



# GUIDELINES FOR SUBMISSIONS ON DEVELOPMENT, PLANNING AND CONSERVATION ISSUES

## 1. Introduction

These guidelines have been developed to assist Council/Scientific Committee and Regional Representatives to make submissions or supply information held by the Society when called upon to do so on matters of local/regional/national interest, including national and regional development projects, Resource Management Act issues and matters concerning the conservation of birds and their habitats.

Members of the Society as well as members of the public and representatives of NGOs, local government and national government agencies may at times seek 'support' from the Society on a range of matters where it is considered that the weight of a submission would be beneficial to conservation, e.g. submitting 'against' a development project, or submitting 'in support' of a planned conservation project such as a species translocation.

In responding to such requests the Society must ensure that its actions are constitutional, and that any response is scientifically robust.

The Society does not have staff to prepare submissions, undertake policy analyses and write reports. In most cases these tasks will fall on the Regional Representatives for matters relating to their regions, and Council/Scientific Committee for matters of national interest.

If the Society decides to respond to such requests it is vital that this be done in a unified and structured manner rather than as a series of uncoordinated *ad hoc* responses from different regions. This will, inevitably, result in a degree of bureaucracy that some may find tedious, but the alternative risks a loss of credibility and standing in the community.

These Guidelines will evolve over time as each case will present new issues and challenges. Regional Representatives should not hesitate to contact the President if faced with a novel situation and are unsure how to respond.

## 2. Birds New Zealand and Conservation

Many members of the Society would regard themselves as 'conservationists' and most, if not all, members would like to see birds and their habitats conserved. Making the Society 'relevant to conservation' is one way that it can broaden its appeal to potential members.

Arguments presented by members at annual meetings in 2018 and 2019 were in support of a more positive approach by the Society for bird conservation. Following the 2019 annual meeting, Council has reviewed its position and has resolved to adopt an amended Conservation Policy for New Zealand birds, namely,

***Birds New Zealand Conservation Policy:***

*To encourage and support the conservation of birds by providing scientifically sound information for making wise management decisions. Where it is appropriate, individuals and Regions can support bird conservation by participating in hearings, meetings or other*

*consultative processes to present and explain scientific evidence and recommend management arrangements and actions based on that evidence. Resourcing of such activities is at the cost of the individuals and Regions involved.*

Whilst not providing a basis for advocacy *per se* the amended policy does describe a more permissive position for supporting bird conservation.

A Discussion Paper for Council, dated 11 September 2019, reviews the conservation policy for New Zealand birds and provided the basis for this amended policy.

### **3. SHOULD BIRDS NEW ZEALAND GET INVOLVED?**

The Society may be approached to get involved in 'conservation' in a range of areas such as:

**Policy issues** (national/regional) – review of the Schedules to the Wildlife Act; listing of fisheries species under the Quota Management System which may impact birds; national Ramsar strategy; New Zealand Coastal Policy Statement review.

**Planning issues** (national/regional) – national wind farm policy; local authority regional policy statements and resource management plans (and revisions/amendments thereto).

**Specific development projects** (regional) – wind farms, hydroelectric schemes, residential subdivisions etc. which may or may not be subject to Resource Management Act processes.

**Supporting conservation activities** (national/regional) – supporting species transfers, supporting conservation of local habitat areas.

Is the Society being asked to make a submission against something, e.g. a development project? If so, the Society cannot get involved (this would be advocacy).

Is the Society being asked to support something, e.g. a species translocation? The Society could potentially 'support' such action, e.g. through a letter confirming the scientific robustness of the proposal, or could highlight any shortcomings in the proposal (which would not be in the form of being 'against' the proposal, but which would allow for potential improvement in future).

Is the Society being asked for information related to something? If so, can the Society potentially provide relevant information from which sound management decisions can be derived? If no – then the Society should not get involved. If yes, then we may give the matter further consideration.

What is the timeframe for the Society's response? If there is insufficient time then the Society should not get involved.

### **4. A CODE OF STANDARDS FOR MAKING SUBMISSIONS**

#### **4.1 Questions to be answered before making a submission**

1. What information can the Society provide and how easy is it to obtain? Information might raw count data from a database or field notebooks, reports of studies (published or unpublished) or reviews of relevant published literature.
2. What resources are needed to collate the information and, if necessary process it – e.g. collating and analysing 5-minute bird counts.
3. The Scientific Committee must nominate a suitably qualified person or group who can complete a peer review of the data and the statements to be made in a submission.

4. Who will present the data to the receiving body? This will need to be a recognised expert.
5. If there are insufficient resources for preparing information then the Society should not get involved.

#### 4.2 Code of Standards for submissions in support of the conservation of birds

1. Submissions to encourage and support the conservation of birds by providing scientifically sound information for making wise management decisions shall be drafted and submitted in the name of The Ornithological Society of New Zealand Incorporated; this is legally registered name of the Society.
2. The Regional Representative may assemble submissions concerning issues in the region in which the Regional Representative has been appointed.
3. A draft submission needs to be reviewed and endorsed by the Chairman of the Scientific Committee before approval by the President.
4. The Regional Representative or another knowledgeable member may participate in hearings or in other consultative processes, once a submission has been endorsed by the Scientific Committee and approved by the President. The expectations of and a Code of Conduct for being an expert witness are set out Chapters 5.1 and 5.2.
5. The President, or the President's nominee, shall make submissions concerning matters spanning two or more regions, or are of national interest.
6. This Code does not otherwise limit the right and opportunity of members' to exercise freedom of expression when assembling submissions.

## 5. THE RESOURCE MANAGEMENT ACT

The RMA has resulted in an increasingly litigious climate and the Society must take extreme care not to lay itself open to potentially costly proceedings, and in the extreme the awarding of costs against it. This does not necessarily rule out engagement in RMA processes, but highlights the need for strict adherence to the process set out above. In most instances of a formal proceeding under the RMA the person who presents the information on behalf of the Society will be called as an expert witness for one party or another.

- 5.1 An expert witness has the following expectations from the High Court (extract from the High Court Rules 2016). A RR or other member considering a request to supply information as part of a hearing should consider these tests when thinking about how, or if, to commit to the process. Taken from:

[www.legislation.govt.nz/regulation/public/2016/0225/latest/whole.html#DLM6953324](http://www.legislation.govt.nz/regulation/public/2016/0225/latest/whole.html#DLM6953324)

#### 5.2 Code of Conduct for expert witnesses

##### Duty to the court

1. An expert witness has an overriding duty to assist the hearing, or court, impartially on relevant matters within the expert's area of expertise.
2. An expert witness is not an advocate for the party who engages the witness.

##### Evidence of expert witness

3. In any evidence given by an expert witness, the expert witness must—
  - a. acknowledge that the expert witness has read this Code of Conduct and agrees to comply with it;
  - b. state the expert witness' qualifications as an expert:

- c. state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:
  - d. state the facts and assumptions on which the opinions of the expert witness are based:
  - e. state the reasons for the opinions given by the expert witness:
  - f. specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:
  - g. describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
4. If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
  5. If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

6. An expert witness must comply with any direction of the court to—
  - a. confer with another expert witness:
  - b. try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:
  - c. prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
7. In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

## 6. CASE STUDIES

The following case studies illustrate some issues in which the Society has been involved.

Review of Schedules to the Wildlife Act:

The Scientific Committee prepared a response to Government highlighting the lack of science in the process and the need for robust science in the management of any species for which harvesting is/might be permitted.

Wind farm development:

Conscious of the growing interest in wind farms the Scientific Committee prepared a Position Statement to which future project proponents could be referred.

Hydro-electric proposal:

The Society found that it had been included in the Draft Conditions for a hydro scheme submitted by the proponent. This was without any discussion with the Society and possibly in a manner that would be *ultra vires* should the consent be granted as proposed. The Society responded by offering to participate 'in a working group to develop the detailed design of base-line and monitoring studies relating to avian ecology and associated matters, and the subsequent interpretation of any such studies, so long as the group also includes, among others, a trained biostatistician. We would not object such participation by the Society being included in any conditions placed upon xxxxxx in the

Final Decision, subject to further discussion with ourselves regarding the extent and terms of such consultation.'

Proposed change to a Regional Resource Management Plan:

When the Tasman District Council sought submissions on a Plan change that would have allowed changes to (destruction of) small freshwater bodies without obtaining a resource consent, OSNZ Nelson made a submission drawing Council's attention to the fact that even small waterbodies are used as breeding sites by some bird species and size alone was therefore an inappropriate criterion for determining biodiversity values. We did not say that we opposed the Plan change.

Regional authority sought public submissions on coastal management issues:

When the Tasman District Council sought submissions on management issues regarding Waimea Inlet OSNZ Nelson submitted drawing Council's attention to count data for waterbirds/waders, including the fact that the site met the Ramsar 1% criterion for several species [but we did not propose Ramsar listing], and responded to questions asked by Council about potentially 'disturbing activities', such as boating, waterskiing and jetskiing, by presenting a review paper summarising international studies on disturbance impacts to waterfowl. This time consuming project was spread over several months and included a review of some 70 references.

Ministry of Fisheries cockle harvesting proposals:

When the Ministry of Fisheries sought submissions on the inclusion of cockles into the Quota Management System (QMS) the discussion paper paid scant regard to potential impacts (both direct and indirect) of cockle harvesting on birds. OSNZ Nelson made a submission drawing the Ministry's attention to the considerable body of research conducted in Europe on oystercatchers and cockles, and highlighting the models developed there which potentially could be 'calibrated' for future use in New Zealand. The need for further studies in NZ was highlighted. This submission required liaison with OSNZ Northland as Whangarei Harbour was also involved.

Submission to the Porirua Harbour Strategy and Action Plan, August 2011:

OSNZ Wellington submitted a summary of survey data of predominantly marine and freshwater wetland birds recorded in the Pauatahanui Inlet over a 30-year period to support sound decision-making in the formulation of the Porirua Harbour Strategy and Action Plan, in particular, for Chapter 3 of the draft plan – *Action Plan for Ecological Restoration*.

*Revised December 2019*