Environmental Law Initiative
Tiakina te mauri o te taiao

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Conservation Services Programme

Department of Conservation

Wellington

By: email to csp@doc.govt.nz

Dear CSP,

The Environmental Law Initiative (ELI) thanks you for this opportunity to submit on the Draft Department of Conservation (DOC) Conservation Services Programme (CSP) Annual Plan for 2023/24.

ABOUT US

The Environmental Law Initiative (ELI) is a charitable trust that aims to make a positive difference to the environment through the application and improvement of environmental laws. ELI uses litigation, advocacy and education to meet these aims. ELI works across a range of environmental domains, including oceans and coasts, freshwater, biodiversity and conservation, climate change, and environmental pollution. For more information, please see www.eli.org.nz.

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OUR SUBMISSION

The Environmental Law Initiative (ELI) thanks you for this opportunity to submit on the Draft Department of Conservation (DOC) Conservation Services Programme (CSP) Annual Plan for 2023/24. ELI welcomes the New Zealand Government taking the effects of fishing on protected species seriously and the development of an appropriate research and mitigation plan.

Observing commercial fisheries

This component of the Plan is not discussed or explained and there is no detail provided in the draft. This is a significant oversight as, without a discussion of what levels of observer coverage DOC proposes to seek and in what fisheries, it is impossible to provide any feedback. Overall, the process whereby CSP identifies fisheries for observer coverage is completely opaque and has a distinct lack of transparency. Several years ago, the draft CSP Annual Plan would include a clear identification of which fisheries and what coverage levels CSP was seeking for the coming year. This has been missing from the draft Plans for several years now and represents a significant loss in transparency.

ELI **strongly recommends** that DOC returns to this open and transparent approach to identifying and setting observer coverage for fisheries with known or suspected bycatch. This will allow stakeholders to understand and comment on DOC's identified priorities.

While it is noted that there is a requirement for some negotiation with Fisheries New Zealand (FNZ) around the final levels of coverage that can be achieved, DOC CSP must start with a clear goal with respect to which fisheries they want to target. Any deviation away from this target should be described and explained by DOC and/or FNZ to support an open and transparent process. In our discussions with DOC CSP, we requested details of how stakeholders can contribute to the process of identifying and setting coverage levels and we were directed to FNZ. It appears that the only opportunity for stakeholders to input into the final proposed list of observer coverage is when the final list is released by FNZ for comment. There appears to be no opportunity for input into the DOC CSP observer allocation process.

Notwithstanding the apparent lack of ability for stakeholders to input into the setting of CSP observer coverage targets, ELI **recommends** that CSP ensures robust observer coverage in the following fisheries:

1. *Cook Strait hoki trawl fisheries* – there has been a known and significant level of fur seal mortality in this fishery for many years. Observer coverage is running at <10% which is inadequate to develop robust estimates of total fur seal bycatch.
2. *East Coast South Island set net fisheries* – Hector's dolphins are caught in this fishery. These fisheries now have Fishing Related Mortality Limits (FRML) set under the Hector's and Maui dolphin Threat Reduction Plan. This should require adequate observer coverage to ensure that accurate estimates of total mortality can be developed (with associated low levels of uncertainty). This is especially important given that these FRMLs are only a few individuals and, given that these fisheries should be closed when a FRML is reached, accurate and robust reporting is critical. It appears likely that both DOC and FNZ are not applying adequate resources in the monitoring of FRMLs in these fisheries due to very low observer levels (e.g., <6%) which don't allow them to reliably estimate and monitor bycatch levels in relation to the FRMLs. ELI notes that the only other fishery which uses FRML for direct management is the 6T SQU fishery and that fishery has consistently achieved between 90-100% coverage over the last few years. ELI submits that equivalent levels of coverage are required in the ECSI set net fishery to also allow for the robust use of FRMLs.
3. *Northern and eastern North Island surface long line fisheries* – These fisheries used to have reasonable levels of observer coverage at around 20-30% but levels have reduced significantly in recent years to approximately 10% which is likely to be inadequate for characterising bycatch levels reliably. There is known and potentially increasing bycatch of endangered Leatherback turtles in these fisheries which require immediate attention. Specifically, it is critical that observer coverage is targeted to those areas and times when turtle bycatch is likely as these areas and times appear. There is also a significant issue with Black Petrel bycatch which also requires robust levels of coverage.
4. *North-eastern North Island bottom line fisheries* – Black petrels are also caught in this fishery and observer levels have been very low (e.g., <6%). Adequate levels of coverage are required.
5. *South Taranaki and Tasman Bay small trawl vessel fisheries* – There is a long-documented bycatch of common dolphins by small (i.e., <28m) trawl vessels operating in south Taranaki and around Tasman Bay. The level of bycatch in this fishery is potentially significant (e.g., 80 per year) and, with long term average of observer coverage of almost zero, it is urgent that there is increased coverage in this fishery to determine if this high level of mortality is real or if it is an artifact of extremely low coverage and/or non-random sampling.

Interaction projects

There is a good range of projects proposed and ELI particularly welcomes the increase in projects related to turtle bycatch which is growing within NZ fisheries and is likely to continue to be a significant issue into the future. However, it is interesting to note that there are no marine mammal projects in this section. Three of the four fisheries described in the section above are fisheries with a significant bycatch issue and for which we have little robust data. All three should be candidates for potential INT projects.

ELI is disappointed to note that there is no follow up project to the previous work on Cook Strait fur seal bycatch in hoki trawls. That project highlighted that the level of estimated bycatch may well be unsustainable under the US PBR approach which has significant implications for exporting hoki to the US. The lack of a follow-up project (e.g., investigating the foraging ecology of fur seals and potential spatial overlap with trawlers) allows for the continuation of this considerable bycatch for another year with no direct action.

ELI **supports** projects INT2021-04, INT2022-02, INT2022-03, INT2023-02, INT2023-04, INT2023-07, 2023-09 and 2023-11 as maximising the amount of information that comes from existing data.

Population projects

CSP have developed a good range of projects under this item but, again, marine mammals are largely absent except for the NZ sea lion project. ELI **recommends** that DOC should include projects on fur seals in the Cook Strait region given the preliminary results from the existing project identifies a need to collect higher quality data about the local populations. In addition, it is also reasonable to expect CSP to contribute towards a national fur seal survey which is an essential step in understanding overall fishery impacts, including local deletion, given that this species is the most frequently caught marine mammal year on year.

Project POP2023-01 is ambitious but could provide some essential data in understanding the interaction with turtles. While ELI **support this project in principle**, we would recommend that there is a robust scoping project to assess the potential effectiveness of this project prior to starting the actual survey work itself. The project appears particularly optimistic in that an aerial survey can provide meaningful data on turtles over the full range (or even a small part) of their distribution. It may be that drones offer the most cost-effective way of undertaking this work but that would be strongly dependent on turtle

encounter rates. Perhaps a better use of these funds would be in ensuring the delivery of a robust observer programme but the two projects are not mutually exclusive.

Mitigation projects

As noted above, there is also a dearth of marine mammal mitigation projects. ELI **recommends** that CSP scope a project on Seal Exclusion Devices (SED) given that fur seals are the most commonly caught marine mammal in trawls and there are no other viable mitigation methods. We note that SEDs have been tested previously with limited success but it is long overdue to revisit this issue given the technological and gear advances that have arisen since the original trials in 2008 and 2009. Given the sheer number of fur seals being caught annually and, with no signs of any reduction in bycatch rates, it is essential to revisit the utility of SEDs. Any such projects should also include a review of other potential mitigation methods that may have been used around the world. We note that there was little faith that Sea lion Exclusion Devices (SLED) would work in the early days of development but that incremental advances were made over many years that resulted in a fully functional product that has essentially eliminated the bycatch issue in that fishery. It is naive to expect that equivalent challenges with the implementation of SEDs can be resolved with a single project trial. For example, if a fur seal FRML was applied to fisheries with a significant fur seal bycatch issue and, the fishery was closed upon reaching the FRML (as is implemented in the 6T SQU fishery), there would be sufficient incentive for fishers to develop an effective mitigation tool. We also note that this project is consistent with a High priority assigned to Mitigation studies for NZ fur seals in the CSP Medium Term Research Plan.

Potential new projects

ELI encourages CSP to explore other mitigation and management tools including potential economic incentives and disincentives to provide a carrot and/or stick approach for the mitigation of bycatch. At present, there appears to be little reduction in bycatch rates in many fisheries, including where mitigation has already been applied. It is possible that the industry has now implemented all the relatively easy-fix mitigation options that have little operational or financial impact on their bottom line. It is likely that to make further reductions in line with a zero-mortality goal, then further mitigation approaches are going to require industry to implement mitigation that will affect their financial bottom line and that this will likely require the Government to enforce such unfavourable actions.

If you require any further information about our submission, please feel free to contact Simon Childerhouse.