

<b>Distribution</b>
Minister
Minister's Advisor
Minister's Office

**Ministry for Primary Industries**  
Manatū Ahu Matua



13 September 2012

Document Number: B12-182

## Prohibition on the taking of oceanic whitetip sharks

### Purpose:

This final advice paper asks that you utilise your powers under the Fisheries Act 1996 to prohibit the taking of oceanic whitetip sharks by New Zealand flagged vessels fishing on the high seas. The Ministry for Primary Industries (MPI) and Department of Conservation (DOC) consulted with stakeholders on 18 July 2012 on a joint proposal to prohibit the taking of oceanic whitetip shark in New Zealand fisheries waters (using the Wildlife Act) and on the high seas (using the Fisheries Act). MPI now presents the following advice for your consideration based on the submissions received.

Minister	Action Required:	Minister's Deadline
<b>Minister for Primary Industries</b>	<b>Note</b> the contents of this Final Advice Paper; and <b>Decide</b> on the recommendations contained in this Final Advice Paper.	21 September 2012 to meet regulatory commitments for implementation in 2013
<b>Cc: Associate Minister for Primary Industries</b>		

### Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	James Stevenson-Wallace	Director Fisheries Management	04 894 0278	029 894 0278
Principal Author	Arthur Hore	Fisheries Manager Highly Migratory Species/Pelagic	09 820 7686	027 495 7482

## Executive Summary

---

1. This briefing summarises changes proposed in the attached final advice paper, to provide protection to oceanic whitetip sharks in New Zealand fisheries waters and captures from New Zealand flagged vessels fishing on the high seas. The Minister of Conservation will separately receive advice regarding the application of the Wildlife Act in New Zealand fisheries waters.

## Background

2. 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 and are also targeted in small-scale fisheries. More recently, however, substantial concerns have been raised about the status and abundance of oceanic whitetip sharks.
3. In response, a measure to prohibit any landings or sale of oceanic whitetip shark was adopted by the Western and Central Pacific Fisheries Commission (WCPFC) in March 2012. As a member nation of the WCPFC, New Zealand has an obligation to implement this measure.
4. Oceanic whitetip sharks are not managed within the quota management system (QMS). 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.
5. 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. This bycatch is not likely to be large and would normally not be retained. New Zealand flagged longline vessels operate periodically on the high seas in and around the New Zealand Exclusive Economic Zone (EEZ). Again the bycatch is likely to be small and the oceanic whitetip taken and released by this fishing method have a relatively high likelihood of survival.

## Consultation

6. To provide protection for oceanic whitetips within New Zealand fisheries waters and captures from New Zealand flagged vessels fishing on the high seas, the Ministry for Primary Industries (MPI) and Department of Conservation (DOC) consulted released an initial position paper (IPP) for consultation on your behalf on 18 July 2012 proposing that:

- a) The Minister of Conservation agrees to prohibit the take of oceanic whitetip sharks in New Zealand and New Zealand fisheries waters under the Wildlife Act 1953; and
  - b) The Minister for Primary Industries agrees to prohibit the take of oceanic whitetip sharks by New Zealand flagged vessels operating on the high seas, through regulations made under the Fisheries Act.
7. Four submissions were received during the consultation period and these are available under separate cover.
8. Submissions were received from the following organisations:
  - New Zealand Recreational Fishing Council (NZRFC);
  - New Zealand Sport Fishing Council (NZSFC);
  - Seafood Industry Council (SeaFIC); and
  - The Solander Group (Solander).
9. Submissions received supported the proposal. MPI confirms its view that oceanic whitetip shark warrants protected status and in order to effect this outcome, your approval is sought for the following regulatory changes:
  - a) Making regulations under section 297 of the Fisheries Act 1996 to restrict the take of oceanic whitetip shark by New Zealand flagged vessels operating on the high seas; and
  - b) A consequential amendment to the Fisheries (Reporting) Regulations 2001 to require fishers to report take of oceanic whitetip shark on the non-fish and protected species catch return.
10. The option to retain the status quo is also available to you should you consider the existing management measures to be sufficient, or you wish to delay this decision or you wish to implement an alternative approach at a later date. MPI does not recommend retaining the status quo.
11. The recommendation to protect oceanic whitetip sharks has arisen because of New Zealand's obligation under WCPFC, not because there is evidence indicating New Zealand fisheries pose a sustainability risk to the local oceanic whitetip shark population.

## Recommendations

---

12. MPI recommends that you:

- a) **Note** that DOC will be giving a separate briefing to the Minister of Conservation with a recommendation to include oceanic whitetip shark on Schedule 7A of the Wildlife Act 1953, to give it protection in New Zealand and New Zealand fisheries waters.

**Noted**

- b) **Agree** to the making of regulations under section 297 of the Fisheries Act 1996 to restrict the take of oceanic whitetip shark by New Zealand flagged vessels operating on the high seas; and

**Agreed / Not Agreed**

- c) **Agree** to the making of a consequential amendment to the Fisheries (Reporting) Regulations 2001 to require fishers to report incidental take of oceanic whitetip shark on a non-fish and protected species return.

**Agreed / Not Agreed**

James Stevenson-Wallace  
Director, Fisheries Management  
Resource Management and Programmes

Hon David Carter  
Minister for Primary Industries

/ /2012

## **Final Advice Paper on Protection of Oceanic Whitetip Shark**

### **Stock status**

13. Oceanic whitetip shark 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.
14. 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'.
15. 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.
16. 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.

### **International context**

17. 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.
18. 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 Exclusive Economic Zone, high seas permit conditions require fishers to land fins only if attached to the trunk, in line with CMM 2010 - 07.
19. The WCPFC's scientific committee considered several papers at its 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.

20. 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).
21. 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.

### **Domestic context**

22. 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).

### **Commercial fishery**

23. 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.
24. 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.
25. 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.

### ***Recreational fishery***

26. There is currently little information available on the recreational use of oceanic whitetip sharks in New Zealand. MPI is unaware of any recreational targeting of oceanic whitetip shark.

### ***Customary fishery***

27. An estimate of the customary catch of oceanic whitetip sharks is not available but is likely to be small, for the same reasons as outlined for recreational catches.

### **Summary of IPP Proposal**

28. On 18 July 2012 MPI and DOC released an IPP for public consultation. The IPP was posted on both MPI and DOC websites, and key stakeholders were notified of the documents availability.
29. In the IPP, MPI and DOC proposed a prohibition on the taking of a marine species through the use of two statutes currently in force:
  - a) The Wildlife Act to prohibit the taking and utilisation of marine species in New Zealand fisheries waters; and
  - b) Regulations under the Fisheries Act to restrict the take of oceanic whitetip shark by New Zealand flagged vessels fishing on the high seas.
30. The IPP also proposed an amendment to the Fisheries (Reporting) Regulations 2001, to include oceanic whitetips on Part 2C of Schedule 3. Part 2C lists those fish species that are absolutely protected under the Wildlife Act.

### **Analysis of Submissions**

31. Four written submissions were received by MPI that contained comments on the IPP proposal. DOC did not receive any submissions on the proposal. Copies of the submissions are available under separate cover.
32. All submissions received were in support of the proposal.
33. NZRFC noted that only occasional catches of oceanic whitetips are known in New Zealand, but these catches are likely to be underestimated.
34. SeaFIC agreed that there is a need for combined action under the Wildlife Act 1953 and the Fisheries Act 1996, to ensure protection would apply to both New Zealand fisheries waters and New Zealand vessels operating on the high seas. SeaFIC noted that the proposed regulatory measures are identical to those used to protect white pointer and basking sharks.
35. SeaFIC, Solander and the NZSFC all acknowledged the proposal to protect oceanic whitetip sharks arose due to New Zealand's obligation to implement

measures adopted by the WCPFC. Solander further notes that there is no evidence that New Zealand fisheries pose a sustainability risk to the oceanic whitetip population.

36. NZSFC stated that they are not aware of any recreational targeting or capture of oceanic whitetip sharks, but that ocean-going recreational vessels have sighted oceanic whitetip sharks on rare occasions. NZSFC requested meaningful consultation on the subsequent creation of new regulations to give effect to the prohibition of taking whitetip sharks.

## **Option Analysis**

### ***Status Quo***

37. MPI proposed only one option for consultation but the status quo remains an option that is open to you. Retaining the status quo would enable fishers to continue to use any incidental bycatch of oceanic whitetip shark. The status quo was not supported by any of the submitters, and New Zealand has an obligation to implement protection measures for oceanic whitetip sharks given the measures adopted by the WCPFC. The measures indicate 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.

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

38. In cases such as this, where international concerns dictate action, the taking of a marine species can be prohibited using a combination of the tools available under the Wildlife Act and Fisheries Act. This will provide the strongest and most comprehensive protection measures for oceanic whitetip sharks available in New Zealand.
39. The Wildlife Act (administered by DOC) is the primary legislation for wildlife protection. It applies throughout New Zealand and New Zealand fisheries waters (i.e. out to 200 nautical miles).
40. 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.
41. However regulations can be made under section 297(1)(o) of the Fisheries Act to give effect to provisions of a convention to which New Zealand is a party and these regulations can apply to New Zealand flagged vessels beyond the outer limits of New Zealand's fisheries waters.
42. MPI and DOC therefore believe that a combination of regulations under the Fisheries Act plus the addition of oceanic whitetip shark to Schedule 7A of the Wildlife Act are the appropriate tools to use, to give effect to the WCPFC requirements.



43. An option to place conditions on all high seas permits, prohibiting the utilisation of oceanic whitetip shark is available, but MPI and DOC do not consider this approach appropriate. The proposed regulatory approach provides more transparency than amending all high seas permits and entails less administrative burden. The Ministry and DOC therefore recommend a regulatory approach.
44. A combination of regulations under the Fisheries Act plus the Wildlife Act 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***

45. 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.
46. 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.
47. 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.
48. As well as the reporting requirements outlined above, all oceanic whitetips caught incidentally must be released as soon as practicable. There are no specific data available on the survival rates of oceanic sharks subsequently released. However, all recorded captures in New Zealand have occurred on surface longline vessels, and catch and release data from other sharks species caught on surface longline gear suggest that there is a relatively high likelihood that they are likely to survive release.

### ***Relevant objectives: National Fisheries Plan for Highly Migratory Species***

49. 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. Objectives relevant to, and consistent with this proposal, include:
  - 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***

- 50. 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.
- 51. There are mechanisms available under the Fisheries Act that allow for customary take. Whilst the Wildlife Act makes no specific provision for traditional or customary use, there are provisions under which applications could be considered for take of absolutely protected wildlife. While current information does not suggest that oceanic whitetip shark is a species of importance to Maori, MPI and DOC do not consider that according them protected species status would preclude future customary use or customary take.

### ***Recreational considerations***

- 52. There is currently little information available on the recreational use of oceanic whitetip sharks in New Zealand. MPI are unaware of any recreational targeting of oceanic whitetip shark (confirmed also by the submission of NZSFC). 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. No submissions were received that provided any further information on this matter. The NZSFC did note in its submission, however, that ocean-going recreational vessels have sighted oceanic whitetip sharks on rare occasions.