

REGULATORY IMPACT STATEMENT – SEABIRD MITIGATION MEASURES FOR TRAWL AND LONGLINE VESSELS

Executive Summary

- 1 The Ministry of Fisheries (MFish) proposes to amend Regulation 58 of the Fisheries (Commercial Fishing) Regulations 2001 to empower the Chief Executive of MFish to promulgate seabird mitigation measures by circular. These measures would replace the mitigation measures that have been notified in the NZ *Gazette*.
- 2 In February 2008 the Minister of Fisheries decided to introduce a suite of mitigation measures across all trawl and longline vessels. The details of these measures were published in the New Zealand Gazette.
- 3 At the time the Minister's decisions were made known, it was indicated that the *Gazette* notices would be superseded through changes to the commercial fishing regulations later in 2008. The commercial fishing regulations allow greater flexibility for least cost, finer scale measures to be implemented through the use of circulars issued by the Ministry of Fisheries Chief Executive.

Adequacy Statement

- 4 This Regulatory Impact Statement has been reviewed by the Ministry of Fisheries' Regulatory Impact Analysis Review Committee and is considered to meet the criteria agreed by Cabinet.

Status Quo and Problem

The Current Situation

- 5 New Zealand is an important breeding ground for approximately eighty seabird species and has the greatest variety of albatross and petrel species in the world. These species range in IUCN threat ranking from critically endangered (eg, Chatham albatross) to least concern (eg, Flesh-footed shearwaters). Seabird species globally are facing a number of threats to their long-term viability, both at the sites where they breed and while they are foraging at sea. One of the key threats is the incidental mortality of seabirds in the course of fishing activity.
- 6 Several population characteristics of albatrosses and petrels make them susceptible to long-term population decline from fishing-related mortalities. Albatrosses and petrels typically have late maturity, low productivity, and take a long time to form pairbonds if a partner is killed.
- 7 The intrinsic rate of population increase for these species is very low, meaning that birds may not be able to reproduce sufficiently rapidly to compensate for fishing

related removals to the population level. As a result decreases in population sizes and an associated increase in threat status are likely to occur.

- 8 MFish is currently consulting on a National Plan of Action to reduce the Incidental catch of Seabirds in New Zealand (NPOA), which sets out a long term, strategic approach to reducing the incidental catch of seabirds that includes goals, objectives, management measures and supporting services such as monitoring and research. While conscious that a comprehensive management framework for seabirds is being consulted on, the Minister of Fisheries is also concerned about the risk in the period before the management framework can be implemented. Following a stakeholder consultation process, in February 2008 the Minister determined minimum acceptable mitigation that all trawl and longline vessels should be using in the short term.

Why Government Action is Needed

- 9 The Minister's decisions were implemented by *Gazette* Notices, pursuant to section 11 of the Fisheries Act 1996 (the Act). The Minister indicated in his decision letter to stakeholders that the measures would be implemented initially by *Gazette* Notice, to be superseded by amendments to the Fisheries (Commercial Fishing) Regulations 2001.
- 10 The current arrangement of promulgating the seabird mitigation measures by *Gazette* Notice is insufficient because the mitigation measures are highly detailed and technical, and thus more suitable to be notified in a circular issued by the MFish Chief Executive, so as to be able to respond rapidly to changes in mitigation technology. The mitigation measures may require frequent changes and iterations over time as further research and trials of such devices and measures is carried out. The Fisheries (Commercial Fishing) Regulations 2001 also may provide better public access for legislation, especially given that those regulations already contain seabird mitigation measures. It is preferable to have all seabird mitigation measures consolidated in one place in regulation for easy reference.

Objectives

- 11 The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. The meaning of sustainability includes ensuring that the adverse effects of fishing on the aquatic environment, including on seabirds, is avoided, remedied or mitigated.
- 12 The Act also contains a set of environmental principles that the Minister is required to take into account, along with specific provisions relating to managing the effects of fishing-related mortality on protected species. The key environmental principles in relation to seabirds are that associated and dependent species (including seabirds) should be maintained above a level that ensures their long-term viability and that biodiversity of the aquatic environment should be maintained.
- 13 The fisheries management objectives for this proposal are to ensure that any adverse effects of fishing on seabirds are avoided, remedied or mitigated. Analysis by MFish suggests that fishing is likely to be having an adverse effect on at least some species of seabirds. The purpose of the proposed measures is to mitigate the immediate and

ongoing risk to seabirds from vessels not using adequate mitigation measures, by placing those measures in a more robust and flexible regulatory framework.

Alternative Options

14 There are no alternative options other than the status quo and the preferred option.

Preferred Option

15 MFish's preferred option is to amend Regulation 58 of the Fisheries (Commercial Fishing) Regulations 2001 to empower the Chief Executive of MFish to promulgate seabird mitigation measures by circular.

Benefits

16 This is MFish's preferred option because:

- a) The proposed amendments to the Fisheries (Commercial Fishing) Regulations 2001 will allow greater flexibility through the use of circulars issued by the MFish Chief Executive, rather than by *Gazette* Notices approved by the Minister of Fisheries. Given that the measures are highly detailed and technical, it is important that the tool used to promulgate the measures is quick and responsive to innovations in mitigation technology. MFish considers that circulars meet this criteria more readily than do *Gazette* Notices issued by the Minister;
- b) The Fisheries (Commercial Fishing) Regulations 2001 arguably provide better public access for legislation, especially given that those regulations already contain seabird mitigation measures. It is preferable to have all seabird mitigation measures consolidated in one place in regulation for easy reference;
- c) The commercial fishing regulations will provide a framework for additional seabird mitigation measures to be introduced as part of the longer term framework for managing seabird interactions. Additional measures to be notified by circular will be subject to full consultation with stakeholders.

Costs

17 Compliance costs to the fishing industry fall into two areas:

- i) Purchase of seabird mitigation measures; or
- ii) Changes in fishing practice and gear set-up and deployment that may affect fishing efficiency.

18 MFish does not consider that the purchase of seabird mitigation measures as proposed will be a significant cost. Typically, measures proposed are low-cost such as streamer lines, line weighting and fish storage bins. However, measures may be more expensive for storage and possible reconfiguration of offal management practices for some trawl vessels. Operational changes required to implement measures can also carry a cost.

- 19 Based on available information from observers on fishing practices, MFish does not consider that the proposals will lead to significant costs for the majority of fishers due to the need to change fishing practices. However, some stakeholders do not consider information from observers to be adequate and MFish is conscious of the possibility that some vessels or fisheries may need to make significant changes to meet the proposed requirements.
- 20 Costs will be incurred under both the status quo and preferred options. No additional cost is associated with this proposal.

Impact

- 21 The preferred option impacts on a wide range of target and by-catch fisheries fished by trawlers and bottom and surface longliners, depending on the length and type of the vessel concerned.
- 22 The proposed measures will replace the existing seabird mitigation measures promulgated by *Gazette Notice*, and will not have an additional impact over and above the status quo.

Implementation and Review

- 23 MFish proposes that the amendments to the Fisheries (Commercial Fishing) Regulations 2001, if approved, will come into effect on 1 October 2008.
- 24 The proposed regulations empower the Chief Executive of MFish to establish new seabird mitigation measures through the use of circulars. On an on-going basis, MFish, when considering such new measures, will prepare and publish the equivalent of Regulatory Impact Statements.
- 25 For both these regulations and the on-going use of circulars, commercial fishers will be notified of changes on the MFish external website and through contact with MFish staff.
- 26 MFish will give priority to monitoring and evaluating the measures on an on-going basis, concentrating on such indicators as the number of seabirds caught, and working with the fishing industry and interested agencies such as Maritime New Zealand on revising and refining the measures, particularly in relation to information on impacts.

Consultation

- 27 The seabird mitigation measures have been through an extensive consultation process with stakeholders in the lead-up to their notification by *Gazette Notice*. MFish proposed a range of sustainability measures for bottom longline, surface longline, inshore trawl and deepwater trawl fisheries. While all stakeholders supported the desired outcome of the proposals, ie, that all vessels using the methods of trawl and longlines within New Zealand waters, the majority of Industry representatives did not see the need for urgent measures and did not support the use of blanket regulations to reduce fishing-related mortality of seabirds. Environmental stakeholders stressed the importance of mitigating fishing-related mortality fishing-related mortality by

applying workable and effective measures. MFish amended the proposals in light of stakeholder feedback.

- 28 Key government departments (ie, the Department of Conservation and Maritime New Zealand) have also been closely involved in the development of the measures. The proposed measures take account of developing best international practices.