Regulatory Impact Statement

Statement of the nature and magnitude of the problem and the need for government action

The Ministry of Fisheries has a role in managing the adverse impacts of fishing on seabirds. For Seabirds the principal framework to meet this obligation is the National Plan of Action for Seabirds (NPOA Seabirds). Within this framework, Industry are expected to develop and implement voluntary Code of Practice (CoP) for fisheries known to have interactions with seabirds. Four such CoP have been developed with a further five being developed.

Despite the CoP being developed, high mortality events have been recorded, coincident with varying degrees of non-compliance with the mitigation measures developed within the CoP. For example due to observed seabird interactions in the squid fishery the fleet was asked by the previous Minister of Fisheries to return to port. The previous Minister was concerned that the squid fishery CoP was not being adequately complied with. The CoP framework at this time does not deliver the assurances necessary for the appropriate management of seabird mortalities in middle depth and deepwater trawl fisheries

As a result the Minister of Fisheries instructed the Ministry of Fisheries to assess management measures to reduce seabird bycatch in middle depth and deepwater trawl fisheries.

Following the assessment, and after consultation with industry, the Minister of Fisheries imposed, by gazette notice on the 15 September 2005 under section 11 of the Fisheries Act 1996, interim management measures requiring the use of paired streamer lines on all vessels over 28metres in length who trawl in Fisheries Management Areas (FMA) 3, 4, 5, 6 and 7. However, the gazette notices fail to provide a robust mechanism for managing mitigation of seabird mortalities. The gazette notice provides only one option for the industry to mitigate seabird interactions. It does not allow for flexibility in the standards and requirements to use seabird mitigation devices and does not encourage the continued development and use of alternative mitigation measures, which may ultimately prove more effective than paired streamer lines. Additionally the industry believes the requirement to use seabird mitigation devices should be extended to all New Zealand fishery waters.

Statement of the public policy objective(s)

The public policy objective is to avoid, remedy or mitigate adverse effects of fishing on the aquatic environment, which includes seabirds.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)

Status Quo: Gazette notices and CoP to mitigate seabird mortalities
The gazette notices impose the deployment of paired streamer lines on all vessels over 28metres in length that trawl in Fisheries Management Areas (FMA) 3, 4, 5, 6 and 7. Failure to use and deploy will result in a penalty of up to $100,000. The gazette notices were issued to manage the immediate imposition of paired streamer lines as an

interim measure pending the passage of regulation. Therefore the status quo is not the preferred option because it does not optimally meet the public policy objective.

Codes of Practice attempt to specify industry best practice methods to minimise seabird interactions. They are voluntary arrangements for specific fisheries. Further work to strengthen the ability of the CoP to implement and enforce agreed management measures is continuing. Therefore the CoP framework is not the preferred option because it does not effectively meet the public policy objective

Preferred Option: Regulations to Mitigate Seabird Mortalities
Amend the Fisheries (Commercial) Fishing Regulations 2001 to require vessels over 28 metres in length to deploy approved seabird mitigation devices while trawling in New Zealand fisheries waters. Under the proposal, paired streamer lines would be regulated as the device for mitigating seabird mortalities unless the Chief Executive of the Ministry of Fisheries approves another mitigation device.

It is proposed that the Chief Executive be authorised to issue circulars. Circulars provide capacity for the Chief Executive to approve alternative seabird mitigation devices. The key features of the circular making powers being:

a) The Chief Executive must be satisfied that the seabird mitigation device is effective in mitigating seabird mortalities.
b) The Chief Executive may issue circulars that specify alternative mitigation devices that may be used, defines who the circular is to apply to, and specifies the criteria for the use and deployment of the seabird mitigation device.
c) The Chief Executive may repeal or amend a circular if the seabird mitigation device is no longer considered effective

To ensure that approved seabird mitigation devices are used and deployed there are a number of proposed regulations to assist with the implementation of the regulatory framework. The key features being:

a) Fisheries Officers and Observers must be able to inspect the seabird mitigation device
b) The operator and master of the vessel are responsible for using and deploying approved mitigation devices in accordance with criteria specified in the Circulars.
c) Creating an offence for failure to comply with the circular or failure to allow inspection of mitigation device.
d) Penalty for offences ranging from $20,000 to $100,000.

The proposed regulations will come into force 28 days after their enactment.

Code of Practices will continue to be developed and form part of the NPOA seabird framework. The proposed regulations will also form part of the NPOA seabird framework.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government
The proposal ensures that the Ministry of Fisheries is meeting its obligations under the Fisheries Act 1996 by ensuring that the adverse effects of fishing on the aquatic environment are avoided, remedied or mitigated. The proposed regulatory proposals

enable the Ministry to manage the immediate risk faced in the middle depth and deepwater trawl fisheries as well as providing a flexible framework to ensure the best solution for mitigating seabird mortalities can be quickly implemented.

The proposed measures are consistent with the NPOA seabirds, which is the agreed policy framework between Department of Conservation and Ministry of Fisheries, and should assist with managing seabird mortalities.

There will be no additional financial implications to the Governement.

Industry
The fishing industry accepts the need to deploy effective mitigation devices to reduce seabird bycatch and accepts that there may be a cost associated with such devices, whether deployed voluntarily or under regulation.

Currently most industry participants who will be required under these regulations to use paired streamer lines or any other method approved by the Chief Executive are required by gazette notice to use paired streamer lines. The costs of installing, replacing and repairing paired streamer lines are between 40 to 700 dollars (industry estimate).

Fishers expressed a preference for flexibility in mitigation devices and for fishers to choose the measure that best suited their vessel. The proposals look to provide this flexibility in allowing for the approval of alternate seabird mitigation devices. This will enable new technologies, which prove to be more efficient, and cost effective to be used and deployed.

Society
The enhanced protection of potentially vulnerable, and in some cases threatened, seabirds will enable future generations to be able to have the diversity of marine life that we enjoy today.

Statement of consultation undertaken

A detailed Initial Position Paper was developed for the proposals and sent out, seeking submissions, to members of the fishing industry, environmental and recreational sectors and any other interested parties who would be directly affected.

There were some significant concerns raised by Industry leaders, including the Seafood Industry Council, regarding the imposition of seabird mitigation devices by way of regulation. To address these concerns the Ministry has looked to provide a flexible regime that will enable the Industry to seek more efficient and cost effective methods for reducing seabird mortalities over time.

Consultation was also undertaken with Ministry of Justice, Ministry for the Environment, Ministry of Economic Development, Te Puni Kokiri, the Treasury, and Department of Conservation. Their comments have been taken into account in the final preparation of the proposals in this paper. No significant concerns were raised.

Business Compliance Cost Statement

Those in the fleet who are currently required to comply and are complying will not incur additional compliance costs. Most of the identified fleet (approximately 60 vessels) are currently required by gazette notice to use and deploy paired streamer lines. Any New Zealand vessels over 28 metres in length that currently are not captured by the gazette notices will have to use and deploy paired streamer lines when fishing in New Zealand fisheries waters.

Estimates vary around the costs associated with implementation of the requirements to use and deploy paired streamer lines. The one off compliance costs include; fitting to vessel estimated at approximately 500 dollars; and potential costs of modifications to meet the requirements of the circular or for heath and safety purposes, the costs of which will vary from vessel to vessel, but may run to several thousand dollars if significant safety modifications are required. There are likely to be compliance costs associated with alternative mitigation measures approved by the Chief Executive. These costs will not be known until the Chief Executive looks to approve the alternative mitigation device after consultation with representative parties of those likely to be affected.

The Ministry will advise vessel operators when the regulations will come into force, and what the regulations entail to minimise implementation costs.