

COMPLAINT NUMBER	18/299
APPEAL NUMBER	18/021
COMPLAINANT	S Lewis
APPLICANT	S Lewis
ADVERTISER	Seafood New Zealand
ADVERTISEMENT	Seafood New Zealand Television
DATE OF MEETING	14 February 2019
OUTCOME	Appeal Allowed, Complaint Upheld

SUMMARY

The Complaints Board ruled on 9 October 2018 the complaint made by S Lewis about the television advertisement for Seafood New Zealand was Not Upheld.

The Complainant appealed the Decision. The Chairperson considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board de novo.

The Appeal Board discussed the use of the word “guarantees” in the sentence: “Our quota management system guarantees our fisheries stay sustainable...”. The Appeal Board agreed the purpose of the Quota Management System is to encourage sustainable fishing.

The Appeal Board said the dictionary definition for the word “guarantee” is “to ensure, to make certain something will be the case”. The Appeal Board said the use of the word “guarantees” creates a strong claim, more in the nature of a contractual provision. It implies much greater certainty than the words “helps keep” or “works to ensure” sustainability, as stated on the QMS and Fisheries New Zealand websites.

The Appeal Board said the existence of the Quota Management System, in itself, is not sufficient to “guarantee” the sustainability of New Zealand fisheries. To be effective such a guarantee would be dependent on a number of factors, including the level of engagement with the system from industry and the role of the Government in relation to compliance.

The Appeal Board said the claim “...Our quota management system guarantees our fisheries stay sustainable...” had not been substantiated.

The Appeal Board ruled the advertisement was in breach of Basic Principle 4 and Rule 2 of the Code of Ethics and Principles 1 and 2 of the Code for Environmental Claims.

The Appeal was Allowed and the Complaint was Upheld.

Decision: Complaint **Upheld**, Appeal **Allowed**

Please note this headnote does not form part of the Decision.

APPEAL BOARD DECISION

The Complaints Board ruled on 9 October 2018 the complaint made by S Lewis about the television advertisement for Seafood New Zealand was Not Upheld.

The Complainant appealed the Decision. The Chairperson considered that the Application raised sufficient grounds on matters relating to the interpretation of evidence for the matter to be considered by the Appeal Board de novo.

The Chairperson directed the Appeal Board to consider the advertisement with reference to Basic Principle 4 and Rule 2 of the Code of Ethics and Principles 1 and 2 of the Code for Environmental Claims.

Basic Principle 4 required the Appeal Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 2 required the Appeal Board to consider whether the advertisement contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge.

Principle 1 of the Code for Environmental Claims required the Appeal Board to consider whether any environmental claims in the advertisement were prepared with a due sense of social responsibility to consumers and to society.

Principle 2 of the Code for Environmental Claims required the Appeal Board to consider whether any environmental claims in the advertisement contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

The Appeal Board ruled the complaint was Upheld and the Appeal was Allowed.

The Complaints Board Decision

The majority of the Complaints Board said the advertisement was not misleading. The advertisement explains how the New Zealand fishing industry is environmentally responsible because it has a Quota Management System which relies on advanced technology and is designed to ensure the New Zealand fishing industry remains sustainable. The majority of the Complaints Board said the average consumer would view the statements in the advertisement more as a promise or a commitment to sustainable fisheries, rather than an absolute guarantee.

A minority disagreed. It said the use of the word “guarantees” in the statement: “Our quota management system guarantees our fisheries stay sustainable” was misleading. The word “guarantees” implies a strong environmental claim, especially when talking about “our” QMS, and this claim has not been substantiated.

Therefore, in accordance with the majority, the Complaints Board ruled the advertisement was not misleading.

Accordingly, the Complaints Board ruled the complaint was Not Upheld

Complainant's Appeal

The Complainant appealed the Complaints Board decision on the grounds that the proper process had not been followed and evidence has been misinterpreted to the extent it affected the Decision.

The Complainant disagreed with the Advertiser that there is consensus of opinion in the scientific community about sustainable quota levels or that the New Zealand Quota Management System was lauded internationally as world leading. The Complainant said there is a lack of certainty in the fish stocks and significant non-compliance in the fishing industry. The Complainant provided evidence from a number of sources to support these views.

The Advertiser's response to the Appeal

The Advertiser said they do not consider the material supplied by the Complainant to be credible evidence to support the hypothesis that New Zealand's fisheries are not sustainable. Their overall assessment is that the evidence is largely extracts from opinion pieces and media statements by academics and environmental lobbyists, who have no involvement in fisheries management in New Zealand. The Advertiser provided detailed information about the fisheries management system in New Zealand and said there is no substance to the claim that illegal activity is compromising the sustainability of New Zealand's fishing stock.

Appeal Board Discussion

The Appeal Board carefully considered all the information provided by the Complainant, the Advertiser, the television advertisement and the Complaints Board Decision.

Consumer Takeout

The Appeal Board agreed with the Complaints Board about the likely consumer takeout of the advertisement for Seafood New Zealand. The Appeal Board said the advertisement portrays the New Zealand fishing industry as sustainable and encourages the viewer to buy New Zealand fish.

Was the advertisement misleading?

The Appeal Board then considered whether the advertisement was likely to mislead the consumer and whether it made any claims which were unsubstantiated.

The Appeal Board noted the Complainant's views that: the Quota Management System does not guarantee New Zealand's fisheries stay sustainable, there is significant non-compliance within the industry, and, there is no consensus of opinion among the scientific community about sustainable quota levels in the New Zealand fishing industry.

The Appeal Board discussed the use of the word "guarantees" in the sentence: "Our quota management system guarantees our fisheries stay sustainable...". The Appeal Board agreed the purpose of the Quota Management System is to encourage sustainable fishing.

The Appeal Board said the dictionary definition for the word "guarantee" is "to ensure, to make certain something will be the case". The Appeal Board said the use of the word "guarantees" creates a strong claim, more in the nature of a contractual provision. It implies much greater certainty than the words "helps keep" or "works to ensure" sustainability, as stated on the QMS¹ and Fisheries New Zealand² websites.

¹ Quote from the QMS website: "By controlling the amount of fish taken from each stock, the QMS helps keep New Zealand fisheries sustainable"

² Quote from Fisheries New Zealand website: "Fisheries New Zealand works to ensure that fisheries resources are managed to provide the greatest overall benefit to New Zealanders"

The Appeal Board said the existence of the Quota Management System, in itself, is not sufficient to “guarantee” the sustainability of New Zealand fisheries. To be effective such a guarantee would be dependent on a number of factors, including the level of engagement with the system from industry and the role of the Government in relation to compliance.

The Appeal Board said the claim “...Our quota management system guarantees our fisheries stay sustainable...” had not been substantiated.

The Appeal Board ruled the advertisement was in breach of Basic Principle 4 and Rule 2 of the Code of Ethics and Principles 1 and 2 of the Code for Environmental Claims.

The Appeal was Allowed and the Complaint was Upheld.

Decision: Complaint **Upheld**, Appeal **Allowed**

DESCRIPTION OF ADVERTISEMENT

The television advertisement for Seafood New Zealand started with portraits of three men who work in the fishing industry. Next there was an image of a fishing vessel in port, and then a shot of the technology used in the bridge of a fishing vessel. Following that there were some graphics which used fish to illustrate how the quota management system works. The final shots showed men working on a fishing vessel out at sea. The website “Seafood.co.nz” was displayed. While these images were being shown the following voiceover was heard:

“We’re keeping our promise to be guardians of our oceans.
Thanks to smarter technology, we know how many fish there are
And, just as importantly, how many to leave
Our quota management system guarantees our fisheries stay sustainable
It’s something we live by
Every day we head out to sea
And that is a promise”

APPEAL APPLICATION FROM THE COMPLAINANT

On Thursday 1 November I was advised by email that the above complaint was not upheld. I am writing to you in order to appeal the decision on the grounds

- I believe the proper process was not followed in ruling on one aspect of the original complaint; and
- I wish to present evidence countering the advertiser’s statements. I believe this evidence to have sufficient substance to affect the decision.

Proper Process

In terms of the proper process being followed, I do not believe the board considered the Code for Environmental Claims, Principle 1, Guideline d) fully in the original decision. The Guideline states:

- d. Environmental claims shall only be made where there is a genuine benefit, not where they are simply promoting the observance of existing law.

The voiceover states:

“Our quota management system guarantees our fisheries stay sustainable”

A reasonable analysis of the voiceover is that it is both an environmental claim and simply promoting the observance of existing law. This is a breach of the code and therefore appears to be an oversight made by the board in the original ruling.

New Evidence

In terms of new evidence to present to the board I offer the following:

With respect to the advertiser's voiceover stating:

"Our quota management system guarantees our fisheries stay sustainable"

The Code for Environmental Claims, Principle 1, Guideline e) states:

- e. Environmental claims shall not overstate the level of scientific acceptance.

The advertiser defended themselves in the original hearing by claiming there was a consensus of opinion in the scientific community about sustainable quota levels in the New Zealand fishing industry and that the New Zealand Quota Management System was lauded internationally as world leading. To claim scientific consensus on these matters is extremely dishonest.

They even contradict this claim on their own website!

<https://www.seafood.co.nz/news/article/item/hit-and-miss-report-on-the-quota-management-system/>

"The Quota Management System (QMS) is a success in some areas, a miserable failure in others.

...the current status of most inshore stocks was unknown and the system was so unwieldy a Total Allowable Catch (TAC) review can take as long as eight years.

There are more than 400 inshore stocks, which are not being actively managed.

There was a marked loss of institutional knowledge within the Ministry for Primary Industries, the system was now largely reactive and there was only a sketchy legislative and policy framework.

"After more than 30 years of the quota management system we still don't know enough about most of our inshore fish stocks to make informed decisions – we are flying blind," the report says.

"Where the system has most grossly failed is in protecting the marine habitats essential for future fish production, as well as for the health of our marine environment more generally.

"There are multiple examples of the marked decline of fisheries and in some cases total collapse, linked to habitat degradation and loss."

The Challenger scallop fishery in Tasman and Golden bays, paua and blue cod stocks in the Marlborough Sounds and kina barrens along the Northland coast were given as examples.

"This is the element of our research that I found most alarming, because such habitat changes can be very difficult, if not impossible to reverse." – 13 April 2018

In terms of industry acceptance:

<https://www.sciencedirect.com/science/article/pii/S0308597X15000664>

Barry Torkington's publication in 2016:

The author writes from the perspective of long involvement in the commercial fishing industry as well as the aquaculture sector and fisheries management. Although New Zealand's fisheries management system is viewed by many as a successful model for other fishing nations to follow, the analysis here shows that it has embedded a perverse, rent-based management system that has created incentives for dominant actors to maximize low value-added extractive activity, often in very wasteful ways.

In terms of financial acceptance:

<https://treasury.govt.nz/sites/default/files/2018-03/oia-20170286.pdf>

Low levels of observer coverage, real-time catch-effort reporting, and real-time geospatial position reporting – particularly in the in-shore fishery – result in:

- *Constrained progress in resolving key management issues, such as discarding and protected species by-catch.*
- *Critical risks to the integrity of the QMS. The status of around 50% of fish stocks included in the QMS is unknown. **Therefore, while unknown stocks are of varying levels of commercial interest, MPI cannot guarantee that these are being sustainably managed** (a credibility risk for the management regime overall).*
- *Limited opportunities to create/add value to wild fish harvest through implementing traceability. Low monitoring levels restrict MPI's ability to verify reported catch information. Many fish stocks cannot currently meet the requirements of sustainability assessments that support access to premium markets and where boat-to-plate product traceability is required.*
- *Limited confidence among the public, international markets and users of wild fisheries that commercial fishers are catching their allocations with minimal or acceptable impacts on the environment and protected species.*

In terms of scientific acceptance:

<https://www.auckland.ac.nz/en/about/news-events-and-notice/news/news-2017/06/failed-fisheries-management-system-costing-nz-economy-and-environment-experts-say.html>

Claims that New Zealand has a “world leading” system for sustainably managing fishing have been scientifically debunked, say an international team of fisheries experts in a paper published in a top United States journal.

The strongly worded critique was published online [in June 2017] in the official journal of the prestigious US-based National Academy of Sciences, a member organisation of top scientists.

Problems outlined in the paper include:

- *Fisheries data shows management of most New Zealand fish species relies entirely on information provided by the fishing industry (for example, self-reported catches and fishing effort). Failure to collect independent scientific data is now recognised as one of the reasons why Canadian northern cod stocks were consistently over-estimated until they collapsed in 1992*
- *Three quarters of our fish stocks have no formal stock assessment at all. For example, there are no estimates of population size for warehou, either now or before fishing started. This is one of the fisheries that causes deaths of the critically endangered Maui dolphin found only in New Zealand*
- *Funding for stock assessment is about 45 percent of levels in the early 1990s; the number of QMS stocks has increased 3.5 times in that period*
- *Data on ecological impacts are inadequate for most fisheries, with observers on only 8.4 percent of fishing boats, despite repeated recommendations for government officials to increase coverage*
- *A groundbreaking 2016 study led by Dr Simmons showed that widespread illegal dumping and misreporting have distorted catch statistics for decades*
- *An independent review of the MPI's handling of illegal fish dumping and dolphin by-catch "demonstrated industry capture of the regulator"*

This paper was written by Professor Elisabeth Slooten, Department of Zoology, University of Otago; Dr Glenn Simmons, New Zealand Asia Institute, University of Auckland; Professor Stephen Dawson, head of Department of Marine Science at the University of Otago; Associate Professor Graeme Bremner, Botswana International University of Science and Technology; Professor Simon Thrush, head of the University of Auckland-based Institute of Marine Science; Professor Hugh Whittaker, School of Interdisciplinary Area Studies, University of Oxford; Dr Fiona McCormack, Anthropology Programme, University of Waikato; Associate Professor Bruce Robertson, Department of Zoology, University of Otago; Professor Nigel Haworth, Management and International Business, University of Auckland; Philip Clarke, Quadrat Ltd; Professor Daniel Pauly and Dr Dirk Zeller, Institute for the Oceans and Fisheries, University of British Columbia.

With so many distinguished academics saying they have scientifically debunked claims that New Zealand has a world leading system for sustainably managing fishing, it is clear the advertiser is overstating the level of scientific acceptance. Therefore they are in breach of Guideline e) in the representations they have made to the Advertising Standards Authority. Additionally from reading the accompanying reports, the advertiser is well aware of the literature quoted above and therefore lied to the Authority when they claimed a consensus existed.

With respect to the advertiser's voiceover stating:

"Our quota management system guarantees our fisheries stay sustainable"

The Code for Environmental Claims, Principle 2, Guideline a) states:

- a. Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.

See the references in the above section for evidence that the Quota Management System (QMS) does not guarantee our fisheries stay sustainable. The key comment from the Treasury report is highlighted in the preceding section (and repeated here for relevance):

*“Critical risks to the integrity of the QMS. The status of around 50% of fish stocks included in the QMS is unknown. Therefore, while unknown stocks are of varying levels of commercial interest, **MPI cannot guarantee that these are being sustainably managed**”*

Further to this, the advertiser has defended themselves from my original assertion that significant non-compliance exists within the fishing industry by saying this assertion is incorrect. They back up this defence by pointing out there have only been six successful prosecutions for non-compliance in the 2016/17 year.

Sadly, there is little correlation between prosecutions and non-compliance.

<https://www.newshub.co.nz/home/politics/2017/04/mpi-admits-officials-made-incorrect-statements-over-illegal-fish-dumping.html>

The Ministry for Primary Industries (MPI) has admitted two senior officials made incorrect public statements when explaining why they didn't prosecute over illegal fish dumping.

The matter was only clarified after Newshub laid a complaint with the Ombudsman – Newshub 13 April 2017

<https://www.greenpeace.org/new-zealand/press-release/independent-inquiry-needed-after-shocking-leaked-fishing-report/>

“Greenpeace Executive Director, Dr Russel Norman, says the report is profoundly at odds with public material about fishing industry practises that have been released by the Ministry for Primary Industries (MPI), into which the Ministry of Fisheries was merged.

“This report is shocking. It lists a multitude of ways that Fisheries Officers found that fishing companies were seriously under-reporting catches – we’re talking thousands and thousands of tonnes of hoki that has been made to disappear,” he says.

In just one example, Talley’s system of reporting the weight of cartons of fish was described as unlawful by the report, and it was estimated that if this system was applied to all Talley’s hoki fishery, it would result in under-reporting of 780 tonnes a hoki in one season. Carton weight discrepancies also led the authors to conclude that Sanford had under-reported hoki catch by 90 tonnes in a monthly return.

MPI had earlier, under the Official Information Act, released an 11 page version of the leaked 141 page report that left out all the important parts, including the critical 45 recommendations made by the compliance team.

“MPI is captured by the fishing industry. We need an independent public inquiry into the fisheries management system and its regulator. But MPI and the seafood industry are

trying to prevent this independent inquiry and are instead pushing for an internal review. This leaked report shows why that must not happen.

"MPI simply cannot be trusted to tell the truth or regulate the industry. Just last year when they didn't prosecute anyone after their own video cameras exposed widespread fish dumping in the inshore fishery, MPI claimed the decision not to prosecute was due to legal advice. But it turned out that legal advice did not exist. MPI simply didn't tell the truth." – Greenpeace 24 May 2018

<https://www.mpi.govt.nz/news-and-resources/media-releases/mpi-accepts-findings-of-independent-review-into-fisheries-compliance-operations/>

Ministry for Primary Industries Director-General, Martyn Dunne, says he accepts the findings of an independent review conducted by Queen's Counsel Michael Heron into 3 MPI fisheries compliance operations.

In looking at the decision not to prosecute in the investigation known as Operation Achilles, Mr Heron found the decision not to take prosecution action and, in particular, the process leading to it, was flawed.

"Illegal discarding in the commercial fishery is not a new problem. It has been around since the formation of the quota management system 30 years ago and it is a problem that fisheries management systems are grappling with around the world.

In order to evaluate the degree of non-compliance we can refer to various studies by MPI:

"During Operation Bronto in 2011, the Ministry for Primary Industries identified significant non-compliance relating to catch reporting, fishing practices and misreporting of bycatch, among other issues." – Slooten et al referenced later in this document.

"[Operation Trois](#) also found significant under-reporting due to a number of non-compliance issues across the entire southern blue whiting fleet." – Slooten et al referenced later in this document.

"In short, Operations Bronto, Trois, and [Maxi](#), among others, show that the effectiveness of New Zealand's [Quota Management System](#) and MSC certification is profoundly compromised by the quality of the data used to set the Total Allowable Catches (TACs)." – Slooten et al referenced later in this document.

<https://www.stuff.co.nz/business/industries/104173620/fishing-giants-underreported-hoki-catch-by-thousands-of-tonnes>

The report [Fisheries Ministry report 2012] said Talley's relied on the weight of "randomly sampled" cartons of fish caught by fishing boats, only addressing discrepancies between those samples and the average weight that had been recorded if they were found to be more than 2 per cent out – a practice which the Fisheries Ministry considered "unlawful".

While the 2 per cent buffer was supposed to take into account the weight of drips of water on fish, the ministry suggested that practice alone could have resulted in the annual hoki catch being under-reported by 780 tonnes.

One factory ship which caught and filleted fish, Amaltal Enterprise, was calculated to have under-estimated its catch by 151 tonnes – or 9 per cent of its hoki catch – during a two-month period in 2011 by using an equation that underestimated the catch needed to produce the fillets that it weighed.

Two Sanford factory ships were also calculated to have underestimated their catches by more than 200 tonnes for the same reason.

The report said many vessels fishing for hoki off the east coast of the South Island were using what it described as a "loophole" to spend most of their time exploiting rather than avoiding "hoki management areas" where they should not have been fishing for hoki.

<https://www.greenpeace.org/new-zealand/press-release/another-leaked-mpi-report-reveals-industrial-scale-underreporting-of-fish/>

Some notes from "2012 Compliance Risk Profile of the Sub-Antarctic Southern Blue Whiting Fisheries" (dated December 2013) by the Ministry of Primary Industries Compliance and Response Branch.

This report was based largely on an operation carried out by the investigations team at Ministry of Primary Industries, Operation Trois (August to October 2012).

Key findings include:

Carton weights: 56% of trips examined had underweight cartons; 44% adequate [p.25].

Of the 16 landings examined by fisheries officers over the course of three months, underweight cartons added up to 151 tonnes of under-reporting. There were an additional 6 landings that were not examined, so it's likely to be higher [p.26].

These underweight cartons were broken down by fishing company:

- Amaltal 14 tonnes under-reported*
- Independent 54 tonnes under-reported*
- Maruha 34 tonnes under-reported*
- Sanford 6 tonnes under-reported*
- Sealord 43 tonnes under-reported [p.26].*

Under-reporting of catch, linked to the way fish were processed on board, was estimated by the Fisheries Officers at up to 2678 tonnes [p.37].

Large amount of effort in this fishery was bottom trawling. [p.20]

Catching too much fish and leaving it in the net for extended periods was common – causes damage to fish [p.21].

http://www.searoundus.org/doc/publications/wp/2016/Simmons_2016.pdf

"New Zealand's reconstructed catch totalled 38.1 million tonnes (t) over the 61 year period. This indicates the actual catch was about 2.7 times the 14 million t reported to the FAO on behalf of New Zealand for the same time period. New Zealand introduced a Quota Management System (QMS) in 1986, to ensure fisheries resource sustainability and improve reporting. The total catch since then is conservatively estimated to be 2.1 times greater than that reported to the FAO." By University of Auckland, University of British Columbia Glenn Simmons, Graeme Bremner, Hugh Whittaker, Philip Clarke, Lydia

Teh, Kyrstn Zylich, Dirk Zeller, Daniel Pauly, Christina Stringer, Barry Torkington, and Nigel Haworth

The sad reality is that non-compliance is a significant issue in the fishing industry and the advertiser managed to find only one specious fact which wasn't damning in order to defend against this allegation.

In response to the advertiser's voiceover stating:

"Thanks to smarter technology we know how many fish there are. And, just as importantly, how many to leave."

The Code for Environmental Claims, Principle 2, Guideline a) states:

- a. Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.

The advertiser defended the second half of their statement by claiming they do know the exact size of fish stocks by referencing the Ministry for Primary Industries annual fish stocks assessments. <https://www.mpi.govt.nz/growing-and-harvesting/fisheries/fisheries-management/fish-stock-status/>

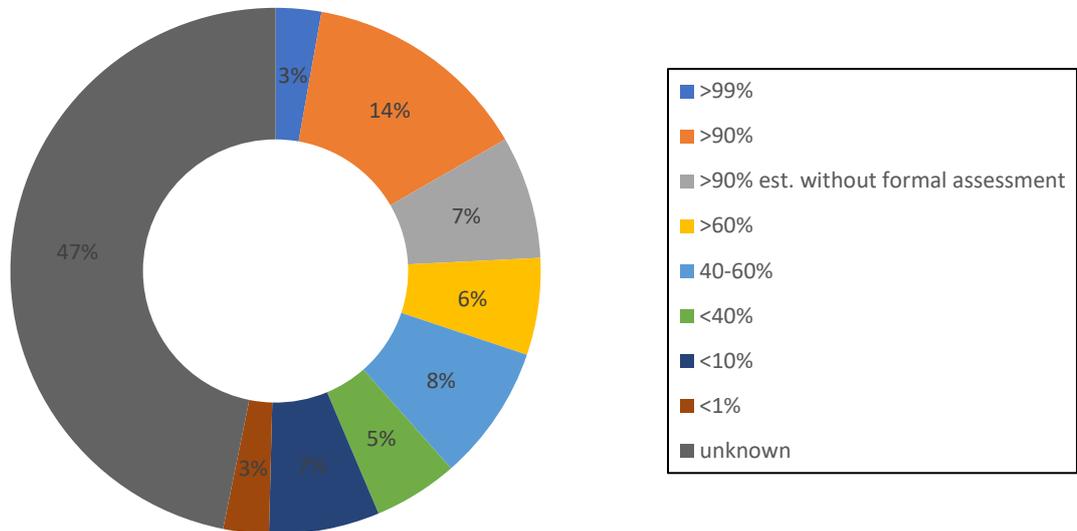
This provides a link to the Current Stock Status Table dated December 2017, and prefaces this information with:

Of the 388 fish stocks or sub-stocks included:

- 46 were assessed in 2017
- 342 were assessed in previous years
- 383 are Quota Management System (QMS) stocks or sub-stocks
- 5 are non-QMS species that are Antarctic or highly migratory species.

Analysing the latest report shows MPI's level of probability in assessing each stock against the target size:

Number of Fish Stocks' Probability of Being At or Above Target Level



Starting from the top of the pie chart and working clockwise, this can be interpreted as:

3%	Of fisheries have been formally assessed and have at least 99% probability of being at or above target level
14%	Have been formally assessed and have at least 90% probability of being at target
7%	Have not been formally assessed and MPI estimate at least 90% probability of being at target
6%	Are assessed as having at least 60% probability of being at or above target
8%	40-60% probability of being at target
5%	<40% probability
7%	<10% probability
3%	<1% probability
47%	Stock status is unknown

So does MPI and the advertiser really know how many fish there are?

Only 3% of fish stocks have been assessed recently to have a greater than 99% probability of being at or above target level. In my opinion that is the number of fisheries in which the number of fish are known.

Only 17% of fish stocks have been assessed recently to have a greater than 90% probability of being at or above target level.

83% of stocks have not been assessed and/or there is less than 90% probability of being at or above target level.

These figures strongly counter the advertiser's claim they know how many fish there are. Ironically this was the advertiser's sole evidence to the Authority they relied upon when claiming they knew the number of fish. It would appear they also relied upon no-one reading and understanding the document.

Further compounding the advertiser's exaggeration is the scientific opinion that the MPI numbers are biased by inaccuracies and small sample sizes in the data fed into the Stock Status Table:

"The broader environmental effects of commercial fishing on biodiversity, endangered species, seafloor habitats and the very ecosystem that supports the fish on which fisheries depend, are becoming increasingly obvious. Even so, little research targets these impacts. New Zealand's QMS is a data hungry beast and it is starving.

As with all markets, not all behaviours that are incentivised are virtuous. There is money to be made or saved by dumping catches for which ACE is unavailable or too expensive, from poaching and falsifying catch returns. These behaviours have seriously distorted New Zealand's catch data for decades. This includes massive dumping of unwanted catch and under-reported bycatch, including endangered dolphins and sealions.

Compounding this is the low level of onboard observer coverage (about 8.4 per cent in offshore fisheries and less than 1 per cent inshore) and the lack of effective enforcement. An independent review of New Zealand's Ministry for Primary Industries (MPI) handling of illegal fish and dolphin dumping revealed industry capture of the regulator, involving flawed processes and inappropriate conduct.

A senior MPI manager admitted that:

... discarding is a systemic failure of the current system and something we have not been able to get on top of from day 1 of the QMS.

Thus, the QMS is not just starved of data: what little data it gets is highly questionable."
<https://www.otago.ac.nz/marine-studies/news/news/otago661972.html> Otago university researchers Liz Sloaten, Bruce Robertson and Steve Dawson 6 September 2017

So it would appear there isn't even scientific acceptance of the 3% figure!

Turning our attention to the first part of the claim:

“Thanks to smarter technology, we know how many fish there are.”

The advertiser solely relies upon the above MPI document to defend they know how many fish there are. How does smarter technology provide scientific and technological developments in order to assess the sizes of fish stocks?

The MPI link provided by the advertiser also provides a section entitled “How we assess fish stocks” and goes on to say:

Each year, we convene a large number of Fisheries Assessment Working Group meetings to assess the status of fish stocks using:

- *scientific research (from contracted research providers)*
- *validated catch and fishing effort reports from commercial fisheries*
- *data from our on-board observer programme*
- *other relevant information.*

<https://thespinoff.co.nz/society/30-05-2018/weve-had-evidence-of-hoki-dumping-for-years-why-did-no-one-act/>

“Hoki is one of New Zealand’s most [valuable export fish](#). The [Marine Stewardship Council \(MSC\)](#) has certified hoki, ling and southern blue whiting fisheries as sustainable, and it is currently undertaking a regular review of the hoki certification. We consider that it may be rubberstamping flawed information from the [Ministry for Primary Industries](#) and the fishing industry itself.

Fish dumping in the hoki fishery has long been investigated and documented in [government reports](#) and [scientific journals](#), but the MSC appears to have ignored this evidence.

During Operation Bronto in 2011, the Ministry for Primary Industries identified significant non-compliance relating to catch reporting, fishing practices and misreporting of bycatch, among other issues.

[Operation Trois](#) also found significant under-reporting due to a number of non-compliance issues across the entire southern blue whiting fleet.

In short, Operations Bronto, Trois, and [Maxi](#), among others, show that the effectiveness of New Zealand’s [Quota Management System](#) and MSC certification is profoundly compromised by the quality of the data used to set the Total Allowable Catches (TACs).”

By Universities of Otago and Auckland researchers [Elisabeth Slooten](#), Professor; [Bruce Robertson](#), Associate Professor in Wildlife Management and Conservation Genomics; [Glenn Simmons](#), Research Fellow; [Graeme Bremner](#), Associate professor, and [Nigel Haworth](#), Professor of human resource development

The only technological advances put forward by the advertiser in their original defence was:

- Precision Seafood Harvesting. This appears to offer a less stressful way for the fish to be harvested, but it is unclear how this smarter technology contributes to knowing how many fish there are. Perhaps the advertiser can clarify this and also advise exactly how many of the 1,165 commercial fishing vessels use this technology?

- Acoustical Optical System. This appears to reduce bycatch and may assist with estimating fish numbers, specifically with Orange Roughy stocks in Australia and NZ. However, it appears from the advertiser's own statement "*This is to be rolled across the New Zealand trawler fleet*" that current deployment is limited and use is more aspirational than contributing to the knowledge of how many fish there are at the moment. Perhaps the advertiser can clarify how many of the 1,165 commercial fishing vessels were using this technology when the advertisement first appeared earlier this year, and the timetable for full deployment across the fleet?
- The final point related to reducing the impact and interaction with seabirds and sea mammals. While any progress in this area is welcome, this does not appear to support the claim of smarter technology leading to knowledge of fish populations.

In analysing the last part of the advertiser's statement "... and more importantly, how many to leave"

I refer to all the preceding evidence which shows the lack of certainty in the fish stocks and the significant non-compliance in the industry. This statement by the advertiser cannot be substantiated.

In response to the advertiser's voiceover stating:

"It's something we live by every day we head out to sea, and that is a promise"

The Code for Environmental Claims, Principle 2, Guideline a) states:

- a. Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.

In the context of the initial evidence, I respect the Authority's initial ruling this statement "*...contained elements of hyperbole. They also have an aspirational theme and convey the Advertiser's intention to be 'guardians of our oceans'.*"

However I refer to the evidence provided above with respect to non-compliance in the industry and invite the Appeals board to review their ruling in the context of this substantial evidence. With the industry's disregard of the truth shown to the Advertising Standards Authority and MPI, it would appear the Advertiser's real intention is to try and retrieve their tarnished public reputation by lying and manipulation, rather than being a true guardian of the ocean.

Rather than being congratulated on their initiatives as the ASA stated in the original ruling, the industry should be held to account for their institutionalised dishonesty and wasteful fishing practices. I am relying upon the Appeals Board to correct this situation and thank you for your consideration.

CODES OF PRACTICE

CODE OF ETHICS

Basic Principle 4 – Social responsibility: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2 - Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

CODE FOR ENVIRONMENTAL CLAIMS

Principle 1: Advertisements making an environmental claim should be prepared with a due sense of social responsibility to consumers and to society.

Principle 2: Advertisements making environmental claims should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

RESPONSE TO THE APPEAL APPLICATION FROM THE ADVERTISER

SEAFOOD NZ APPEAL RESPONSE

1. We have prepared a fulsome response to the appeal in the hope of putting this matter to rest once and for all. We trust that the Appeal Board will give due consideration to this response and recognise the frivolous nature of the appellant's claims and the lack of credibility of the evidence he has presented.
2. The Appeal Application (18/021) by the complainant S Lewis is unstructured and difficult to follow. Much of the cited material is not directly relevant to the scope of the initial complaint and subsequent appeal.
3. We have described the New Zealand fisheries management process to provide the Appeal Board with some context as to the protection of sustainability.
4. Rather than attempt to deal with the veritable barrage of cited material, we have extracted from the appeal the grounds being advanced by the appellant and responded on those points.
5. Where the remaining material contains significant errors, we have commented on those in the additional points section.
6. Our overall assessment is that the evidence provided by the appellant is largely extracts from opinion pieces and media statements by academics and environmental lobbyists who have no involvement in, and appear to have no in-depth understanding of, fisheries management in New Zealand. The media articles and opinion pieces are largely assertions, with no scientific or robust supporting analyses. We do not consider the material supplied by the appellant to be credible evidence supporting the hypothesis that New Zealand's fisheries are not sustainable.

A THE SUSTAINABILITY OF STOCKS

7. The appellant cites articles that make reference to the numbers of stock for which the sustainability status is not known, e.g.
 - *Ministry for Primary Industries, Cost Benefit Analysis 19/12/2016*³;
 - *Failed fisheries management system costing NZ economy*⁴
8. The common thread to this analysis is that a significant proportion, 50-75%, of the stocks are of unknown status.

RESPONSE:

9. To respond in a meaningful and helpful manner to the Appeal Board, we have provided a summary of the legislated provisions and processes by which sustainability is protected. This provides the context against which the appellant's claims are made.

Legislated Safeguards

10. The sustainability of New Zealand fisheries is a fundamental premise of fisheries management and is captured in Parts 2 and 3 of the Fisheries Act 1996. Part 2 of the Act sets out the purpose of the Act as being to “provide for the utilisation of fisheries resources while ensuring sustainability” and a definition of ensuring sustainability—
“ (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.”
11. Sustainability measures are the domain of the Minister who under Part 3 section 13(2) of the Act is required to set a Total Allowable Catch (TAC) for each stock that maintains the stock at or above a level that can provide the maximum sustainable yield or should the stock be below that maximum point returns the stock to that minimum level. The maximum sustainable yield is the point where the stock has the maximum level of reproduction that can be harvested without depleting the capacity of the stock to maintain that reproduction level. It is significantly higher than the minimum sustainability level where the stock reproduction is only sufficient to maintain the stock at an equilibrium point without growth. The Minister has no discretion not to take appropriate action if a stock is below the maximum level.
12. Section 9 of the Fisheries Act requires the sustainability of the aquatic environment and biodiversity to be protected from any adverse effects of fishing.
13. The Minister receives scientific and management advice from Fisheries New Zealand relevant to those decisions.
14. Having set the Total Allowable Catch for a stock, the Minister then allocates that allowable catch between the customary, recreational and commercial sectors having

³ <https://treasury.govt.nz/sites/default/files/2018-03/oia-20170286.pdf>

⁴ <https://www.auckland.ac.nz/en/about/news-events-and-notice/news/news-2017/06/failed-fisheries-management-system-costing-nz-economy-and-environment-experts-say.html>

made an allowance for any other fishing related incidental mortality. The commercial allocation is known as the Total Allowable Commercial Catch (TACC). Appropriate management settings are used to manage the catch allocations within the sectors.

The Quota Management System

15. In the commercial sector, a rights based quota system applies. Each stock in the Quota Management System (QMS) has 100 million quota shares which are a perpetual right to a proportional share of the TACC. The TACC approved by the Minister of Fisheries is allocated as Annual Catch Entitlement (ACE) to the quota share owners. ACE and shares may be traded between parties although it should be noted that aggregation limits apply to the holdings of shares in any stock.
16. The total of ACE for a year matches the Minister's TACC decision and effectively allocates the potential catch between quota holders. Quota holders may then catch their own ACE entitlement, contract other fishers to catch it or sell it to other fishers. A fisher's catches must be balanced with ACE he holds. Any catches in excess of the ACE held by a fisher are subject to a punitive deemed value regime which seeks to remove the profit from excess catching and return the maximum actual catch to the TACC. Under the new management approach, catches are reported daily to FNZ.
17. The QMS is effectively a market based mechanism to allocate the TACC to the commercial fishing industry. Alternative allocative measures include Government determined vessel or fisher allocations or tender systems. Being a perpetual right, the New Zealand QMS engenders stewardship and a long term commitment to the sustainability of the stock, a feature missing in alternative annually based allocation mechanisms.

Fisheries Management

18. MPI manages the stocks based on sustainability measures defined in a Harvest Strategy Standard⁵– the two primary sustainability measures being:
 - a. **A soft limit**– below this level, a fish stock is considered to be overfished or depleted and needs to be actively rebuilt, for example by reducing the total allowable catch; and a
 - b. **A hard limit**– below this level, a fish stock is considered to have collapsed and fisheries may need to be closed to rebuild at the fastest possible rate.
19. In addition to the sustainability limits, targets are set to provide a guideline for the management of the stocks. These management targets are not sustainability targets but by inference they must be at or above the sustainable limit
20. Stocks are assessed against those measures and to generate potential catch levels. Stock assessments are undertaken by a range of methodologies relative to the utilisation pressure or risk to the stock. Stocks that are subject to high levels of fishing pressure and thus high risk such as snapper, hoki and orange roughy are subject to full information assessments, generally using fishing industry independent data. Stocks with lower risk are managed on methodologies more appropriate to the revenue and the risk to the stock but with more precaution to

⁵ <https://fs.fish.govt.nz/Doc/16543/harveststrategyfinal.pdf.ashx>

reflect the uncertainty. The use of fisheries dependent data to inform stock assessments is a common international practice and not unique to New Zealand.

21. Stock assessments are undertaken on contract from FNZ or the fishing industry. FNZ approves scientists for its contracts based on their capability, capacity and experience to undertake the work. The scientists contracted by the fishing industry to undertake supplementary work to augment the limited FNZ funded research are drawn from the same pool of scientists as used by FNZ.
22. Given the limited resources and the comprehensive review processes involved in assessing stocks, not all stocks are assessed each year. Stock assessment research consequently focuses on those stocks considered to be at risk from either high utilisation levels or recognised sustainability issues. However, the opportunity exists at all times for scientific stock assessment work to be commissioned if a stock is thought to have an emerging sustainability issue.
23. Reporting of the status of the stocks is an annual process, the primary output being a Plenary of Stocks which contains historical and recent research and provides a summary of the stock sustainability and assessments. Amounting to some 500+ pages, the information is then further summarised in a brief report and infographic form⁶ – most commentators focus only on that summary.
24. There is a companion plenary report for the reporting of and latest risk assessments to the status of the aquatic environment and the biodiversity⁷. This report contains sections on protected species – seabirds, marine mammals, protected fish and corals –, the benthos and marine ecosystems.
25. To ensure high quality information only is used to inform government decision-making, FNZ has established a Research and Science Information Standard⁸. All research that is to be used to inform government decision-making, irrespective of its source or funding, is assessed against that standard. That process includes a peer review scrutiny of the research design, analysis and findings within a FNZ constituted working group process.
26. MPI has a significant level of compliance and enforcement activity to support the responsible utilisation of fisheries resources and thus to protect sustainability of the stocks. The Fisheries Compliance Group has a staff of around 150 with a further 50 staff being involved in investigations and enforcement. They operate independently of the fisheries management function.
27. The Group routinely analyses catch returns and vessel locations to identify potential offending such as discarding and catch mis-reporting. Vessels and operators so identified are then targeted for additional monitoring and surveillance to detect and gather evidence of any offending.
28. Like every other regulator, MPI operates a risk based compliance approach where compliance options other than prosecution exist. In particular, MPI operates a VADE

⁶ <https://www.fisheries.govt.nz/dmsdocument/11950/loggedIn>

⁷ <https://www.fisheries.govt.nz/dmsdocument/27471/loggedIn>

⁸ <https://www.mpi.govt.nz/dmsdocument/3692/loggedIn>

model of compliance:

- a. Voluntary – Operators voluntarily comply and informed
- b. Assisted – Operators attempting to comply and uninformed
- c. Directed – Operators have propensity to offend
- d. Enforced – Operators have criminal intent and illegal activity

29. The model is risk and behaviour based and involves compliance interventions that progress from communication and discussion through additional monitoring and surveillance, advisory discussions, directions and ultimately prosecution and are employed relative to the risk and behaviour/attitude of the offender.

The December 2017 Status of the Stocks⁹

30. There are some 685 stocks managed by Fisheries New Zealand. The stocks have a total allowable catch of approximately 600,000 tonnes. The actual annual catch is around 420,000 tonnes.

31. MPI's latest analysis of the 685 stocks is that:

- a. 297 are considered to be nominal stocks – nominal in that:
 - i. They have insignificant catch or catch allowance (generally close to zero tonnes totalling 0.6% of the total estimated catch);
 - ii. They have little to no potential to develop as either recreational or commercial fisheries;
 - iii. there may be no such fish in reality;
 - iv. they were established primarily for administrative purposes.
With no fisheries interest and generating little economic rent, there is no pressure on these stocks and the stocks are not capable of financing sustainability reviews. The status of these stocks is not available but it is highly unlikely that because of the lack of fishing interest that the stocks could be at unsustainable levels.
- b. 165 stocks, accounting for 71% of the total estimated catch by volume, are scientifically assessed. Of these,
 - i. 138 are assessed to be without sustainability issues, that is above the soft limit and
 - ii. 27 are being managed to address sustainability issues, that is above the hard limit but below the soft limit. For these stocks, stock rebuilding plans are in place to return the stocks to healthier stock levels.; and
 - iii. there are no stocks below the hard limit.
- c. 223 stocks have no status or the status is unknown. For these stocks, FNZ is required by the Fisheries Act 1996 to take a precautionary approach to catch limits. FNZ has a programme to assess the status of these stocks as resources allow. In the event that sustainability issues are perceived or considered to be emerging, stock assessments will be undertaken.

⁹ <https://www.fisheries.govt.nz/protection-and-response/sustainable-fisheries/the-health-of-new-zealands-fisheries/fish-stock-status/>

32. In a May 2016 press release¹⁰, the Ministry stated:

“We have decades of peer-reviewed science that shows steadily increasing levels of abundance. The situation now is that New Zealand fisheries are healthy overall, and that’s because of careful, science-based management.”

Mr Turner said the overwhelming majority of fish caught by commercial fishers came from stocks where sustainability was not a concern. In the remainder of fisheries, we have rebuilding plans in place.

“Science is the bedrock of our approach to fisheries management and New Zealand invests \$22.5 million each year to ensure our fisheries science is up-to-date and accurate.

“Our bottom line - and the factor that is most important to all the people using our fisheries - is making sure there are enough fish in the water. It’s a proven approach, which has delivered real results for New Zealand’s fisheries.”

33. The status of the stocks can provide different outcomes, depending on the measures used, the options being:

- a. the number of stocks (administrative reporting units) or
- b. the volume of fish caught.

34. If the number of stocks is used, then the proportion of stocks of unknown status would be as high as 75% (297 nominal and 223 not targeted and not assessed) or 50% omitting the nominal stocks. However, using the volume of fish caught, the proportion is significantly lower (29%).

35. The commentators cited by the appellant focus on the number of stocks and include the nominal stocks and stocks that are not targeted or in some instances never caught. Fisheries experts internationally look at the volumes of fish actually caught when assessing the sustainable management of a nation’s fisheries resources.

36.

“Three quarters of our fish stocks have no formal stock assessment.”

37. The appellant cites the above statement from the article entitled *“Failed fisheries management system cost NZ economy and environment, experts say.”*¹¹ That article is a public media release highlighting a report entitled *“Evidence of bias in assessment of fisheries management impacts”*¹² written by the same authors. That report contains the above reference to three quarters statement and cites an MPI document as the source¹³. The MPI document contains no such comment. Nor is the comment found in any of the supporting documents to that overview document. It is the authors’ personal assessment.

¹⁰ <https://www.mpi.govt.nz/news-and-resources/media-releases/how-many-fish-in-the-sea-is-the-proper-measure-of-a-healthy-fishery/>

¹¹ <https://www.auckland.ac.nz/en/about/news-events-and-notice/news/news-2017/06/failed-fisheries-management-system-costing-nz-economy-and-environment-experts-say.html>

¹² <https://www.pnas.org/content/114/25/E4901.full> “Evidence of bias in assessment of fisheries management impacts

¹³ at <https://mpi.govt.nz/document-vault/14662>, Ministry for Primary Industries, (2016) The future of our fisheries (Ministry for Primary Industries, Wellington, New Zealand).

Academics, Not Experts

38. The appellant seeks to characterise the authors of the documents he cites as evidence as fisheries experts. We question that characterisation.
39. None of the authors participate in fisheries management processes. None of the authors have been approved by FNZ to undertake fisheries stock assessments research. None of the authors are members of the fisheries stock management working groups that peer review fisheries stock assessment research or have attended those meetings. None have presented fisheries stock assessment research or aquatic environmental research analyses under the Research Standard for peer review scrutiny. Only two of the authors have any experience in fisheries management and that is limited to compliance activities. Four undertake marine mammal research. All have provided articles and opinions on fisheries management, large on assertion but devoid of supporting evidence or analysis. The characterisation of the authors as experts on the New Zealand fisheries environment is questionable given their lack of engagement and experience in those fields. The appellant later describes them as academics – a more appropriate characterisation.
40. It is lamentable that the “fisheries experts” who have prepared the opinion pieces cited as evidence by the appellant do not an in-depth knowledge and understanding of the management of sustainability in our fisheries and make unsupported assertions as to its quality and performance.

Reference to Targets Levels

41. Page 8 of the appeal decision contains comments and a pie chart provided by the appellant comparing stocks to their target reference point.
42. As discussed earlier, target levels are prepared under the Harvest Strategy Standard to provide a guideline for the management of the stocks. They cannot be unsustainable. The analysis and interpretation prepared by the appellant is irrelevant and the section should be set aside.

B ILLEGAL ACTIVITY

43. The appellant seeks to re-assert his view that the industry is non-compliant and that illegal activity compromises the sustainability of the fishstocks. His evidence is primarily based on the:
 - a. Sea Around Us report¹⁴ lead authored by Glenn Simmons; and
 - b. a number of MPI Compliance Division reports on fishing activity.

¹⁴ http://www.searoundus.org/doc/publications/wp/2016/Simmons_2016.pdf

The Sea Around Us Report

44. The report was produced by NZ authors as part of an international review of historical catch levels by Sea Around Us, a research initiative at The University of British Columbia, Canada.
45. The report uses a methodology unlike any of the other reports from Sea Around Us and relies heavily on a high use of interview material and assumptions. It asserts that New Zealand's reconstructed catch in the period 1950-2010 was about 2.7 times the amount reported to the FAO for the period. The level of under-reporting in the earlier years was estimated to be as high as 4.8 times the amount reported to FAO, falling to 2.1 times in the period following the introduction of the QMS. The ratio of 2.7 times places New Zealand as the fifth worst nation for reporting quality with only Haiti, Guinea-Bissau, French Guiana and Cambodia behind it and with nations such as Zaire, Somalia, Ghana, ranking ahead of it. This is contrary to all other assessments of the quality of New Zealand's fisheries management.
46. MPI assessed the veracity of the report and the accuracy of the estimates with reference to their Research Standard¹⁵. MPI's report highlighted the differing definitions of catch on which the analysis was based, the lack of detail and rigour in the estimates and the existence of bias in the interview activity. They provided the following summary statement :
- "MPI's initial analysis revealed serious concerns with the report's methodology and conclusions."*¹⁶
- MPI's concerns were supported by a number of international fisheries scientists¹⁷ and New Zealand fisheries scientists¹⁸.
47. We note that:
- New Zealand's reporting of catches was consistent with the FAO specifications for reporting catch, which did not require all catch to be reported;
 - the authors declined to provide both the Ministry and the industry with a detailed explanation of the estimation methodology and the calculations when requested to do so;
 - the report's approach to estimating the unreported catch used experimental approaches in preference to high quality scientific information on current levels of un-reported catch;
 - the report ignores New Zealand's practice of providing a scientifically-calculated allowance for non-reported catch in stock assessments;
 - the analysis produced highly unrealistic outputs such as recreational fishers purportedly catching tonnes of orange roughy, a fish caught at depths of over 800 metres, and long before stocks of orange roughy were known to exist in New Zealand waters; and

¹⁵ <https://www.fisheries.govt.nz/protection-and-response/sustainable-fisheries/the-health-of-new-zealands-fisheries/#auckland>

¹⁶ <https://www.mpi.govt.nz/news-and-resources/media-releases/how-many-fish-in-the-sea-is-the-proper-measure-of-a-healthy-fishery/>

¹⁷ <https://sustainablefisheries-uw.org/do-catch-reconstructions-really-implicate-overfishing/>

¹⁸ <https://www.sciencemediacentre.co.nz/2016/05/16/nz-fisheries-catch-under-reported-expert-reaction/>

- f. the report deals with historical catches only.
48. The National Institute of Water and Atmospheric Research (NIWA) routinely measure and report on the level of total catch, including any catch not landed, for New Zealand's deepwater stocks. In comparison to the Sea Around Us estimate of non-landed catch being 170% of the landed catch, those analyses estimate the non-landed catch makes up only 7% of the landed catch¹⁹. The Sea Around Us report prefers to use its innovative subjective estimates rather than high quality science for catch estimates.
49. Given the concerns expressed as to the quality of the estimates in the Sea Around Us report and the NIWA scientific results, the Sea Around Us report is not considered to be of sufficiently high quality that it could be accepted as evidence of a threat to the current sustainability of stocks.

Compliance Reports

50. The appellant cites articles which refer to compliance reports as evidence that the level of non-compliance and in particular discarding precludes the sustainability of fish stocks:
- a. Slooten, Simmons , Press release 15 June 2017
 - b. Russell Norman Greenpeace Press Release 24 May 2018²⁰ and;
 - c. Slooten Dawson – Evidence of Bias 12 June 2017
51. The articles refer to the Sea Around Us report which referred to 14 confidential reports prepared by MPI compliance on commercial fishing activity and 21 compliance reports released by MPI on their website in response to OIA requests. Subsequent to this appeal being lodged, MPI has released a summary of a further 53 compliance operations for the period 1990 to 2012 that resulted in a prosecution or MPI action. The compliance reports released cover the period from 1990 to 2013.
52. The compliance reports cover a range of activities, not all of which refer to illegal activities of operators. The reports include:
- a. risk assessment projects undertaken by the Compliance Division to highlight potential risks to be addressed by fisheries management. Changes to fisheries, catch reporting and auditing practices were made with industry collaboration to address the potential risks.
 - b. targeted Compliance Division operations on suspected issues of non-compliance, some of which resulted in prosecutions or warnings.
53. In the above instances, where a management response was considered appropriate, FNZ took action to address the source of the potential offending. The responses include:
- a. Amending regulations for clarity and greater specificity;
 - b. Initiating science to provide more robust management specifics;
 - c. Targeting observers and compliance reviews to potential and identified risk vessels; and

¹⁹ <https://www.niwa.co.nz/fisheries/tools-resources/deepwater-trawl-fisheries-bycatch-and-discards>

²⁰ <https://www.greenpeace.org/new-zealand/press-release/independent-inquiry-needed-after-shocking-leaked-fishing-report/>

- d. Initiating an improved digital monitoring system based on:
 - i. Real-time reporting of vessel locations;
 - ii. Near real-time reporting of fishing activity such as captures; and
 - iii. Camera monitoring of fishing activity.
 - e. Taking enforcement action
 - f. Amending internal procedures relating to enforcement decisions
54. FNZ implemented the deepwater stock catch analyses routinely undertaken by NIWA and referred to earlier in this response to ensure that any non-reporting of catch and discarding was provided for in stock assessments for those stocks where the level of such behaviour might impact the quality of stock assessments.
55. FNZ has introduced a risk profiling process which identifies vessels which could impact the sustainability of New Zealand stocks if they operated illegally. The vessels are required to carry observers to monitor all fishing activity until such time as their compliance with the legislated provisions. They remain the focus of additional performance monitoring and audit after that point.
56. As discussed earlier in the response, the MPI Compliance Division undertakes a risk profiling analysis of vessel catch returns and fishing patterns to detect potential offending, such as discarding and non-reporting of catch. Any instances of suspected offending are targeted for compliance attention.
57. Digital monitoring is currently being implemented by FNZ. A schedule has been set for the implementation of location and activity reporting that will see such reporting for all commercial vessels by 1 September 2019. The implementation details for camera monitoring have yet to be determined and approved by the Government but camera monitoring of some form and extent will be implemented, with particular attention being paid to those fisheries which create risks but cannot be readily observed by current practices.
58. As outlined earlier, MPI operates a staged non-compliance response model where the response is relative to the risks and behaviour of the vessel operator. Prosecutions are not an automatic option and are regarded by industry and MPI as a failure of other options to achieve the desired outcome of a compliant industry.
59. It should not be assumed that non-compliance by one operator is reflective of non-compliance by additional operators or a fleet of vessels. The industry has consistently deployed illegal activity and publicly supported compliance outcomes.

Summary

60. There is no substance to the claim that illegal activity currently compromises the sustainability of New Zealand's fishstocks. The claims contained in the Sea Around Us report are exaggerations based on a less than robust methodology that produces implausible outputs that are inconsistent with robust scientific estimates. The use of compliance reports as evidence that illegal activity compromises the sustainability of stocks is baseless. Reports have been mis-interpreted and have been assumed to reflect industry wide practices when there is no evidence of that extent.
61. Where illegal activity that might compromise the sustainability of stocks has been identified, FNZ has been active in addressing the scope for that illegal activity and ensuring high levels of compliance with regulated provisions.

III WIDER ECOSYSTEM SUSTAINABILITY IGNORED

62. The appellant cites as evidence articles asserting fishing is imposing unsustainable effects on the wider aquatic environment and ecosystem.
63. The effects of fishing on the environment is subject to research programmes of FNZ and the Department of Conservation. Approximately 16% of the FNZ research budget is spent on aquatic environmental research. This is supplemented by DOC research programmes on protected species.
64. FNZ has implemented an Ecosystem Approach to Fisheries to have regard for the impacts of fishing on the wider aquatic environment. Every Ministerial report on fisheries management contains an assessment of the wider impact on the aquatic environment – this includes impacts on other fish stocks, all protected species, the benthos and the wider ecosystem. It is not true to say fisheries effects are ignored.
65. Fisheries New Zealand has commissioned risk assessments for protected species – seabirds²¹, marine mammals²² and sharks²³ – to assess the impact of commercial fishing on the sustainability of those populations. The scientific assessments are world-leading and are based, wherever possible on high quality, observed fishing events. The performance of those observed events is then used to estimate the performance of the non-observed events. Where the level of observed performance is low, uncertainty is incorporated into the analysis to provide a probable over-estimate of the impact. Estimated captures are increased to allow for mortalities that might have occurred but were not seen by observers. The estimated potential fatalities are then compared to protected species mortality limits that provide for increased levels of sustainability of the populations.
66. Those risk assessments show overwhelmingly that commercial fishing is not having an unsustainable impact on protected seabird, marine mammal or shark species populations. Where the risk for a species is considered to be high, additional in-depth research is commissioned by FNZ or DOC to obtain a more informed assessment. Those higher level assessments have confirmed fishing does not have a significant negative effect on the sustainability of any protected species populations.
67. The comments as to the unsustainability of the wider environment have no substance.

²¹ <https://www.mpi.govt.nz/dmsdocument/27531-aebr-191-assessment-of-the-risk-of-commercial-fisheries-to-nz-seabirds-2006-07-to-2014-15/loggedin>

²² <https://www.mpi.govt.nz/dmsdocument/27163-aebr-2017189-assessment-of-the-risk-to-new-zealand-marine-mammals-from-commercial-fisheries/loggedin>

²³ <https://www.mpi.govt.nz/dmsdocument/29807-aebr-2018201-qualitative-level-1-risk-assessment-of-the-impact-of-commercial-fishing-on-new-zealand-chondrichthyans-an-update-for-2017/loggedin>

68. The industry has initiated many programmes and mechanisms to widen the protection of the aquatic environment beyond the legislated provisions. These include, to name but a few:
- a. The creation of benthic protection areas which cover XX% of New Zealand waters;
 - b. Closures to protect Maui dolphins, New Zealand sea lions, yellow eyed penguins, and other protected species
 - c. Fleet and vessel based plans to mitigate the capture of seabirds and other protected species;
 - d. Vessel management programmes to avoid protected species hot-spots
 - e. Closures to protect bryozoans, corals and other benthic life;
 - f. Closures to protect habitats of special importance to fishing;
 - g. Research into practices and approaches to mitigate the risk of fishing to protected species.

IV CAPTURE BY INDUSTRY

69. The appellant cites evidence that MPI has been captured by industry and the sustainability of the stocks is compromised by that capture. The capture comment is contained in statements from:
- a. Russell Norman Greenpeace Press Release 24 May 2018²⁴ and;
 - b. Slooten Dawson – Evidence of Bias June 2017
70. The press releases refer to the actions taken or not taken in regard to reports on industry compliance and the independent review of reports of illegal discarding and misreporting.
71. The article also claims that proposals for downward change are resisted by the fishing industry and most TACs have not changed in response to over-catching or under-catching. Under-catches do not threaten sustainability. We know of no stocks where the Minister has refused to reduce the TAC for a stock with sustainability issues on account of industry pressure. The statement in the article is fallacious and unsupported by any analysis or material.

Response:

72. None of the compliance reports referred to, the Heron independent enquiry report or the MPI responses contains any comments as to any industry pressure on or capture of MPI by industry.
73. The management responses to the compliance events were determined by MPI and MPI alone. Industry was advised of the MPI decisions and plans were developed collaboratively to address the issues raised.
74. Commentators who characterise the non-prosecution or the collaborative processes to

²⁴ <https://www.greenpeace.org/new-zealand/press-release/independent-inquiry-needed-after-shocking-leaked-fishing-report/>

reflect industry capture are gravely mistaken and seek to mis-inform the public. The views are the personal subjective views of the commentators and are not supported by documentation. MPI has either justified its management responses or admitted to failures in internal processes but has not indicated industry pressure.

75. The commentators have not differentiated between the compliance reports that are risk assessments and those that investigate actual cases of non-compliance. The risk assessments result in improved compliance outcomes, not prosecutions.
76. The commentators appear to take a black and white approach to compliance such that every offence investigated should result in a prosecution. That is not the compliance model operated by MPI. Prosecutions are not the only tool to achieve compliance. The VADE model is discussed earlier in this response.
77. As a consequence, it cannot be simple assumed that investigation of an offence or a risk will automatically result in a prosecution. And a decision not to prosecute is not evidence of industry capture.
78. We have earlier in this submission described the science review processes in which any industry-commissioned science is assessed and in which industry participates. Those processes do not permit industry capture.
79. The comments and the allegations should be ignored.

V OTHER COMMENTS

Own Website Reference:

80. Response: the Seafood NZ website reference contains a mixture of quotes from Raewyn Peart, the author of the Environmental Defence Society report “Voices from the Sea”, and comments from Seafood New Zealand. The material cited is comments from R Peart.
81. There is no statement that Seafood New Zealand supports her views. To the contrary, the website reference includes the following comment from Seafood New Zealand *However, the report shows a misunderstanding of the QMS. It was set up to preserve stocks that were being overfished, it is not a mechanism for dealing with heavy siltation and other land-based impacts on the marine environment. That is the responsibility of the Resource Management Act and one that has not been well discharged—to the detriment of inshore fisheries.*
82. The Seafood New Zealand website contains a page on sustainability of the fisheries <https://www.seafood.org.nz/industry/sustainability/> . that affirms our belief in the sustainability of our fisheries.

Barry Torkington Publication in 2016

83. Response: The report by Torkington is an opinion piece by a long term critic of the QMS. The paper makes assertions based on perceptions and economic theory but does not contain any substantive analysis or research to support the assertions.

SUMMARY OF COMPLAINTS BOARD RULING

The television advertisement for Seafood New Zealand showed portraits of men who work in the fishing industry and shots of a fishing vessel in port and at sea. There were also some graphics to illustrate how the quota management system works. The voiceover for the advertisement said: “We’re keeping our promise to be guardians of our oceans. Thanks to

smarter technology, we know how many fish there are. And, just as importantly, how many to leave. Our quota management system guarantees our fisheries stay sustainable...”

The Complainant said the advertisement was misleading because it made a number of claims which are unsubstantiated, for example: only 10% of fish stock is being caught, the quota management system guarantees our fisheries stay sustainable and we know how many fish there are.

The Advertiser defended the use of the statement: “*Our quota management system guarantees our fisheries stay sustainable*” in the advertisement and said because they abide by the law (the Quota Management System) New Zealand fisheries *are* sustainable. New Zealand’s QMS is lauded internationally as world leading.

The majority of the Complaints Board said the advertisement was not misleading. The advertisement explains how the New Zealand fishing industry is environmentally responsible because it has a Quota Management System which relies on advanced technology and is designed to ensure the New Zealand fishing industry remains sustainable. The average consumer would view the statements in the advertisement more as a promise or a commitment to sustainable fisheries, rather than an absolute guarantee.

A minority disagreed. It said the use of the word “guarantees” in the statement: “Our quota management system guarantees our fisheries stay sustainable” was misleading. The word “guarantee” implies a strong environmental claim, especially when talking about “our” QMS, and this claim has not been substantiated.

Therefore, in accordance with the majority, the Complaints Board ruled the advertisement was not misleading.

Accordingly, the Complaints Board ruled the complaint was Not Upheld