



Protection of oceanic whitetip shark

Regulatory Impact Statement

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REGULATORY IMPACT STATEMENT
Protection of oceanic whitetip shark

Agency Disclosure Statement

1. This Regulatory Impact Statement has been jointly prepared by the Ministry for Primary Industries (MPI) and the Department of Conservation (DOC).
2. It provides an analysis of regulatory options for providing protection for oceanic whitetip sharks in New Zealand waters and from New Zealand fishing vessels on the high seas.
3. The proposals put forward must be consistent with the Conservation and Management Measure agreed by the Western and Central Pacific Fisheries Commission.
4. The preferred options will not impair private property rights, market competition or the incentives on businesses to innovate and invest. They will not override fundamental common law principles. The preferred options may impose some additional costs on fishers as they will prohibit utilisation of oceanic whitetip shark, though evidence suggests catches are rare and therefore costs are likely to be minimal.

James Stevenson-Wallace

Director Fisheries Management
Resource Management & Programmes
Ministry for Primary Industries

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Hilary Aikman

Manager – Aquatic and Reporting
Science and Technical
Department of Conservation

/ /2012

Problem definition

5. Oceanic whitetip shark (*Carcharhinus longimanus*) is a highly migratory shark species distributed in tropical and warm-temperate open waters. It 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. More recently, however, substantial concerns have been raised about the status and abundance of oceanic whitetip sharks. The International Union for the Conservation of Nature (IUCN) gave oceanic whitetip sharks a precautionary global assessment of 'vulnerable'.
6. In response, a measure was agreed in March 2012 whereby members of the Western and Central Pacific Fisheries Commission (WCPFC) shall prohibit vessels flying its flag from retaining on board, transshipping, storing on a fishing vessel, or landing any oceanic whitetip shark. All oceanic whitetip sharks caught by member vessels must be released as soon as possible and in a manner that results in as little harm to the shark as possible. As a member nation of the WCPFC, New Zealand has an obligation to implement this measure. Conservation and Management Measures in WCPFC describe binding decisions. New Zealand also has a duty to cooperate in the conservation and management of living resources stemming from the United Nations Convention on the Law of the Sea (UNCLOS)
7. The current New Zealand management of oceanic whitetip sharks does not currently meet our international obligations arising from the WCPFC management measure.

Status quo

8. Oceanic whitetip sharks are not managed within the quota management system (QMS) and no other management measures apply to that species, therefore catches are unconstrained. However, only 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, and observer records show 19 captures over that period.
9. New Zealand flagged purse seine vessels operating on the high seas in the equatorial Pacific are likely to have an incidental bycatch of oceanic whitetip sharks when fishing around fish aggregating devices. However, this bycatch is limited and would normally not be retained. New Zealand flagged longline vessels operate periodically on the high seas in and around New Zealand Exclusive Economic Zone (EEZ) and may capture oceanic whitetip sharks as bycatch. Again the bycatch is likely to be small based on the 19 captures observed over a 15 year period.
10. By allowing utilisation of oceanic whitetip shark bycatch, incentives under the current statutory approach are not aligned with the WCPFC measure. The remaining incentives to retain and sell oceanic whitetip shark bycatch should be removed, by prohibiting all future take and use. The regulatory proposals described herein are considered the most appropriate measures to achieve this based on similar existing measures aimed at the protection of sharks and the ease with which the requirements can be enforced.

Objectives

11. The objective of the regulatory proposals is to give effect to the WCPFC decision to prohibit the landing and sale of oceanic whitetip sharks.
12. The WCPFC measure is required to be promulgated by member states by January 2013. It is therefore desirable that the proposed protection measures are in place as soon as possible.
13. The proposed protection measures are consistent with the National Fisheries Plan for Highly Migratory Species, approved by the Minister of Fisheries under Section 11A of the Fisheries Act in September 2010.

Regulatory impact analysis

14. MPI and DOC consider that only regulatory proposals will best ensure that oceanic whitetip shark is afforded protected species status; current management, voluntary agreements or alternative arrangements are not considered adequate in this case as they would not meet our obligations under the WCPFC Convention to “implement and enforce conservation and management measures through effective monitoring, control and surveillance”.
15. Voluntary agreements would not provide New Zealand with sufficient certainty that it is meeting its obligations under the WCPFC management measure. There are also benefits in maintaining consistency in the manner in which New Zealand applies protection measures. As mentioned, similar measures are currently in place for other shark species (such as pointer and basking sharks) and consistency in implementation is likely to aid in achieving voluntary compliance by simply extending a management regime that fishers are already familiar with. MPI therefore does not recommend alternative arrangements for this particular species.
16. In order to ensure that fishers do not retain and sell any incidental by-catch of oceanic whitetip shark within New Zealand's fisheries waters, DOC proposes that this species is added to Schedule 7A of the Wildlife Act 1953 (Wildlife Act). This would give oceanic whitetip shark absolutely protected species status within New Zealand's fisheries waters and would require incidentally caught oceanic whitetip shark to be returned to the sea unharmed.
17. Absolute protection under the Wildlife Act would mean that any person taking, or attempting to take oceanic whitetip shark without lawful authority, would be committing an offence against the Act. Every person who buys or processes for sale or sells or otherwise disposes of or has in his or her possession any absolutely or partially protected marine wildlife or any part thereof commits an offence under the Wildlife Act. These restrictions on possession and sale would fully meet our obligations under the WCPFC conservation and management measure.
18. The Wildlife Act requires that protected species are released immediately and DOC also provides fishers with guidelines on best practices to ensure minimal harm is caused to the animal.
19. Penalties include fines up to \$250,000 or imprisonment for no longer than 6 months. A further penalty fine, not exceeding \$10,000 for every item of marine wildlife (other than coral) in respect of which the offence was committed, may also be incurred.

20. The powers of the Wildlife Act have limited application beyond the boundaries of New Zealand's fisheries waters, and in order to prohibit the take of oceanic whitetip shark by New Zealand fishing vessels on the high seas MPI proposes that regulations are created under section 297 of the Fisheries Act 1996. It will be an offence to contravene this prohibition, and a penalty fine of up to \$100,000 could be incurred.
21. An option was available to MPI to manage oceanic whitetip shark take on the high seas through placing conditions on all high seas permits, prohibiting the use of all incidental catch of oceanic whitetip sharks. However, the proposed regulatory approach was considered to provide more transparency since the requirements would be clearly described in regulation rather than linked to individual permits. It would also impose a lesser administrative burden than amending all high seas permits. In addition, the regulatory proposals are consistent with the approach used to prohibit the use of white pointer shark in 2007 and basking shark in 2010.
22. The primary impact of both proposals is that fishers would be prevented from using incidental bycatch of oceanic whitetip shark. This would come at a cost to those fishers who currently do so. The value of such fish to fishers is uncertain but data from catch landing records, as well as information received during consultation, indicated that the level of catch of oceanic whitetip sharks is very low; therefore the costs to industry would be minimal. There is no information on the port price of oceanic whitetip sharks based on the low number of recorded catches (19 observed in last 15 years). However, other more commonly caught highly migratory sharks (i.e. mako, blue or porbeagle sharks) are relatively low value with an average port price of \$0.50/kg. Based on this proxy valuation and the extremely low catch rates, MPI would expect the foregone income for any commercial fisher to be well below \$1,000 a year.
23. In addition, observer records from commercial longline vessels show that of the 19 oceanic whitetip sharks recorded, nine were discarded, four were finned, five were retained, and one was lost. This indicates that oceanic whitetip shark has limited commercial value.
24. Defences for sharks taken incidentally would be available under the Wildlife Act and the Fisheries Act. Under the Wildlife Act, there is a defence for incidentally killing or injuring protected species if this takes place as part of a lawful fishing operation and the reporting requirements of the Act are met. Under the Fisheries Act, a defence is available if the fisher can prove that, despite taking reasonable precautions and exercising due diligence, the taking was beyond the fisher's control and the fish was immediately returned to the sea.
25. An impact of including the oceanic whitetip shark as a protected species under the Wildlife Act is that reporting requirements under fisheries legislation would change. This change requires an amendment be made to the Fisheries (Reporting) Regulations 2001, listing oceanic whitetip shark in Part 2C of Schedule 3. The result of this would require captures to be reported on a non- fish and protected species catch return. Compliance would be monitored with only minor changes to the existing procedures and processes undertaken by agencies. In view of this MPI and DOC consider the costs associated with this change to be minimal.
26. If oceanic whitetip shark becomes an absolutely protected species under the Wildlife Act, that Act currently prescribes separate reporting requirements in the event that marine wildlife is incidentally killed or injured. However DOC is in the process of streamlining the protected species reporting provisions of the Wildlife Act with the reporting requirements under fisheries legislation.

Consultation

27. MPI and DOC released an initial position paper (IPP) for consultation on 18 July 2012.

Submissions were received from the following organisations:

- a) New Zealand Recreational Fishing Council;
- b) New Zealand Sport Fishing Council;
- c) Seafood Industry Council;
- d) The Solander Group; and
- e) Shark Advocates International.

28. All submissions received supported the proposal.

Conclusions and recommendations

29. MPI and DOC recommend:

- a) That oceanic whitetip shark (*Carcharhinus longimanus*) be listed on Schedule 7A of the Wildlife Act 1953, thereby making it an absolutely protected species;
- b) That regulations be created under section 297(1)(o) of the Fisheries Act 1996 prohibiting the taking of oceanic whitetip shark by New Zealand fishing vessels on the high seas; and
- c) That the Fisheries (Reporting) Regulations 2001 be amended to include oceanic whitetip shark on Part 2C to Schedule 3.

Implementation

30. Amendments to Schedule 7A of the Wildlife Act to include oceanic whitetip shark can be made by an Order in Council under section 8 of that Act. The Order in Council would be submitted to the Economic Growth and Infrastructure Cabinet Committee and the Legislative Cabinet Committee for approval before being submitted to the Executive Council.

31. Regulations under the Fisheries Act will be submitted to the Economic Growth and Infrastructure Cabinet Committee and the Legislative Cabinet Committee for approval before being submitted to the Executive Council.

32. No transitional arrangements are necessary.

33. There are no additional compliance costs associated with these proposals. Any oceanic whitetip shark taken incidentally as part of fisheries operations for other species must be reported on the appropriate return.

Monitoring, evaluation and review

34. If implemented, the reporting requirements of the Wildlife Act and Fisheries Act would enable agencies to monitor and evaluate the proposed protection measures.

35. Unless the obligations to protect oceanic whitetip shark cease to apply to New Zealand, there will be no requirement to review the proposed protection measures.