utilisation warrant these provisions.
- 16. Therefore we recommend that if it is determined that additional protection of basking shark is appropriate, management option 2 is adopted but with the amendment that the high seas regulation option be deferred until a regional solution for the high seas is developed by RFMOs.

17. We also recommend that the right of tangata whenua to take basking sharks for customary non-commercial use is retained – as is consistent with the CMS.
18. If you have any questions about this submission please contact the writer or Maru Samuels – email: maru.samuels@teohu.maori.nz ddi: (04) 931 9509.



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