

**Te Ohu Kaimoana's response to
the proposed National Plan of
Action - Seabirds 2020**

Te Ohu
Kaimoana


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Summary

1. Te Ohu Kaimoana supports the general direction signalled by the proposed National Plan of Action – Seabirds 2020 (“the Plan”) and its focus on managing the direct effects of fishing. We fully support the vision in which “New Zealand strives for no fishing-related seabird captures”.
2. We are aware there is a push from some parties for the Plan to contain a specific “zero bycatch” target. We don’t think such a target is appropriate if we are to find a balance between conservation and sustainable use consistent with *Te Hā o Tangaroa kia ora ai tāua*. Sustainable use must be based on appropriate conservation of ecosystems, habitats and species but absolutes such as “zero-bycatch” are not helpful.
3. The proposed vision is aspirational and appropriate given the primary reason for managing direct fishing impacts is ensuring species of seabirds are maintained above a level that ensures their long-term viability, consistent with the s 9 (a) of the Fisheries Act. There are opportunities for quota owners to work together to ensure that fishing practices ensure captures are at a level that is above this bottom line.
4. While we recommend some minor changes to the wording of the four goals, we also support their general intent which covers:
 - a. Implementation of effective catch mitigation practices
 - b. Management of the direct effects of fishing in such a way that they do not threaten seabird populations
 - c. Research and information to continuously improve the management of fisheries impacts
 - d. Active engagement internationally, where threats to our seabirds need to be managed.
5. Iwi and the fisheries sector have been making strenuous efforts in various fisheries to reduce incidental catch of protected species, including seabirds. These efforts are focussed on ensuring fisheries effects are managed and much progress is being made with the support of the liaison programme. These efforts need to be sustained to continually improve fishing practices so as to avoid seabird captures.
6. Behaviour is regulated by statutory and non-statutory means. The plan proposes use of “appropriate” regulation but should make it clearer that this includes a combination of outreach and support, reporting and training which are central to innovation and better performance. Statutory regulation is a last resort. It has its challenges – particularly where it “locks in” use of particular methods or approaches that do not fit particular fisheries, or that are surpassed by improvements. There is no “one size fits all” solution for every vessel and much will depend upon the nature of the fisheries concerned and the way seabirds interact with them.
7. The Plan signals the need to address captures in the non-commercial sector. Estimates of seabird captures in recreational fisheries are high compared to the commercial sector and efforts to get better information and foster improved practices within this sector must be a priority. The experience of fishers in the customary non-commercial sector is unclear, and

we recommend further engagement with kaitiaki, through Iwi, to determine whether captures are a problem.

8. We have viewed the combined response prepared by Fisheries Inshore New Zealand (FINZ) and the Deepwater Group (DWG). In our view it provides a high level of technical information and hence we refer Fisheries New Zealand to the detailed comments on specific wording in the text. In turn we draw on some of these comments as appropriate.
9. We look forward to further discussion on the development of this proposal.

Ngā mihi



Dion Tuuta
Chief Executive
Te Ohu Kaimoana

Introduction

10. This document provides Te Ohu Kaimoana’s response to the proposed National Plan of Action – Seabirds 2020. Our interest in the matter relates to our responsibility to protect the rights and interests of Iwi in the Deed of Settlement and assist the Crown to discharge its obligations under the Deed and the Treaty of Waitangi.¹ To achieve our purpose, we are guided by the principles of *Te Hā o Tangaroa kia ora ai tāua*. We do not intend for this response to derogate from or override any response or feedback provided independently by Iwi, through their Mandated Iwi Organisations (MIOs²) and/or Asset Holding Companies (AHCs).
11. We work on behalf of 58 mandated Iwi organisations (MIOs), who represent all Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.
12. In addition to our statutory mandate, MIOs have approved our Māori Fisheries Strategy and three-year strategic plan, which has as its goal “that MIOs collectively lead the development of Aotearoa’s marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent”. We play a key role in assisting MIOs to achieve that goal.

¹ Our purpose, set out in section 32 of the Maori Fisheries Act, is to “advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:

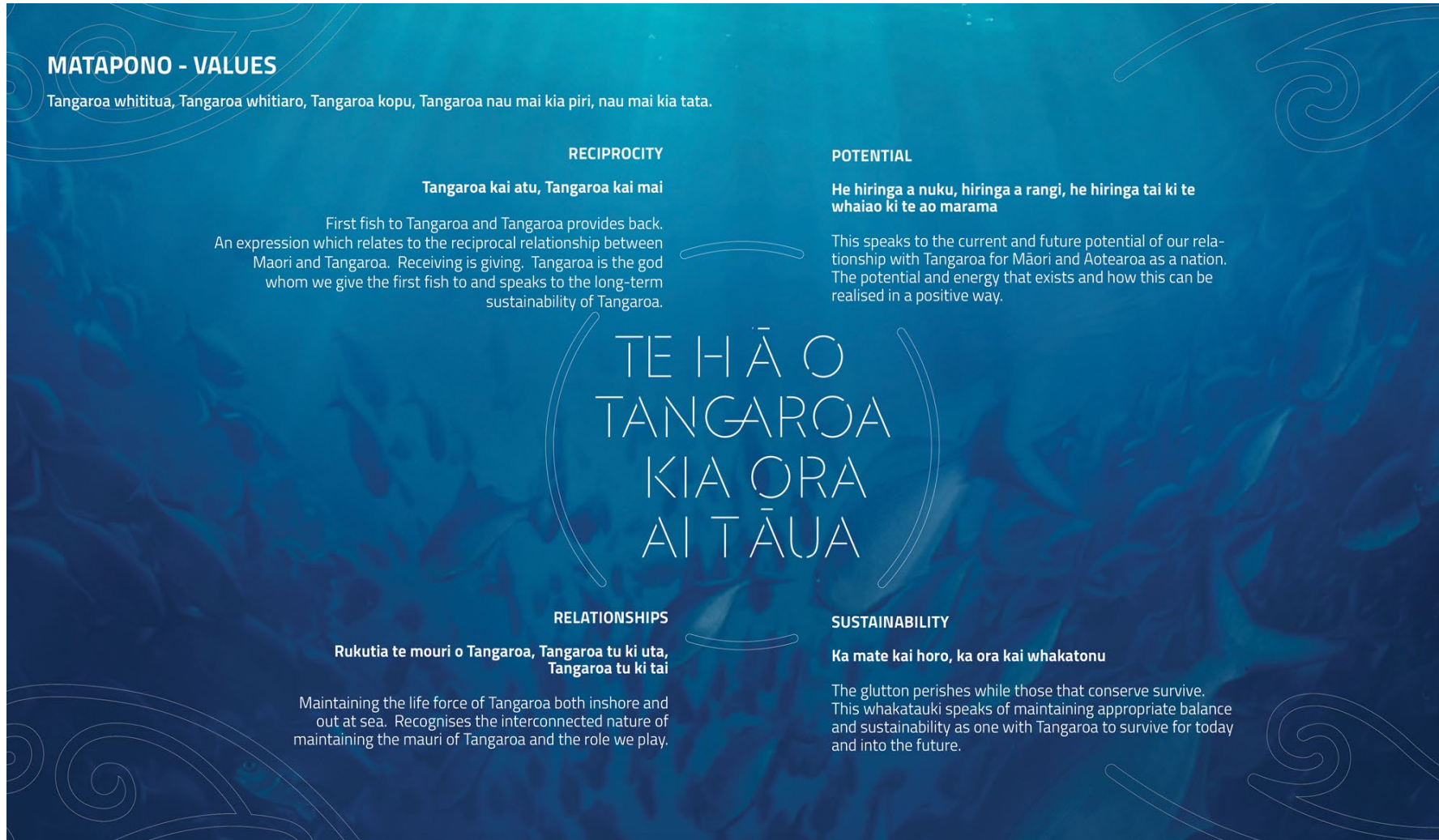
- (a) Ultimately benefit the members of iwi and Maori generally; and
- (b) Further the agreements made in the Deed of Settlement; and
- (c) Assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
- (d) Contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.”

² MIO as referred to in The Maori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27

Te Hā o Tangaroa kia ora ai tāua

13. Iwi/Māori have a unique and lasting connection with the environment. Our challenge is to ensure that this connection is maintained. *Te Hā o Tangaroa kia ora ai tāua* (the breath of Tangaroa sustains us) is an expression of a Māori World View. It contains the principles we use to analyse modern fisheries policy, and other policies that may affect the rights of Iwi under the Deed of Settlement. *Te Hā o Tangaroa kia ora ai tāua* is outlined in **Figure 1**.
14. In essence, *Te Hā o Tangaroa kia ora ai tāua* highlights the importance of humanity's interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.
15. The Fisheries Settlement is an important and relevant part of modern fisheries management for Aotearoa. As a result, Māori rights in fisheries can be expressed as a share of the productive potential of all aquatic life in New Zealand waters. Māori rights are not just a right to harvest, but also to use the resource in a way that provides for their social, cultural and economic wellbeing.
16. The Fisheries Act complements and supports *Te Hā o Tangaroa kia ora ai tāua*. Our ability to maintain a reciprocal relationship with Tangaroa depends in part upon appropriate implementation of the Act, including maintaining the viability of associated and dependent species such as seabirds (s 9(a)). This should be the underlying driver of the NPOA-Seabirds.
17. *Te Hā o Tangaroa kia ora ai tāua* does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa. It speaks to striking an appropriate balance between people and those we share the environment with. When viewing human interactions with the environment, there are no absolutes in Te Ao Māori. Approaches that seek 100% utilisation or 100% preservation do not align with kaitiakitanga.
18. Kaitiakitanga relates to the management of resources – including use and protection. Effectively it refers to sustainable management and the utilisation of resources in a way and at a rate as to ensure that they are not diminished. This aligns with our legislation and the Settlement.

Figure 1: Te Hā o Tangaroa kia ora ai tāua



Scope and content of the Plan

19. We support the proposed scope of the Plan with its focus on the direct effects of fishing on seabirds and an expectation of action on fishing vessels

This is consistent with the Minister of Fisheries' role in managing the effects of fishing and the environmental principles of the Fisheries Act. However, we think that the contents of the Plan need to provide a greater emphasis on the non-commercial sector.

20. The Plan needs to be clearer about the scope of "appropriate regulation"

There are approaches to implementing the law which are intended to influence people's behaviour. Government's role is to establish the frameworks needed to enable the law to be adhered to. These frameworks can include statutory regulation and other forms of regulation involving creation of incentives for rights holders to take collective action and to improve their performance above "bottom-lines".

21. The Fisheries Act sets out bottom lines but enables rights holders to operate above these lines through collective action. The commercial sector has made progress in many fisheries. The Plan does not require "transformational change" of the commercial sector – as suggested in its Executive Summary. Rather its role is to enable the sector to build on progress in areas of need.

22. Within the Plan, we would like to see government commit to a greater emphasis on the recreational sector

When the law does not incentivise or enable collective action, the role of government must be more directive. This applies to management of the recreational sector. The scale of recreational vs commercial captures reveals there is a risk that needs better management. There are less than 1000 commercial vessels as opposed to thousands of recreational vessels. Recreational fishers also operate from land and often lack experience with using nets and lines.

Vision, Goals and Objectives

23. We support the vision: "New Zealand strives for no fishing-related seabird captures"

The proposed vision is aspirational and appropriate given the primary reason for managing direct fishing impacts is ensuring species of seabirds are maintained above a level that ensures their long-term viability, consistent with the s 9 (a) of the Fisheries Act. It conveys the idea that while incidental captures of seabirds can occur as a result of fishing activity, fishers across all sectors should do everything they can to avoid capturing them.

24. We are aware there is a push from some parties for the Plan to contain a specific "zero bycatch" target. We don't think such a goal is appropriate if we are to find a balance between conservation and sustainable use consistent with *Te Hā o Tangaroa kia ora ai tāua*. Sustainable use must be based on appropriate conservation of ecosystems, habitats and species but absolutes such as "zero-bycatch" are not helpful.

25. The four goals provide a sound framework for the Plan

We support the intent of each of the four goals, worded in the Plan as follows:

- Bycatch reduction: Effective bycatch mitigation practices are implemented in New Zealand fisheries
- Healthy Seabird Populations: Direct effects of fishing don't threaten seabird populations
- Research and Information: Information to effectively manage fisheries impacts on seabirds is continuously improved.
- International Engagement: New Zealand actively engages internationally to promote measures that reduce impacts on New Zealand seabirds.

26. The word “bycatch” should be replaced with “incidental captures”

We recommend however that some of the language be amended for clarity and consistency with the International Plan of Action – Seabirds. In particular, we recommend replacing the word “bycatch” with “captures” or “incidental captures” which would also make the first objective more consistent with the wording of the vision. The FINZ/DWG response states that this amendment would clarify that the capture of seabirds is an unintended consequence of fishing activity. Our recommendation is also relevant to the wording of some of the objectives, and we use that wording in our comments where relevant.

Goal 1: Avoiding bycatch - objectives and performance measures

Objective 1	All New Zealand commercial fishers are using practices that best avoid the risk of seabird bycatch enabled by appropriate regulations
Performance measures (inputs)	
1	Proportion of fishing fleet with vessel-specific protected species risk management plans for bycatch mitigation [target: 100 percent]
2	Proportion of vessel-specific protected species risk management plans that reflect the bycatch Mitigation Standards for the relevant fishery [target: 100 percent]
3	Rate of adherence to vessel-specific protected species risk management plans [based on available monitoring data] [target: 100 percent by 2025]
4	Regulations are reviewed, updated, and developed to be consistent with Mitigation Standards [target: annual review]
Performance measures (outputs)	
5	Number of fisheries that have enough information to set reduction targets [target: increasing]
6	Rates of seabird capture relative to agreed reduction targets [where enough information is available] [decreasing]
7	Proportion of fisheries that don't have sufficient information to set numerical targets, with proxy targets set [target: increasing]
8	Frequency of auditing against proxy targets [target: increasing]
Objective 2	Practices that effectively avoid risk of seabird bycatch are supported and promoted to recreational and customary non-commercial fishers
Performance measures	
9	Outreach is directed to recreational and customary non-commercial fisheries organisations and measured by: 1. the number of social media hits for seabird-related outreach campaigns [target: increasing] 2. the amount of seabird-awareness material and mitigation guidance that is distributed [target: increasing]
10	The number of organisations involved in messaging and geographical areas covered [target: increasing]
11	Information that is available on seabird captures and the use of bycatch-mitigation measures in non-commercial fisheries [target: increasing]

Objective 1:

27. Objective 1 under the first goal should be reworded to include approaches other than regulation. We suggest: "All New Zealand commercial fishers are using practices that best reduce the risk of seabird captures, enabled by appropriate regulation including risk management frameworks, training and outreach".

28. Reducing the risk of captures is a more appropriate and achievable objective than avoiding risk

There will always be a risk of captures in some fisheries. Ultimately, the objective is to ensure fishing does not undermine the viability of seabird populations in the knowledge that there is always a risk of incidental captures that needs to be reduced as far as possible. This is also relevant to Objective 2 below.

29. There are limits to the effectiveness of statutory regulations

We have already commented on the different approaches that can be taken under the broad definition of "regulation" and the differences between statutory and non-statutory approaches. Thus "appropriate regulation" includes the broader range of approaches that already contribute to the management of seabird captures including non-statutory regulation, including collective action, liaison support, reporting and training. In many cases these will enable and foster greater innovation than would be possible with statutory regulation, which can restrict positive change and improvement. There are challenges in using statutory regulation to enforce particular mitigation methods as they can restrict innovation and improvement given vessels and their practices vary depending on the fisheries they operate in and their overlap with seabirds.

30. Additional measures suggested above should also be reflected in performance measure number 4, so that they are "reviewed, updated and developed to be consistent with Mitigation Standards".

31. Ensure the NPOA recognises not all the commercial fleet risks incidental captures of seabirds

As the background document shows, not all types of fishing create a measurable or real risk to seabirds. The risk assessment process clarifies the level of risk posed by different fleets, depending on their potential to overlap with the range of seabirds and the potential of different vessel/gear types to capture seabirds. Thus, the first performance measure should be qualified to refer to a proportion of the "relevant" fleet. Consistent with our earlier comments we also recommend amending "bycatch mitigation" to "mitigation of seabird captures."

32. Targets must be framed in a manner that supports a decrease in captures across different fleets

Performance measure 6 focusses on "rates of seabird capture relative to agreed reduction targets". The background document illustrates the current application of this measure through a limit of a specified number of birds per tow, for example: "the reduction target agreed in the NPOA-Seabirds was 12.0 birds per 100 tows". It states: "between 2014/15 and 2016/17 the capture rate was 15.5 birds per 100 tows."

33. FINZ and the DWG point out the problems inherent in this approach, for example, where the total effort across different fleets changes. Where the number of birds and their foraging behaviour is constant between years, then a reduction in effort level would see a commensurate rise in the number of seabirds following the more limited number of vessels in order to access food. The rate of captures per vessel or tow is then likely to increase.
34. While changes in captures against effort-based targets can be interrogated to determine the level of effort and any changes in the number of birds foraging in the area, they are not a useful measure of the success of the NPOA.
35. **Performance measure 6 should focus on rates of seabird captures relative to the Annual Potential Fatalities**
This measure would provide a clearer picture of overall trends in capture rates of particular seabirds relative to their estimated annual potential fatalities. Reduction in overall captures is what the NPOA-seabirds is seeking to achieve.
36. **Include “reduction” targets in performance measures 7 and 8**
We recommend including the word “reduction” to clarify that the targets are not intended to work as catch limits but rather to incentivise every effort to avoid captures.
37. **Estimates of captures in the recreational sector are high but uncertain. We need to promote better fishing practices and improve our estimates of captures.**
We understand seabird captures by the recreational sector could amount to 40,000 per year. Many of these are live releases but there is evidence that some result in mortalities. We support measures that promote improved practices. However, we think it is also vital that we get better information on captures through a reporting obligation.
38. There is no specific information on whether seabird captures are a problem in customary non-commercial fisheries. There is a need to engage with Iwi and kaitiaki to determine whether there any problems and the level of support kaitiaki might require to address them.

Goal 2: Healthy Seabird Populations – objectives and performance measures

Objective 3	Research, monitoring, and management actions are prioritised for seabird populations of particular concern ¹⁴ , and their risk ratios reduce
Performance measures	
12	Research and/or management actions are undertaken specifically for species or populations of particular concern [target: increasing as a proportion of populations of concern]
13	Level of uncertainty in risk assessment outputs [target: decreasing]
14	Risk ratios for seabird populations of concern [target: decreasing]
Objective 4	The estimated number of fishing-related deaths ¹⁵ of all seabird populations is less than the average number between 2014/15 and 2016/17
15	Estimated fishing-related deaths, from the seabird risk assessment, relative to the average number of fishing-related deaths between 2014/15 and 2016/17 [target: decreasing]

Objective 3

39. The process of identifying populations of concern should be based on the relative threat from fishing to the viability of different seabird species

We agree that research, monitoring and management should be prioritised for seabird populations which are at higher risk – as signalled by Objective 2. For each species, risk classifications are based on the level of estimated annual potential fatalities relative to their population sustainability threshold. If the level of captures is close to or exceeds the population sustainability threshold, the viability of relevant bird species is clearly at very high risk and is a priority for action.

40. We note the comment made by FINZ and DWG in relation to performance measure 14 that risk ratios may be forced to move upwards due to a reduction in abundance in response to non-fishing threats and in this situation is not a signal that the NPOA has failed. Clearly an increasing risk ratio should result in a review of the priority given to mitigation but also signals the need to deal with other threats outside the framework of the NPOA. In some cases a broader response under a Threat Management Plan framework may be necessary.

Objective 4

41. We support the objective of decreasing incidental captures of seabirds and the relevant performance measure

This objective uses a benchmark of the average number of “fishing-related deaths” between 2014/15 and 2016/17, from which the average number of estimated deaths would decrease.

Goal 3: Research and Information – objectives and performance measures

Objective 5	Research is undertaken to improve bycatch mitigation across sectors, especially those without effective mitigation (Note: mitigation may include spatial and temporal closures)
Performance measures	
16	Number of mitigation practices assessed
17	Number of mitigation practices improved, where applicable
18	Number of fisheries without available or known effective mitigation [target: decreasing]
Objective 6	Monitoring programmes for New Zealand commercial fisheries are designed and implemented to provide statistically robust information to assess progress towards the NPOA-Seabirds 2020's objectives
Performance measures	
19	Monitoring objectives and needs are documented and updated annually, informed by the risk assessment
20	Monitoring coverage across all fisheries [target: increasing]
21	Uncertainty in risk assessment arising from limited monitoring data [target: decreasing]
22	The Fisheries New Zealand monitoring plan, and the plan's rationale, is published annually
Objective 7	Observation and monitoring methods are researched, developed and implemented across all sectors
Performance measures	
23	New observation and monitoring methods [including e-monitoring] are incorporated into monitoring programmes and reporting
24	Data collection protocols [such as observer forms] are updated as necessary
Objective 8	A research programme provides information to reduce uncertainty in estimates of risk to seabirds from fishing
Performance measures	
25	Uncertainty in risk assessment due to limited biological data [target: decreasing]
26	Uncertainty in risk assessment due to limited information about the nature of fishing interactions with seabirds [such as vulnerability and cryptic mortality] [target: decreasing]

42. We agree with the need to conduct research into effective mitigation practices but note there are potential problems with the way the following objectives/performance measures are couched:
- a. Performance measure 16, by focussing on the number of assessments, incentivises assessments even where they are not a priority
 - b. Objective 6 should also apply to the recreational sector
 - c. Objective 7 and its performance measures dictate that certain types of methods will be used to achieve an outcome without it being clear these approaches will help deliver on the NPOA
 - d. The performance measures under objective 8 suggest that research into demographics, abundance, survival rates and productivity are within scope of the NPOA, whereas this research is more appropriately conducted within DOCs protected species responsibilities and appropriation.

Goal 4: International Engagement – objectives and performance measures

Objective 9	The risk to New Zealand seabird species from fisheries outside the New Zealand EEZ is assessed and communicated to international organisations, governments and other stakeholders
Performance measures	
27	A fisheries risk assessment for seabirds is completed and updated to incorporate data for New Zealand seabirds caught outside the New Zealand EEZ
28	New Zealand's information on compliance with seabird measures is shared with relevant flag states, CCAMLR ¹⁶ , and Regional Fisheries Management Organisations
29	New Zealand actively engages with governments and fishing industries whose vessels create the greatest risk to New Zealand seabirds
30	New Zealand actively facilitates data sharing [relevant to New Zealand seabirds and fishing] between relevant international organisations, governments and stakeholders
Objective 10	New Zealand advocates for the development, adoption, improvement, and uptake of seabird conservation measures
Performance measures	
31	Where possible, meeting reports from CCAMLR and Regional Fisheries Management Organisations show that seabird matters, including new conservation measures, have been considered
32	Where possible, resolutions from relevant fora that consider the risk to seabirds from fishing
Objective 11	New Zealand actively works bilaterally, multi-laterally, and with international organisations to build capacity to reduce the risk to New Zealand seabirds
Performance measures	
33	Active and effective programmes are in place, or completed, that build the capacity of governments and other stakeholders whose fisheries create risks to New Zealand seabirds

43. We support the goal, objectives and measures for international engagement. It is important we do what we can to influence other countries to reduce risks to New Zealand seabirds. Albatross and petrels are of particular concern. We need to increase awareness of the situation facing these species and to encourage creative ways to reduce the risk of incidental captures in other jurisdictions and international waters.

Implementation

44. This section of the NPOA is very light on information. For those who have not participated in seabird management processes it is difficult to understand how the plan's goals and objectives will be implemented without reading the background document. The document shows that there is already a great deal of work and commitment across the commercial sector and this provides a firm basis for progress.
45. We suggest some of the material in the background document be used to provide a fuller picture of how the management process works – particularly the way mitigation standards are specified (and monitored), and the central role of the liaison programme in supporting mitigation on the water.
46. The focus of this section is on the commercial sector, but an implementation plan is also needed for the non-commercial sector.

Te Ohu
Kaimoana

