

# **REGULATORY IMPACT STATEMENT**

## **Implementing Seabird Mitigation Measures by Circular**

### **a. Executive Summary**

The Fisheries Act 1996 (the Act) requires fishers and those administering it to avoid, remedy, or mitigate the adverse effects of fishing on seabirds. Regulations exist that enable the Chief Executive of the Ministry of Fisheries (MFish) to require fishers to use mitigating measures. Whilst valuable, these regulations do not provide the capacity for flexible, vessel specific approaches to seabird mitigation measures. MFish proposes to amend the Fisheries (Commercial Fishing) Regulations 2001 (the Regulations) to enable the Chief Executive to issue circulars specifying the type of seabird mitigation measures that fishers must adopt across specific fisheries, fishing methods, vessel types (including individual vessels), and areas.

The Chief Executive can currently issue circulars under the regulations but is limited in the type of mitigation measures he can apply and the way he can apply them. This limitation is a problem because it precludes responding rapidly to emerging bycatch problems and to changing mitigation technology. The limitation also precludes cost-efficient vessel-specific measures in favour of generic measures.

Mitigation technology is dynamic and typically technical in specification. In addition, the most efficient and effective mitigation measures vary within and between fisheries and vessel fleets. Expanding the scope of the regulations to give the Chief Executive flexibility to provide for this situation is more efficient than amending the regulations or issuing *Gazette* notices on a case-by-case basis (both of which would require ongoing Ministerial involvement in highly technical decisions). Flexibility will reduce the costs to industry of mitigation measures. It would simply not be practical to amend regulations to provide for measures that apply to individual or small groups of vessels.

### **b. Adequacy Statement**

This Regulatory Impact Statement has been reviewed by MFish's Regulatory Impact Analysis Review Group and is considered adequate according to the criteria agreed by Cabinet.

### **c. Status Quo and Problem**

The Act requires those administering it to avoid, remedy, or mitigate the adverse effects of fishing on seabirds (fishing is likely to be having an adverse effect on at least some species of seabirds). Mitigation measures currently exist in *Gazette* notices issued under section 11 of the Act and in circulars issued under regulation 58B of the Regulations.<sup>[1]</sup> The notices and circulars include, for example, requirements to use 'weighted' fishing lines that sink quickly, and requirements to use 'seabird scaring devices' (the requirements vary between fisheries).

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<sup>[1]</sup> The Minister of Fisheries is responsible for issuing *Gazette* notices, and the Chief Executive of the MFish is responsible for issuing circulars.

The Regulations limit the scope of the circulars that the Chief Executive can issue. The circulars can only relate to ‘seabird scaring devices’ in deepwater trawl and surface longline fisheries. This limitation is a problem because it precludes rapid response to emerging bycatch problems and to changing mitigation technology. The limitation also precludes circulars with vessel-specific measures that would, in many cases, be more cost-efficient or effective for fishers than generic ‘one-size-fits-all’ measures currently permitted by the Regulations. For example, there are longline vessels that operate in the Cook Strait subject to generic mitigation requirements. MFish has been advised that due to the Cook Strait fishing environment, and size of the vessels operating in this area, the generic requirements create potential safety problems. An ability to issue circulars with tailored requirements to specific vessels or groups of vessels and areas would help alleviate these types of problems.

#### **d. Objectives**

The ultimate fisheries management objective for this proposal is to ensure that the adverse effects of fishing on seabirds are avoided, remedied or mitigated to the extent possible. The specific objective of this proposal is to create a more flexible, responsive and efficient regulatory framework to help Government and industry meet the ultimate objective.

#### **e. Alternative Options**

Alternative options include amending the regulations or issuing *Gazette* notices under the Act on a case-by-case basis. These are inappropriate options because it is not practical to issue *Gazette* notices or amend regulations on an ongoing basis to provide for highly technical measures that apply to individual or small groups of vessels.

#### **f. Preferred Option**

MFish’s preferred option is to amend the regulations by inserting a new regulation 58D to authorise the Chief Executive of MFish to issue, amend or revoke seabird mitigation measures in circulars and to apply the measures to one or more fishing vessels. The amendment will, in effect, enable the Chief Executive to specify, as necessary, the type of seabird mitigation measures that fishers must adopt across specific fisheries, fishing methods, vessel types (including individual vessels), and areas. Measures could include such things as, for example, offal discharge methods, back-of-the-boat mitigation measures such as tori lines, or specifications for high-risk fishing gear.

Any new circulars would be subject to consultation, and fishers would retain the same right to challenge new circulars as they would if rules were issued under other mechanisms in the Act. In addition, MFish, when considering new circulars, will prepare and publish the equivalent of this Regulatory Impact Statement for transparency and to help inform the Chief Executive’s decision-making.

There are four main benefits from adopting this proposal:

1. MFish could respond more quickly to changing mitigation technology to support more cost-effective and efficient seabird mitigation – the constant development of new mitigation technology, combined with the need for fishery-specific or vessel-specific standards and specifications to optimise mitigation measures, means that it would not be practical to attempt to reflect this dynamic situation through specifying mitigation measures directly into the Regulations. The use of circulars allows the Chief Executive to respond to new information on mitigation device efficacy, and allows technical adjustments to standards and specifications to be made more easily.
2. MFish could translate non-regulatory mitigation rules that operate in deepwater fisheries into mandatory requirements if particular vessels do not comply with the existing non-regulatory programme – all deepwater trawl vessels have vessel specific management plans that include mandatory and voluntary seabird mitigation measures. There is industry support for a framework that enables vessel specific management plans to be regulated in circumstances where individual vessels are not complying with the non-regulatory framework. The circular approach provides the most efficient vehicle to make non-regulatory measures mandatory for particular vessels.
3. MFish could amend existing seabird mitigation rules already in circulars to refine the measures on a fishery, area, method, and vessel type or vessel basis – there are existing circulars and *Gazette* notices that specify mitigation measures for particular fishing methods. The circular-based approach will enable MFish to amend existing measures where necessary to the appropriate scale of management (*i.e.*, fishery, area, method, and vessel type or vessel basis) to ensure they are as efficient and effective as possible.
4. Highly technical decisions about specification of mitigation measures will be made under the appropriate delegated authority (*i.e.*, the Chief Executive) – specification of seabird mitigation measures is highly technical in nature and MFish considers is best delegated to the level of Chief Executive to avoid burdening Government with unnecessary technical matters, especially where such measures may in future be applied at finer scales such as to individual vessels.

There are no immediate costs associated with the proposal because only the enabling provision of the Regulations would be amended. Costs could be incurred in the future if the Chief Executive issues a circular – fishers may need to purchase mitigation gear or adopt seabird-friendly, but less efficient, fishing practices. Compliance costs would also involve understanding the new requirements should any circulars be issued.

#### **g. Implementation and Review**

MFish proposes that the amendment, if approved, comes into effect on 1 October 2009. Any new circulars would be subject to consultation, and fishers would retain the same right to challenge new circulars as they would if rules were issued under other mechanisms in the Act. In addition, MFiSh, when considering new circulars, will prepare and publish the equivalent of this Regulatory Impact Statement for transparency, to help inform the consultation process, and to help inform the Chief Executive's decision-making. Consultation on proposed circulars (including the Regulatory Impact Statement) would reflect the statutory consultation obligations in the Act. Namely, MFiSh would consult with people with an interest in the proposal, including Maori, environmental, commercial, and recreational interests. Proposals would be sent to interested people and published on the MFiSh website. However, MFiSh also envisages involving, initially through the seabird stakeholder advisory group, commercial fishers and other interested stakeholders in the stages of developing circulars – from problem identification through to tool choice.

If approved, MFiSh will notify commercial fishers of this amendment, and any subsequent circulars, by personal notification from the Chief Executive and updates on the MFiSh external website.

MFish will monitor and evaluate the efficacy of issued mitigation measures on an ongoing basis and will work with the fishing industry and agencies such as Maritime New Zealand to revise and refine measures over time.

Under MFiSh's National Plan of Action for seabird mitigation, MFiSh meets with industry representatives regularly to review current and ongoing mitigation strategies designed to minimise seabird capture. The efficiency of measures imposed by circulars will be considered by this group.

#### **h. Consultation**

The proposal to expand the enabling provisions of the regulations was subject to a statutory consultation process. Industry submitters were comfortable with flexible approach provided by the proposed amendment providing that circulars were accompanied by sufficient consultation and attention to drafting. Amateur fishing submitters also supported the flexibility offered by this proposal.