

Environmental Law Initiative

Submission:

Draft Guidelines for Identifying a Habitat of Particular Significance for Fisheries Management



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Tiakina te mauri o te taiao



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ABOUT US

The Environmental Law Initiative (ELI) thanks Fisheries New Zealand for the opportunity to submit on its Draft Guidelines for Identifying a Habitat of Particular Significance for Fisheries Management, and its Draft Operational Proposals for Habitats of Significance.

ELI is a registered charitable trust, whose objective is to support the effective protection of Aotearoa's natural resources and environment. We are advised by a small team of experts in environmental law, policy, science, ecology and management.

Though operating independently, we partner with a range of other groups and individuals—including iwi, hapū, governmental agencies, charities, and organisations—to achieve positive outcomes for the environment.

In ELI's view, the law is our best tool for effectively protecting the environment. Our research and advocacy is centred around improving legislation and policy to better protect and restore Aotearoa's marine, freshwater, and terrestrial environments and biodiversity.

As a non-profit, our ultimate objective is to bring sound environmental research to decision-making in matters of the environment and move towards a sustainable, healthy Aotearoa for all.

For more information, see www.eli.org.nz

If you have any questions about our submission, we would welcome the opportunity to discuss any issues. Please contact James Tremlett to arrange a time to discuss (james.tremlett@eli.org.nz).

Summary

1. ELI's analysis of Fisheries New Zealand's proposals demonstrates that the purpose, working definition and proposed processes of the Draft Guidelines and Operational Proposals are contrary to sections 8, 9 and 10 of the Fisheries Act.
2. The proposals do not strike a reasonable balance between the 'sustainability' and 'utilisation' purposes of the Act. Rather they are unreasonably prejudiced towards a narrow conception of the 'utilisation' purpose, in particular through their adoption of a narrow definition based around the 'productivity of fisheries resources' without reference to the 'aquatic environment'.
3. The Draft Guidelines propose an exercise of 'identifying' geographic areas as habitats of particular significance, separately to the implementation of sections 9(a) and 9(b). This is illogical, and contradicts both the Act and New Zealand's many commitments to ecosystem-based fisheries management. The Act rather requires that the three environmental principles be taken into account in all functions, duties, or powers exercised or performed under the Act.
4. The proposed process for designating areas as habitats of particular significance relies on a very high threshold of confidence, in a largely data-poor environment. This is contrary to the information principles in s 10 of the Act, in particular the precautionary principle.
5. We propose an alternative approach to the implementation of section 9(c). A more useful and lawful programme of implementation would be based on the identification of qualities or characteristics of habitats of significance for fisheries management, to be taken into account in all decisions made under the Act.
6. In the interests of a stronger and more sustainable fisheries management system, we also recommend that Fisheries New Zealand seek Crown Law advice on the alignment of these proposals with the Fisheries Act and other relevant legislation.

The purpose of the Draft Guidelines

7. ELI welcomes the fact that Fisheries New Zealand (FNZ) are consulting on the implementation of section 9(c) of the Fisheries Act 1996 (the Act). Section 9(c) is a

critical environmental principle for New Zealand's fisheries management system but has not been adequately considered in the 26 years since the adoption of the Act.

8. This consultation relates to FNZ's Draft Guidelines for Identifying a Habitat of Particular Significance for Fisheries Management, and the Draft Operational Proposals for Habitats of Significance. The stated purpose of the Draft Guidelines is 'to identify "habitat of particular significance for fisheries management" (hereafter habitats of significance (HoS))'. We question whether this purpose is in alignment with the purpose of s 9 when considered as a whole, and in context.
9. A primary assumption by FNZ is that HoS need to be 'identified' at all. The word 'identify' does not appear anywhere in s 9. The Act neither specifies nor implies an exercise to define, identify, and demarcate HoS. Rather 9(c) is a principle to be taken into account by every person with a role under the Act. Even if s 9(c) does require a project of 'identifying' something, which ELI does not necessarily agree with, there remains the question of why FNZ would assume beginning from zero HoS throughout New Zealand's marine environment and then work to 'identify' them. In the context of s 10(c), another – possibly more sensible – possibility would be to do the reverse: to assume, in the absence of information, that every habitat is a HoS, and work to 'identify' what is not a HoS.
10. Whatever the case, by an exercise of identifying and mapping HoS as geographic areas, they will be distinguished from other areas, and will acquire a static character in space. By using a formal structure for their designation, they will also acquire a static character in time, inconsistent with basic features of s 8, and with the fundamentals of marine ecology. In ELI's view, this points to the artificiality, and ultimately the ineffectiveness, of an 'identification' exercise as proposed in the Draft Guidelines.
11. FNZ provides several examples of 'existing s 11 sustainability measures that recognise the environmental principle in section 9(c).' These examples demonstrate that it is possible (even if currently infrequent) to take the protection of HoS into account in the implementation of the Act without systematically designating some marine habitats as 'significant for fisheries management' and all others not.
12. A second primary assumption of the Draft Guidelines is that implementation of s 9(c) should occur in isolation from the rest of s 9. There is, however, nothing in s 9 that suggests separate policy, management, or implementation processes for each of the

principles. Just as the information principles of s 10 must all be considered together, the same is true for the environmental principles of s 9.

13. Indeed, although the Draft Guidelines are explicitly positioned as ‘supporting an ecosystems approach to fisheries management,’ the indivisibility of s 9 is fundamental to implementing an ecosystems approach within the Fisheries Act as it stands. The three principles are obviously mutually supporting as outcomes, in the sense that achieving any of the principles depends on the achievement of the other two. They are also indivisible in their implementation, in that taking account of any one principle requires consideration of the others: it does not make sense within any ecosystems approach to fisheries management, for instance, to consider habitats of significance without close reference to biological diversity or the long-term viability of associated or dependent species.
14. Accordingly, this HoS workstream, whatever its content, can only ‘make sense’ if FNZ sets out and commits to a work programme for the remainder of s 9. We have welcomed strong intimations of future work along these lines in recent meetings; however, the unfortunate reality of selecting a s 9(c) exercise first is to have chosen the most commercially benign aspect of s 9 first. We understand the political pressures that may have led to that choice, but in the low-trust environment of fisheries management, FNZ will only likely build trust with ELI and others if and when such commitments are made. In the absence of clear commitments, this exercise has obvious potential to be a device to further commercial fishery interests.
15. Although the Draft Guidelines state that s 9(c) applies to ‘Decisions under the Fisheries Act 1996 in relation to the utilisation of fisheries resources or ensuring sustainability’, s 9 itself states that the three environmental principles apply to ‘All persons exercising or performing functions, duties, or powers under this Act’. This is a wider description of the applicability of the environmental principles than the ‘decisions under the Act’ referred to by FNZ.
16. Given that the three environmental principles are intended to apply to ‘all persons exercising or performing functions, duties, or powers’ under the Act, FNZ cannot relegate consideration of s 9(c) (or the other subsections) to a discrete process that is referred to only when certain kinds of decisions are made, as proposed in the Draft Operational Proposals. Rather, since by giving effect to s 9(c) FNZ is ‘exercising or performing functions, duties, or powers under the Act,’ it must take into account the other parts of s 9 whilst doing so. Section 9(c) must therefore be taken into account in

all work done under the Act; and this must occur alongside 9(a) and 9(b). For example, fisheries managers deciding how to allocate observer effort must take into account the protection of habitats of particular significance for fisheries management in their allocation, alongside consideration of associated and dependent species, and maintenance of biological diversity.

17. We further note that the purpose of the Act is to 'provide for the utilisation of fisheries resources *while* ensuring sustainability', not 'the utilisation of fisheries resources *or* ensuring sustainability' as stated in the Draft Guidelines (p4, our emphasis). This is not just a semantic difference. ELI is highly concerned that the Draft Guidelines as they stand do not equally reflect both the sustainability and utilisation elements of the Act's purpose.
18. The Draft Guidelines state that 'the obligation under s 9(c) is to take into account the protection of these habitats in decisions but does not create an obligation to protect them' (p6). This is strictly true. Nonetheless it is equally important to remember that although the language of sections 9 and 10, namely to 'take into account' the environmental and information principles, each of which states that something 'should' be done, does not create any obligation to achieve the principles, it is stronger than merely requiring that relevant persons 'have regard to' them. Persons 'exercising or performing functions, duties, or powers' under the Act should therefore actively strive to comply with all of the environmental and information principles, which were designed to be mutually supporting and implemented together. The Crown's responsibilities to implement s 9 are discussed by the High Court in its judgement of *New Zealand Federation of Commercial Fishermen Incorporated v The Minister of Fisheries*,¹ where the Court elucidates the intention of the Select Committee in the development of s 9:

'The environmental principles in s 9 similarly have the "take into account" and "should" wording. In relation to that section the Select Committee discussed the history of that wording. Initially the wording was "have regard to" but environmental and recreational submitters considered this was not strong enough. In response to this concern the wording was changed to "recognise and provide for" but on reflection the Select Committee considered this to place too strong an obligation on the decision maker. It said "[t]he words "take

¹ *The New Zealand Federation of Commercial Fishermen Incorporated and Ors v The Minister of Fisheries and Anor* HC Wellington CIV-2008-485-2016, 23 February 2010.

into account' provide more appropriate discretion to the decision maker, while clearly setting out his or responsibility".'

19. It therefore seems disingenuous for FNZ to use the early pages of the Draft Guidelines to state its lack of strict obligation to protect habitats of significance, given the obvious intention of s 9(c) the HoS 'should be protected'. The decision maker therefore has a clear responsibility to implement these principles, and (limited) discretion around *how* this implementation should occur.
20. The proposed process for identifying and managing impacts on HoS alone amounts to a substantial marine spatial planning exercise; an exercise that will be even larger if, as we say must occur, FNZ commits to parallel exercises against other elements of s 9. The result is a marine planning exercise at a scale that has very rarely, if ever, been attempted in New Zealand. The scale and importance of this exercise suggests that it would require a legislative mandate beyond that in s 9(c); at the least, it would require regulations to be developed under the Act. It is surprising that FNZ has not proposed the development of regulations to govern the HoS process, and we are concerned at the implications of this for future public input and scrutiny.
21. For the reasons above, ELI considers that the purpose of the Draft Guidelines and the proposed process therein are inconsistent with both sections 8 and 9 of the Fisheries Act, with an ecosystem approach to fisheries management, and with the precautionary principle. The proposed information assessment processes are likewise contradictory to s 10, for reasons discussed in paragraphs 33-38 below. We constructively suggest that FNZ seeks Crown Law advice on whether their proposed Guidelines are consistent with the Act.
22. Instead of the process proposed in the Draft Guidelines, ELI recommends that FNZ first identify the *qualities or characteristics of habitats* that would qualify them for status as a habitat of particular significance for fisheries management. This approach recognises that many marine habitats are dynamic in space and time; their boundaries shift to reflect changes in temperature, currents, seasons, and broad ecological processes such as trophic cascades. Because of the scale and importance of the exercise proposed in the Draft Guidelines, these qualities or characteristics of habitats should be identified by independent experts that are not associated with the commercial fishing industry, including experts in mātauranga Māori and international experts.

23. Identifying these qualities or characteristics of habitats would not preclude FNZ from developing a register of geographic areas that are clearly HoS. This register would comprise areas that clearly satisfy the characteristics of HoS, and would assist decision makers by providing an easy reference of HoS areas. Not being on the register, however, would not mean that a particular habitat is not a HoS. Decision makers would still need to take account the protection of habitats of particular significance every time they exercise or perform actions, duties or powers under the Act; this is the nature of the obligation in s 9(c), for the reasons discussed above. Each time a fisheries management decision is made, the decision maker would therefore need to ask whether the decision affects any habitat that fulfils one or more of the qualities or characteristics of HoS, regardless of whether or not that habitat has already been identified on the register.

The working definition

24. The Draft Guidelines propose a working definition of HoS: ‘an area of particular significance in supporting the productivity of fisheries resources.’ In assessing the appropriateness of this working definition we must refer to s 8 of the Act:

8. Purpose

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act,—

ensuring sustainability means—

(a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment

utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

25. The proposed working definition of HoS links to s 8 through its reference to ‘fisheries resources’ (defined in the Act as ‘any 1 or more stocks or species of fish, aquatic life, or seaweed’). However, it lacks any reference to the second element of the sustainability purpose of the Act as encapsulated in s 8 by the ‘aquatic environment’ (which the Act states ‘(a) means the natural and biological resources comprising any aquatic

ecosystem; and (b) includes all aquatic life and the oceans, seas, coastal areas, intertidal areas, estuaries, rivers, lakes, and other places where aquatic life exists’).

26. Given that FNZ explicitly invokes an ‘ecosystems approach to fisheries management’ in the Draft Guidelines, it is surprising that the working definition omits reference to the ‘aquatic environment’, since doing so would much better reflect the sustainability purpose of the Act and the principles of an ecosystems approach (noting that an ecosystems approach is based on the recognition of the importance of a healthy aquatic environment for maintaining fisheries resources). This omission is inconsistent with New Zealand’s numerous international and domestic commitments to implementing ecosystem-based fisheries management, including in the Convention on Biological Diversity (CBD), the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries, numerous resolutions of the United Nations General Assembly,² and Te Mana o te Taiao – The Aotearoa New Zealand Biodiversity Strategy.
27. We also note that the wording in s 9(c) itself is ‘fisheries management’; this is not defined in the Act, but is clearly wider than supporting only ‘the productivity of fishery resources’.
28. A broader definition of HoS is therefore clearly required if the Guidelines are to align with the Act. Because of the ecosystem considerations noted above, this must refer to the health of the aquatic environment rather than a narrow definition of productivity. We note that the Royal Forest and Bird Protection Society has proposed an alternative definition in their submission, and ELI gives our support to a definition of similar breadth to that proposed by Forest and Bird. There may be objections that this point goes to wider considerations than s 9(c); however, as we set out above, it runs contrary to the Act to consider the implementation of s 9(c) separately from 9(a) and 9(b). The wider definition proposed by Forest and Bird is also in keeping with what occurs in other countries. For example, in the United States the habitats of ‘protected resources’ (endangered species, marine mammals and turtles) and their prey are included in

² The UNGA adopts resolutions on implementing ecosystem-based fisheries management every year. For the most recent, see: UNGA A/RES/76/71, 2021. *Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments*. Downloaded from: <https://undocs.org/en/A/RES/76/71>. Accessed 16 November 2022.

work of the Office of Habitat Conservation at the National Oceanic and Atmospheric Administration (NOAA).³

29. As the current working definition stands, we are concerned that the very narrow criteria proposed in the Draft Guidelines will prevent the vast majority of New Zealand marine habitats from being considered HoS. The Draft Guidelines state that under the current proposal, although ‘habitat-forming species, for example kelp, provide ecosystem services and habitat for many marine species at a range of spatial scales,’ they will be excluded from the HoS classification as they are not ‘nursery and spawning or egg laying habitat.’ We agree with FNZ that nursery and spawning or egg laying habitat is extremely important, and we hope to see these habitats receive significant protection as a result of their inclusion in the HoS regime. However, there is no substantive scientific discussion or justification provided regarding why and how this criterion was adopted, and whether alternatives were considered. As above, excluding ‘habitat-forming species... that provide ecosystem services and habitat’ from classification as HoS seems at odds with the principles of an ecosystems approach to fisheries management. It is difficult to have confidence in the Draft Guidelines’ statement that ‘consideration of adverse effects of fishing or other activities on broader scale habitats and the wider aquatic environment will continue to be a consideration when preparing fisheries management advice’ given the significant fisheries impacts on many marine habitats in New Zealand, including the kelp forests that are used as an example.
30. In the formulation of the working definition, little attention seems to have been given to the rights of Māori, in particular rights relating to taonga species and ecosystems. As above, the narrow focus on ‘nursery and spawning or egg laying habitat’ at the expense of habitat-forming species explicitly excludes certain taonga such as rimurimu (seaweeds). ELI’s Māori stakeholders note that rimurimu (especially kelp) are the forests of the sea, are themselves a taonga, and are the habitat of other taonga. Safeguarding these taonga requires protection of their ecological links to wider habitats and ecosystems, for instance through the dynamic ocean currents that carry spawn between habitats. It is difficult to see how rights relating to marine taonga can be respected within the framework proposed in the Draft Guidelines.
31. We are likewise concerned that the Draft Guidelines exclude degraded habitats from consideration as HoS, stating that identification ‘will be on the basis that it is currently

³ NOAA Fisheries, *Habitat enterprise strategic plan 2016-2020*. National Marine Fisheries Service, NOAA. Downloaded from: <https://repository.library.noaa.gov/view/noaa/14994>. Accessed 16 November 2022.

particularly significant in supporting the productivity of fisheries resources. Degraded areas that have been significant in the past, and have the potential to be significant if restored, would not meet our working definition of a HoS.’ This is inconsistent with the ‘utilisation’ purpose of the Act, which s 8 defines as including the ‘enhancing’ of fisheries resources. There is also insufficient information in the Draft Guidelines regarding criteria for distinguishing a ‘degraded’ habitat from one suitable for HoS status, given that most of New Zealand’s marine habitats are degraded. This exclusion has implications for Māori, as so much customary fishing occurs in what are currently degraded marine environments. As it stands, it appears that the Draft Guidelines will exclude from consideration the majority of habitats considered significant by iwi, hapū and whānau Māori.

32. Finally, the narrow definition proposed by FNZ falls short of best practice internationally. In the United States, for example, one of the goals of NOAA’s Fisheries Habitat Enterprise Strategic Plan is to ‘Conserve Habitat for Managed Fisheries and Protected Resources’. NOAA’s definition identifies ‘six key habitat types depended on by NOAA fisheries and protected resources and their prey: coastal wetlands, rivers, coral reefs (deep and shallow), natural hard bottom (e.g., oyster reefs, rocky reefs), and submerged aquatic vegetation. While work is not exclusive to these areas, they represent the major priorities.’⁴ ELI is not advocating the identification of habitat types in this sense; however, the broad definition adopted in the US is evidence of international recognition of the diverse and interconnected nature of significant habitats for fisheries. It would be a shame for New Zealand to fall even further behind our international partners in our progress towards an ecosystem-based approach to fisheries management.

Evidence and information assessment

33. ELI agrees with FNZ on the importance of utilising best available information in all its work, as is required by s 10 of the Fisheries Act. We also stress that less-researched marine environments should not be excluded from the full range of management tools because of the absence of a comprehensive body of empirical ecological information. We base this approach on s 10(d) of the Act, which states that ‘the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act’.

⁴ p. 4.

34. There are aspects of the Draft Guidelines that appear to run contrary to the requirements of s 10. The concerns of the High Court in *New Zealand Federation of Commercial Fishermen Incorporated v The Minister of Fisheries*, seem to be playing out here. In that case, when discussing s 10 of the Act, the High Court noted a ‘concern that it might be thought that, because decisions are to be based on best available information, decision makers could not act when information was inconclusive. [...] [T]he intent was that decisions should be based on best available information but that inconclusive information should not prevent measures being implemented to achieve the Act’s purpose.’⁵ Consider the process described in the Draft Guidelines where BRAG and AEWG only consider designating habitats where there is a high or very high level of confidence that they are HoS. The outcome from such a designation is then only that impacts to those HoS must ‘be considered’ when making fisheries management decisions; there is no automatic or mandatory management response. The requirement for such a high threshold of confidence in a data-poor environment seems contrary to s 10 and a significant weakening of what is a mandatory relevant consideration under the Act.
35. ELI is glad that the Draft Guidelines include recognition of the importance of mātauranga Māori in making sound fisheries management decisions. As the Draft Guidelines themselves note, ensuring the input and participation of Māori is a legal obligation and is not discretionary. However, we are concerned by the statement that FNZ ‘will seek input and participation from Treaty partners, whānau, hapū, iwi and Māori organisations, initially through Iwi Fisheries Forums which have been established for that purpose, on how HoS of taonga species could be identified, how to best recognise their role as rangatira and kaitiaki, and how mātauranga can inform consideration of how protection of HoS should be taken account of in fisheries management decisions.’ It is disappointing that FNZ has not yet sought this ‘input and participation’ given that these Draft Guidelines and Operational Proposals have already been released for public consultation and include proposed processes for the very questions FNZ proposes to consult Māori on.
36. Mātauranga Māori is relevant to all the information assessment processes described in the Draft Guidelines and Operational Proposals, not only those related to taonga species, or the roles of rangatira and kaitiaki. FNZ has designed these processes from a ‘mainstream’ fisheries science perspective, and seems to be assuming that mātauranga will simply be able to fit within the framework proposed. This is neither

⁵ At [33].

logical nor respectful. If FNZ wishes mātauranga Māori to have a meaningful role in the information assessment processes relating to HoS, they should discuss the design of the information assessment with relevant experts in mātauranga pertaining to the moana and fisheries, and be prepared to re-design these processes if necessary.

37. Although the Draft Guidelines acknowledge that consultation through Iwi Fisheries Forums will only take place 'initially,' they do not give any detail of what further consultation with Māori will look like, or what weight this consultation will be given within the HoS process. ELI is concerned about this, as we have cause to question whether Iwi Fisheries Forums effectively cater for non-commercial Māori voices. We suggest that the final HoS Guidelines be much more specific about how the input and participation of tangata whenua will be taken into account.
38. We note that the Draft Guidelines do not make any mentions of timelines for information assessments to identify HoS. As noted in s 10(d) of the Act, measures to achieve the purpose of the Act cannot be postponed because of the absence or uncertainty of information. To avoid the risk of deferring the identification of HoS whilst additional research takes place, we suggest that indicative timelines for the information assessment process be included in the final HoS Guidelines.

The 'expert-led' approach to identify HoS

39. The Draft Guidelines state that 'FNZ will work with experts (e.g., from iwi, the Department of Conservation (DOC), research providers, industry, and Regional Councils) to apply a systematic assessment of available information.' ELI is concerned that the proposed HoS 'expert-led approach' conflates objective scientific expertise with input from fisheries stakeholders. We stress that information assessment should be undertaken by independent scientists (including, where appropriate, experts in mātauranga Māori) rather than industry stakeholders or others with vested interests in particular outcomes.
40. Scale is a very important question in the identification process, and the Draft Guidelines state that 'Establishing the appropriate scale for assessing this information and developing consistent approaches for presenting it (e.g., through habitat mapping and juvenile fish surveys where possible) will be an important component of this work to ensure the habitat is identified at a scale that is relevant to the species and the management decision.' We note that within te ao Māori in particular, significance has a

meaning that can be very local. Understanding local ecological dynamics within a potential HoS therefore requires the meaningful involvement of people with local ecological knowledge. It is unclear how the proposed 'expert-led process' will facilitate this.

41. The proposed 'expert-led process' reflects existing decision-making structures, which in turn reflect the requirements of sections 11(1) and 12 (consulting when setting sustainability measures). The topic of this consultation sits outside this context, in that it does not deal with a 'sustainability measure' according to the definition in the Act. ELI is concerned that recreating those same decision-making structures for s 9(c) can therefore only be a matter of prioritising administrative familiarity and convenience. Those are understandable and reasonable priorities, but should not be the only consideration when designing a structure for identifying HoS. Ensuring sustainability, for example, should be a primary consideration. The apparent absence of this priority in the design of the decision-making process is yet another reason to conclude that these proposals require significant rethinking.

Identifying adverse effects

42. ELI agrees with FNZ that it is important to identify the full range of anthropogenic stressors on HoS (and on every other environment). We also emphasise that the existence of non-fishing stressors, and their impact relative to fishing stressors, does not diminish the imperative to take account of the s 9 environmental principles in all fisheries management actions. Even if fishing stressors appear to make a relatively small contribution to the totality of stressors within a particular HoS, the obligation remains under the Act to address those fishing stressors. We also recognise that the existence of non-fishing stressors is regularly abused by commercial stakeholders, and at times by FNZ, to avoid or delay making management decisions to reduce fishing impacts on the aquatic environment. This is unacceptable, and a dynamic that we do not want to see reproduced in the HoS Guidelines.

The approach proposed to establish and publish habitat areas as HoS

43. ELI emphasises the importance of independent scientific analysis in fisheries management. We are therefore concerned about the proposed role of the Biodiversity Research Advisory Group (BRAG) and Aquatic Environment Working Group (AEWG),

neither of which ELI considers to be fully objective or independent of the views of the industry. We suggest that there is a significant potential role for independent peer review in this process, potentially involving international experts, in addition to the BRAG and AEWG.

How habitat areas can be proposed as HoS

44. ELI is generally supportive of the proposal that independent parties may propose habitat areas as HoS. We remain concerned about the central role of fisheries industry stakeholders in the assessment of proposed areas, as discussed above.

Matters that should inform research priorities for HoS

45. ELI agrees with FNZ that in many cases decisions around HoS will need to be made from a position of scientific uncertainty. We reiterate the point made in s 10(d) of the Act, that ‘the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.’ We therefore urge that an ecologically conservative precautionary approach be taken when there are gaps in knowledge around HoS.

46. We also agree with FNZ about the importance of filling these knowledge gaps so that management actions can more accurately reflect what is needed to achieve protection of HoS and contribute towards the purpose of the Act. Given that the protection of HoS in s 9(c) is one of only three high-level environmental principles identified in the Act, it is therefore surprising that FNZ has not identified a strategic approach for assessing gaps in knowledge relating to HoS and corresponding research needs and priorities. Instead, the research pipeline described appears ad hoc and opportunistic, and therefore unlikely to result in efficient or effective research prioritisation. We suggest that an independent scientific expert is contracted to undertake a comprehensive assessment of knowledge gaps and research priorities relating to HoS. It is important that this assessment be conducted by an independent third party, rather than industry stakeholders or their representatives.

47. The Draft Guidelines do not mention how HoS research will be resourced. As above, it is of course difficult to understand how any research funding relating to HoS might be allocated until after an independent research needs assessment. Nonetheless it is

concerning that no consideration appears to have been given to where new research funding will come from, given that FNZ is proposing a significant new spatial planning process with substantial information requirements. FNZ seems to be assuming that the required research will occur organically through existing fisheries science institutions and partnerships. We question the wisdom of this approach, as the current scientific infrastructure of fisheries research in New Zealand has developed to support the functioning and information requirements of the Fisheries Management System as it stands (i.e., excluding explicit consideration of HoS). It is unlikely that the appropriate information gaps will be addressed without a targeted, and funded, programme of research.