

Submission on “Proposed amendments to non-fish and protected species reporting requirements”

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SUBMITTER DETAILS

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1. This is the Environmental Defence Society’s (EDS) submission on a Consultation Document by the Ministry for Primary Industries on Proposed amendments to non-fish and protected species reporting requirements.
2. EDS is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning to promote better environmental outcomes in resource management.
3. EDS has recently published a report on reform of the Wildlife Act 1953¹ which examined the large ‘carve outs’ from marine protection for accidental or incidental take in the Wildlife Act and the Marine Mammals Protection Act 1978 (MMPA).²
4. Protected species such as seabirds, marine reptiles, marine mammals and corals are regularly taken as bycatch during fishing activity, and the numbers affected can be significant.
5. Both the Wildlife Act and the MMPA provide a defence to prosecution for taking a protected species without a permit, where the killing or injuring of the animal is accidental or incidental and it is reported, to a fisheries officer or a wildlife ranger in the case of the Wildlife Act, and to a marine mammals officer or a fisheries officer in the case of the MMPA.
6. So long as the protected species bycatch is reported, the presumption is there is no cap on the number of species that can be caught as bycatch. The Minister may action specific controls, however, there is no requirement for the Minister to act based on the number of individuals caught as bycatch, the mortality rate or the threat status of the species concerned.

¹ <https://eds.org.nz/resources/documents/reports/reform-of-the-wildlife-act-1953-an-opportunity-for-transformational-change-of-aotearoa-new-zealands-biodiversity-law-2/>

² <https://eds.org.nz/wp-content/uploads/2023/07/Wildlife-Act-Report-Appendix-D-Oceans.pdf>, Issue 3

7. In its report on the Wildlife Act, EDS has suggested that:

a) *The duty of care on fishers to avoid bycatch should be improved*

Bycatch is an inevitable consequence of fishing. However, its impact can be significantly reduced via improvements to the current regulatory framework, which only requires that it be reported.

If bycatch occurs the report of the incident could be required to include the avoidance measures taken before and after the incident occurred, and a 'move on' rule could be applied. If a vessel has repeated incidents of bycatch, it could be excluded from participating in the fishery where the bycatch has occurred and only be let back in after demonstrating that equipment and methods have been put in place to avoid it in the future. Fines could also be issued. This would rely on effective monitoring of bycatch, such as by placing surveillance cameras on commercial fishing vessels, which is currently happening in any event.

b) *Bycatch of threatened species should be more tightly regulated*

Currently, bycatch species that are threatened (under the New Zealand Threat Classification System) are not adequately protected by either population management plans under the Wildlife Act, the MMPA or under the Fisheries Act 1996. Management of these species requires greater oversight and control.

c) *Reporting arrangements could be improved*

Currently, if the bycatch is reported to a fisheries officer, there is no requirement that the Department of Conservation (DOC) be notified. There is also no requirement for Fisheries NZ to pass the information onto DOC, meaning that DOC may not be apprised of the risks to a protected species in a timely manner. These reporting arrangements could be improved so that DOC is apprised of current information.

8. EDS supports the proposed changes to non-fish or protected fish species reporting for commercial fishers as set out in the Consultation Document. An expanded definition of "catch" will better align reporting obligations with what is required under the Wildlife Act. Further, greater specificity in reporting detail will provide a more accurate and fulsome picture of by-catch.

9. However, we consider that Fisheries NZ should go further to address by-catch as suggested above. By-catch is a significant threat to Aotearoa New Zealand's protected marine species and more needs to be done to prevent it in the first instance, and then to manage it.

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