

27 June 2005

Minister of Fisheries

## **INTERIM SEABIRD MITIGATION MEASURES - FINAL ADVICE**

### **Purpose**

1 The purpose of this document is to present Final Advice on proposals for the introduction of interim measures by Gazette notice to manage the incidental catch of seabirds in middle depth trawl fisheries. This advice follows a three-week consultation on the Initial Position Paper (IPP) and includes a consideration of stakeholder views relating to the interim proposals contained in the Gazette notice.

2 The paper does not address comments relating to the proposed amendments to the Fisheries (Commercial Fishing) Regulations 2001 that were also contained in the IPP. These proposals will be dealt with in a separate advice paper, following the conclusion of the consultation period on the proposals on 15 July.

### **Executive summary**

3 The Initial Position Paper described the intention of the proposed Gazette notice as being to provide for interim measures to mitigate seabird bycatch in the middle depth trawl fleet, following reports of high seabird mortality in the squid fishery and widespread non-compliance with the voluntary Code of Practice.

4 The use of a Gazette notice allows for rapid action to be taken while longer-term measures are considered on proposed amendments to the Fisheries (Commercial Fishing) Regulations 2001.

5 The IPP proposed the following interim measures:

Vessels greater than 28m in registered length using trawl methods in fisheries management areas 3,4,5,6 and 7 should be required to:

- ◆ Only discharge offal and other waste while the vessel is steaming, not during fishing, shooting or hauling operations or while the net is on the surface of the water; and
- ◆ Use either a bird baffle or a tori line or an acoustic device to deter birds from active fishing gear.

6 The interim measures proposed in the Gazette notice were designed to match the key elements of the existing squid and hoki voluntary Code of Practice, based on the view that the Gazette notice would not require industry to undertake any new measures that they had not already agreed to under the voluntary Code of Practice.

7 However, many submitters cast doubt on that view. Submitters note:

- ◆ There is confusion over the status of the voluntary Code of Practice and whether it was in force or not. Some companies believed they did not have to follow it;
- ◆ Some companies had not agreed to the measures proposed in the Code;
- ◆ Some companies cannot comply with the measures proposed in the Code or the Gazette notice without significant economic implications;
- ◆ The offal restrictions in the Gazette notice were stricter than the offal restrictions intended by the Code of Practice.

8 In light of the response from industry, MFish does not now consider the squid and hoki Code of Practice to be a suitable basis for the development of interim measures, as many elements of the Code either could not be complied with or were not being complied with for a variety of reasons.

9 Furthermore, MFish does not recommend moving ahead with proposals to manage offal through a Gazette notice as submissions and subsequent analysis suggest that offal management is much more complex than anticipated.

10 MFish therefore considers that you have the following options to mitigate seabird bycatch in the short term:

- ◆ Direct officials to prepare a range of options for reducing or eliminating offal discharge based on independent advice, including the cost implications associated with each option; and
- ◆ Agree to:
  - i) Gazette the use of paired tori lines for the areas specified in the Initial Position Paper for all vessels **28 metres** and over in length; **or**
  - ii) Gazette the use of paired tori lines for the areas specified in the Initial Position Paper for all vessels **46 metres** and over in length; **or**
  - iii) Defer the Gazette notice.

11 In considering whether to proceed with the Gazette notice you should review the voluntary alternatives available to you that have been submitted by industry in response to the IPP and note the effect that your decision may have on the wider NPOA<sup>1</sup> framework.

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<sup>1</sup> National Plan of Action to Reduce the Incidental Catch of Seabirds in New Zealand Fisheries (NPOA Seabirds)

## Introduction

12 The Final Advice Paper is split into subject headings relating to issues discussed in the IPP, which is attached for reference. Additional subject headings relate to issues raised by stakeholders that were not part of the original IPP but are considered relevant to your decision.

13 The paper is divided into four main sections:

- ◆ Issues relating to the NPOA Seabirds framework;
- ◆ Issues relating to the consultation process;
- ◆ Issues relating to the content of the Gazette notice;
- ◆ Implementation of measures to reduce seabird bycatch.

14 The advice contained in this Final Advice Paper was developed in conjunction with Department of Conservation (DoC) officials.

## Consultation responses

15 Eleven written consultation responses were received following the publication of the Initial Position Paper. Responses were received from the following organisations:

- The New Zealand Seafood Industry Council (**SeaFIC**)
- The Squid Fishery Management Company and the Hoki Fishery Management Company (**SFMC/HFMC**)
- **Talley's**
- **Sanford Ltd**
- **Aurora Fisheries**
- **Sealord**
- **Forest & Bird**
- WWF-New Zealand (**WWF**)
- The Northern Inshore Fisheries Company Limited (**TNIFCL**)
- The Orange Roughy Management Company Limited (**ORMC**)
- Independent Fisheries Limited (**IFL**)

## ISSUES RELATING TO THE NPOA FRAMEWORK

16 Submissions have raised a number of policy issues resulting from your proposed actions. This section focuses on:

- ◆ Information to support assessment of adverse effects of fishing on seabirds;
- ◆ Implications of regulatory measures for the NPOA framework;
- ◆ Implications for fisheries currently developing Codes of Practice.

## **Impacts of fishing on seabirds**

### ***Submissions***

17 **Talley's** contend that the nature and extent of the incident that triggered the regulatory proposals was grossly overstated. They note that the problem of seabirds has always been more apparent than real and that the population or biological risk posed to seabirds by the activities of fishing is non-existent.

18 Further, **Talley's** contend that the increase in adult mortality by fishing could be offset many times over by the beneficial effects of discarded fish as a food source. Such net benefit analysis must be undertaken prior to imposing blame or cost on the industry and there is a very real risk that by removing a readily available food source and restricting fishing it may have a catastrophic effect on seabird populations.

19 **Talley's** support their assertion that fishing is having a negligible effect by stating that only 2% of observed hoki trawls have a seabird bycatch, that seabird captures per hook reduced 85% from 1997 to 2000 and that for the 9 years to 2000, 81% of birds observed caught in tuna vessels were returned alive. They contrast this with the range of sources of non-fishing mortality including loss of habitat, poisoning by 1080, starvation, pollution, disease, environmental conditions, harvesting as a food source and bird-strikes at airports.

### ***MFish discussion***

20 MFish does not agree that measures, whether voluntary or regulatory, are not required to mitigate against the impact of fishing on seabirds. You have legislative obligations to avoid, remedy or mitigate the adverse effects of fishing.

21 Because there is limited information about the level of incidental catch of different seabird species and limited knowledge of the population characteristics of some seabird species<sup>2</sup> it is difficult to quantify the overall impact of fishing activities on seabird species.

22 However, the information principles of the Fisheries Act 1996 state that the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measures to achieve the purpose of the Act. In doing so you need to balance the risk of impact (which incorporates an assessment of effects of the impacts of fishing) and uncertainty in the information, along with the socio-economic impact of measures designed to avoid, remedy or mitigate.

23 As part of your considerations you are able to take into account any past, present or future effects that fishing may have on seabird populations and may also take into account social, cultural and economic factors in addition to biological information.

24 MFish acknowledges that some fisheries have made significant progress in reducing bycatch, such as the Joint Venture tuna fleet and the ling autoline fleet, although MFish cannot verify the figures presented by Talley's as they have not been referenced. However, in relation to the current proposals, MFish notes that the squid and hoki fisheries have some of the highest recorded bycatch in New Zealand, and their fishing grounds overlap with the foraging ranges of a number of protected and threatened seabirds.

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<sup>2</sup> See NPOA Seabirds for discussion of this uncertainty

25 Furthermore, recorded bycatch is only a proportion of birds killed by fishing vessels, as significant percentages are killed by warp strikes and are never recovered. For example, a recent study in the squid fishery found that an average of 5 birds per hour had potentially lethal or injury-causing contacts with trawl warps.

26 Whilst MFish acknowledges that seabird populations undergo stress from other sources, there is no research to date for New Zealand species quantifying what contribution, if any, these other sources of mortality or threat make to seabird population viability. Further, although it is known for some species that fisheries waste contributes to the diet of seabirds at some times of year, the net benefit to populations or individuals from this food sources is unquantified, and there is debate scientifically about whether feeding birds with food they wouldn't naturally access provides any overall benefit to populations.

27 In the case of recent events in the squid fishery you decided that, after having regard to uncertainty in the information around the sustainability of the numbers of seabirds killed, the risk of further seabird mortality was unacceptable and that regulatory intervention should be considered.

## **NPOA process**

### ***Submissions***

28 **SFMC/HFMC** note that neither the NPOA nor the Code of Practice (CoP) Guidelines contemplated perfection from industry in relation to the implementation of CoP's, particularly from day one. In circumstances where a particular CoP is not working for any reason, the NPOA and CoP Guidelines contemplate a structured process to resolve the problem. **SFMC/HFMC** assert that if the Minister and Ministry were to adopt an approach of casting aside CoPs in their first year of application, the entire basis of the NPOA and CoPs would be undermined.

29 **SeaFIC** are also concerned at the signals that the current intention to regulate sends to other fisheries participating in the NPOA, suggesting that it does not provide positive incentives for the "Group 2" fisheries<sup>3</sup> which are currently developing and implementing seabird COPs. **SeaFIC** believe it signals that the Government's first response to non-compliance will be to regulate, rather than to adopt a more measured and sensitive response, and that Commercial Service Organisations (CSO's) might legitimately question whether they should be investing considerable time and effort in developing and implementing COPs.

30 **SeaFIC's** views are fully supported by **TNIFCL**, who are concerned that at the first failure of implementation [of their Group 2 CoP] they will be similarly "publicly pilloried and flogged with the cat o' nine tails".

31 Whilst supporting the regulatory proposals in the middle-depth fisheries, **WWF** are also sympathetic to this view. They note the clear need for guidance to determine at what stage non-compliance will be considered sufficiently severe to set off an investigation and possibly the introduction of regulatory measures.

32 **TNIFCL** encourage the Crown to review their position and continue to support Codes of Practice. This would provide positive incentives to other fisheries that they will be supported in their Codes if they demonstrate good intent and willingness to adapt.

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<sup>3</sup> The NPOA Seabirds splits fisheries with known seabird interactions into two groups. Group Two fisheries consist of ling longline, bluenose longline, snapper longline, scampi trawl and domestic tuna

33 Finally, **SeaFIC** note that the circumstances leading to the current regulatory proposals raise some wider policy issues relating to the adequacy of tools available for CSO's to implement and enforce voluntary measures such as COPs. These issues are pertinent to the successful development and implementation of Group 2 COPs and need to be addressed if effective voluntary arrangements are expected to be put into place. SeaFIC would be interested in discussing with the Ministry the ways in which policy work in this area might be progressed.

### ***MFish Discussion***

34 The Fisheries Act 1996 places an obligation on you to provide for utilisation while ensuring sustainability. As part of that obligation you have a duty to avoid, remedy or mitigate the adverse effects of fishing related mortality on any protected species, including seabirds.

35 The principal framework for delivering on these obligations is the NPOA Seabirds, which includes a range of measures stemming from voluntary Codes through to regulatory action.

36 MFish notes industry's ongoing support for Codes of Practice and considers that where a robust voluntary framework is in place and the measures proposed are sufficient to mitigate adverse effects they should be considered as the preferred framework for managing fishery-seabird interactions.

37 MFish notes the following advantages of voluntary measures:

- ◆ They give industry the opportunity to identify and implement the most effective and lowest cost solutions for their circumstances;
- ◆ They allow for innovative solutions to be delivered and ongoing changes in best practice to be introduced;
- ◆ They reduce Government compliance costs.

38 The overall objective of the NPOA is to reduce seabird mortality. The NPOA outlines a range of measures that may be used to achieve the objective. The first preference is for the use of voluntary Codes of Practice, in recognition of the benefits noted above. However, where these Codes are not successful in achieving the objective, or where they place that objective at risk, the NPOA outlines a range of alternative measures that are available.

39 The proposals contained within the IPP are consistent with this philosophy. In this case, based on ongoing monitoring of fisheries performance against the Code, you determined that the number of seabirds being caught and the information suggesting widespread non-compliance with the Code created sufficient risk to justify consideration of regulatory intervention. Hence, MFish does not consider that the proposed measures undermine the entire basis of the NPOA or the voluntary CoP framework.

40 MFish also notes comments by the Minister of Fisheries that voluntary Codes of Practice have worked well in other fisheries and that the proposed Gazette notice does not signal an end to the philosophy of industry solutions where possible, regulation where necessary.

41 However, MFish also acknowledges the concerns of industry that the current proposals may send a message to Group 2 fishers that the voluntary Code of Practice approach will not be allowed to develop and overcome 'teething problems' in their fisheries.

42 In order to provide certainty to stakeholders and government, MFish proposes to analyse the NPOA framework to ensure that the NPOA can better deliver robust outcomes for dealing with seabird-fishery interactions that are consistent with your obligations and with stakeholders' expectations.

43 If you agree, MFish will provide you with advice on recommended improvements to the NPOA framework within the next two months, and looks forward to working with stakeholders to achieve this goal.

## **ISSUES RELATING TO THE CONSULTATION PROCESS**

44 This section discusses issues relating to the process that has been followed by MFish and the decisions that have been made by you following reports of high seabird bycatch in the squid fishery, coincident with widespread failure to implement the hoki and squid Code of Practice. Submission focus on the following three areas:

- ◆ The adequacy of the consultation process;
- ◆ Issues of predetermination;
- ◆ Status of the squid and hoki Code of Practice.

### **Adequacy of the Consultation Process**

#### ***Submissions***

45 **SFMC/HFMC** are concerned that the Ministry's consultation is inadequate. They note that there is a very limited timeframe to respond to the IPP (3 weeks), despite the Ministry's recent recognition of the complexity of the issues and the potential severity of the impact on the squid and hoki trawl fisheries. They also believe that the use of a Gazette notice is intended to circumvent the need to undergo the cabinet committee process that is required for the imposition of regulations.

46 **SFMC/HFMC** consider it imperative that further discussions occur between industry and officials prior to further consideration of the proposed regulatory measures, noting particularly that offal and waste water management are of critical importance and are patently unsuited to a truncated consultation process.

47 **SeaFIC** also has a number of concerns with the consultation process including the short timeframe for gazettal and the misleading title of the proposals – they refer to “middle depth trawl fisheries” yet also impact on the deepwater fleet. **Aurora Fisheries** also note that the terminology and nomenclature of the proposals could be improved.

48 Additionally, **SeaFIC** consider that, aside from those fisheries that are directly affected by the proposals, the other fisheries that are covered by the NPOA Seabirds have an interest in the proposed regulatory measures and should have been sent copies of the consultation material.

49 **Talley's** consider that the timeframe provided for the MFish consultation round is totally impractical and does not allow sufficient time for submitters to compile legal and technical information that is essential to the protection of Quota Management System (QMS) rights.

## ***MFish discussion***

50 MFish acknowledges the short consultation timeframe. In order to focus consultation, the list of stakeholders who were sent consultation material was restricted to those representative groups affected by the proposed Gazette notice. However, the proposals and supporting documents were posted on the MFish website and submissions from other parties have also been considered.

51 In addition to written submissions, MFish has held two meetings with industry members to discuss concerns and issues over the proposed measures.

52 MFish originally considered that the time frame given for consultation was sufficient because:

- a) The measures proposed were already required in the hoki and squid voluntary Code of Practice, therefore industry was not being asked to undertake any new measures;
- b) There was a need for rapid action given the high risk of seabird mortality as a result of failure of the voluntary Code of Practice;
- c) The proposed sustainability measures would be interim in nature while extended consultation and discussion was held with Industry about the seabird problem and further proposals to regulate were progressed if required.

53 However, Industry have raised a number of issues that must be carefully considered when deciding whether or not to proceed with the Gazette notice. In particular, Industry have raised concerns over the status of the voluntary code and the impact that the interim proposals will have on the economic viability of their fishing operations. The Ministry acknowledges that these issues are complicated and the implications for Industry should all of the interim measures be introduced as proposed may be considerable. These issues will be discussed in subsequent sections of the paper.

## **Issues of predetermination**

### ***Submissions***

54 **SFMC/HFMC** note that the IPP does not contain any alternative solutions to regulation. Furthermore **SFMC/HFMC**, supported by **SeaFIC**, give examples of what they believe to be the Minister's predetermination, citing a 6 May 2005 press release, in which the Minister uses the following language:

- ◆ “The measures are an inevitable consequence of their poor behaviour”;
- ◆ “The package will also include a move to the mandatory use of ...”;
- ◆ “The Minister intends to achieve this change through the introduction of regulations”.

55 This view is supported by **SeaFIC**, who consider that it is difficult to conclude that the Ministry is now consulting on the use of regulations with an open mind.

56 **SFMC/HFMC** go on to assert that the document represents a *fait accompli*. Not only does it not discuss alternatives, it does not seek to understand the reasons behind the failures of the voluntary CoP or consider the health and safety or economic implications of the proposed regulations, despite the Ministry being well aware of these issues.

### ***MFish discussion***

57 MFish acknowledges that the IPP does not contain alternatives to regulation, but considers that the process up to and including this Final Advice Paper demonstrate that the outcome of the process is not predetermined. In particular we note that:

- ◆ A briefing was presented to you on 3 May setting out a range of options, from voluntary through to mandatory mitigation measures, for managing the incidental catch of seabirds by squid trawlers;
- ◆ Following this briefing you expressed an initial view that regulatory measures were necessary and instructed MFish to consult with stakeholders on these proposals;
- ◆ The purpose of this consultation is to allow stakeholders to provide their views to you on the proposals before making a final decision;
- ◆ This Final Advice Paper contains submissions from industry supporting an alternative to regulation and proposing a more robust voluntary framework;
- ◆ This paper again provides you an opportunity to explicitly consider alternatives to regulation and the costs and benefits of those measures.

### **Status of the squid and hoki Code of Practice**

#### ***Submissions***

58 **SFMC/HFMC** note that the CoP Guidelines were not finalised until August 2004, with the effect that the timeframe for development of CoPs was severely truncated. Due to the fast-tracked timeline, the draft CoP submitted for approval was not approved by the directors of HFMC/SFMC or its quota holder members. **SFMC/HFMC** assert that this was made clear to the Technical Working Group (TWG) and Officials Group.

59 Furthermore, **SFMC/HFMC** state that the TWG and Officials Group did not, and have not subsequently approved the CoP. Although the Officials Group requested a revision of the Key Performance Indicator (KPI) it did not provide any information to suggest that the basis for the KPI extrapolation was incorrect.

60 **SFMC/HFMC** believe that, as a result, the uncertain status of the CoP led to confusion and miscommunication between SFMC, quota holders and vessels. The Ministry have been aware of this, and did nothing to clarify, let alone confirm, the position. Furthermore, the IPP does not reflect these circumstances.

61 **IFL** confirm that the reason they had not fully implemented the CoP was that it was still in draft form and was not agreed by IFL. The major areas still in conflict are cited as being the prohibition of offal whilst trawling and the KPI. The draft CoP had therefore not been distributed to the fleet.

62 **HFMC/SFMC** note that, notwithstanding the uncertainty over the status of the draft CoP, it was provided to directors and quota holders in order for it to be implemented voluntarily as far as was possible, given the lack of contractual arrangements, and given economic, safety and technological constraints. However, they note that some vessels were not aware of the CoP, or were uncertain as to its status.

63 **SFMC/HFMC** add that, following Ministry advice on incidents of seabird bycatch in the squid fishery, SFMC wrote to the Minister outlining the factors that contributed to this problem and proposing interim measures to address the problem of compliance. HFMC/SFMC accepts that none of these factors justified the non-compliance in the squid fishery, but that they were perhaps unsurprising given the NPOA and CoP process.

64 **IFL** also accept that they, and a number of other operators, did not meet the Minister's expectations or standards, and apologise for this. However, they believe that the actions that they have taken will result in significantly less bird deaths during fishing operations.

65 **Talleys** question the validity of claims of non-compliance in the squid fishery, noting that the Orion observations of non-compliance may have been inaccurate. They note that a professional enquiry would have better defined the parameters of the six suspect vessels.

### ***MFish discussion***

66 Industry has raised a number of issues in relation to the squid and hoki Code that MFish was not aware of. In particular:

- ◆ The Code had not been agreed to by directors and quota holders prior to presentation to the Technical Working Group and Officials Group;
- ◆ The lack of contractual arrangements was perceived as a barrier to the Code being fully implemented;
- ◆ The degree of confusion over the status and implementation of the Code contributed to low uptake of the proposed measures and no compliance regime being implemented.

67 In response to these issues, MFish notes the following:

#### ***Lack of contractual arrangements***

68 MFish acknowledges that the original Group One Code of Practice implementation timetable was changed, as more time was required to analyse substantial stakeholder input into the proposed Code of Practice Guidelines. The revised implementation timetable did not allow the Officials Group to review the Squid & Hoki Code until after the start of the fishing year, meaning that contractual arrangements between the SFMC/HFMC and fishing companies would not be able to be put into place for the 04/05 fishing year.

69 However, MFish does not consider that the lack of contractual arrangements was a barrier to the adoption of a voluntary Code of Practice, as neither the Code of Practice Guidelines nor the evaluation and approval process stipulated the need for contractual arrangements to be in place in order for the voluntary Code to be approved.

70 That said, MFish agrees that, looking forward, the presence of civil contracts would strengthen the Code of Practice framework and would likely provide greater clarity to fishing companies as to the need to comply with a voluntary Code of Practice, removing some of the uncertainty that is reported by the SFMC/HFMC to have occurred in the current fishing year.

71 You should note that industry will need to implement civil contracts as part of the pre-October 2005 ACE tender round/vessel leasing process if they are to implement a more robust Code of Practice regime for the next fishing year.

### *Approval of the squid and hoki Code*

72 The intention of the voluntary Code of Practice framework is to give industry the opportunity to manage their own seabird bycatch problem by implementing and monitoring an effective framework that meets the expectations of Government. The role of Officials in this process is to confirm satisfaction (or otherwise) with the Code, in order to give comfort to industry that the voluntary regime is likely to be considered sufficient when voluntary measures are reviewed.

73 MFish agrees with the SFMC/HFMC that their Code of Practice has not been approved, however, this is because the CoP did not meet the required standard for approval in terms of its Key Performance Indicator (KPI)<sup>4</sup>. This was clearly explained to the SFMC/HFMC in a letter on 22 October 2004. The letter also explained that officials were satisfied that the mitigation measures and compliance regime described in the CoP were sufficient.

74 The NPOA Seabirds is quite categorical about the expectations placed on Group 1<sup>5</sup> fishers and does not require that fishers refrain from implementing mitigation measures until such time as the fishery develops a Code that is sufficient to meet the requirements of the Technical Working Group and the Officials Group.

75 Specifically, the NPOA Seabirds states that:

“Neither the evaluation of codes nor the approval of codes will require formal ‘sign-off’ by the Technical Working Group or the Officials Group. However, fisheries will have the incentive to ensure that the groups have formally evaluated and approved their Codes. This is because the evaluation and approval process, as well as the ongoing monitoring of fisheries performance against the codes, will be used to determine the overall effectiveness of voluntary codes of practice as a management measure under the NPOA. If adequate codes are not put in place, or if there is insufficient sign-up to the codes, then they will be replaced with mandatory measures.”

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<sup>4</sup> A Key Performance Indicator (KPI) sets out the number of birds killed or injured that the fishery does not wish to exceed

<sup>5</sup> The NPOA Seabirds splits fisheries with known seabird interactions into two groups. Group One fisheries consist of ling autoline, southern bluefin tuna charter fleet, hoki trawl and squid trawl

### *Agreement by quota holders to measures proposed in the Code*

76 MFish was also not aware that the CoP put forward for evaluation and approval by the SFMC/HFMC did not have the support of the directors or quota holders, as the Code quite clearly stated that the HFMC and the SFMC took responsibility for the Code and for the performance of its shareholders' vessels fishing for hoki and squid. Despite the assertions of the SFMC/HFMC, MFish does not have a record of this fact being made clear to the TWG or Officials Group.

77 MFish is disappointed that a Code that purported to have the support of over 99% of quota holders had not been agreed by those quota holders before it was presented for assessment and approval. Group 1 fisheries, including hoki and squid, were given over six months notice of Government expectations in this area before their Code was due to be implemented, and had ample time to agree what was and what was not feasible or achievable and what was considered to be "best practice".

### *Implications for Gazette notice proposals*

78 The measures proposed in the IPP were based on the hoki and squid Code of Practice put forward by industry. However, submissions reveal that this Code had not been agreed to by industry prior to being put forward for evaluation. In light of this, MFish notes that there is sufficient evidence to suggest that some vessel captains may not have been aware of the need to fish in accordance with the CoP and may not have been able to comply with the industry Code anyway without significant changes to fishing practices and potential vessel modifications.

79 This information has come to light as part of the consultation process and indicates that companies were not fully aware of the need to implement the Squid and Hoki Code of Practice and had not agreed to do so.

80 You should have regard to this new information when reviewing the remainder of the paper and when considering whether or not to proceed with the Gazette notice, as it has implications for the reasonableness of the measures proposed in terms of the consultation timeframe and the impact of the proposals.

## **ISSUES RELATING TO THE CONTENT OF THE GAZETTE NOTICE**

81 This section contains a detailed discussion on the mitigation measures proposed in the Gazette notice and the vessels and areas that these measures will apply to. Submissions generally focused on three issues:

- ◆ Offal and discard management;
- ◆ Back of boat mitigation measures;
- ◆ High risk vessels and areas.

## Mitigation measures: offal and discard management

### *Submissions*

82 **SFMC/HFMC** note that, contrary to the IPP, the draft CoP does not prevent vessels from discharging offal during fishing. Rather, the prohibition is on discharge during the shooting and hauling process. However, the draft CoP recognises that it is preferable to retain offal and discharge it when steaming, if possible.

83 Furthermore, **SFMC/HFMC** note that as the draft CoP was developed under considerable urgency, the problems associated with offal management were not fully appreciated by SFMC and HFMC, nor the NPOA TWG and Officials Group, meaning that the draft CoP may not be able to be complied with. For example, factory vessels in trawl fisheries cannot operate without discharging offal and waste water while fishing.

84 **SFMC/HFMC** provide background on factory vessels and their ability to reduce their offal discharge. They note that all factory vessels are designed to operate on a 24-hour continuous processing cycle, particularly in high volume fisheries such as squid, hoki and southern blue whiting. They note that these vessels must continuously fish and process to be economic.

### *Vessels with fishmeal plants*

85 **SFMC/HFMC** note that although offal from some species can be mealed and retained, during many continuous processing operations and high volume catches, the volumes of fish being processed mean that mealing all offal is not possible. Moreover, some species such as squid cannot be put through fishmeal plants.

86 **SFMC/HFMC** explain that, even where a fishmeal plant is in use, waste water is still generated on the factory deck and goes into the sump pumps. They note that there is a significant safety risk if sump pumps cannot be discharged when and as required.

87 **WWF** note that there is evidence that sump pumps produce fish waste, which has been shown to be a key attractant for seabirds. They suggest that material released by sump pumps should be fine-screened.

### *Vessels without fishmeal plants*

88 For those vessels without fishmeal plants, **SFMC/HFMC** accept that offal is a significant problem. It cannot be retained on board for health reasons, and may also constitute a safety risk to the vessel.

89 Whilst **Sealord** supports the gradual removal of particulate offal with time, they note that for some of the current fleet an immediate solution is not feasible.

### *Surimi production*

90 **SFMC/HFMC** note that vessels processing fish such as southern blue whiting into surimi face a particular challenge in relation to the discharge of waste water. Due to the very large catch volumes and the volumes of water required for processing, large amounts of offal and waste water must be continuously discharged over the side and through the sump pumps. **Talleys** estimates that up to 900 mt of offal and waste water is discharged per day from a Surimi vessel. They conclude that the delayed retention of waste solids and fluids whilst the vessels are operating in the Southern

Ocean is simply not possible.

91 **Aurora Fisheries** expand on this point. They note that a surimi plant cannot be “stop started” as in batch production, as this would create a very high chance of bacterial build-up in the meat separator and during the washing process.

### *Safety concerns*

92 In addition to the safety implications raised by **SFMC/HFMC** above, **Sanford** also believe that reducing offal discharge from vessel decks is unpractical, unachievable and unsafe. Preventing discharge of offal during trawling, Sanfords note, will require all freeing ports, scuppers and strum boxes to be closed and sealed, which is inherently dangerous and not permitted under vessel safety requirements. This is supported by **Aurora Fisheries**.

93 Furthermore, **Aurora Fisheries** are strongly opposed to any regulation that prevents the designed egress of ‘dirty’ or surface water from the main or weather decks of factory trawlers when they are at sea. **Sealord** and **ORMC** believe that liquid offal streams will always be returned to sea for safety reasons.

94 **Talleys** note that the stability requirements of the Classification Society (i.e. Lloyds) stipulates that all free surface water of the factory deck must be continually discharged so as to maintain the stability integrity of the ship. All factory processing vessels are fitted with pumps designed to discharge all free surface water that accumulates on the factory deck. This waste water will include remnants of fish guts and blood that is released during the processing cycle. **Talleys** note that any regulations to prevent the designed egress of ‘dirty’ water or other free-surface water from the factory deck is a major safety issue.

95 Finally, **Aurora Fisheries** is concerned that vessel managers may be tempted to retain the previous tow’s catch on the factory deck and continue fishing. They note that the additional weight of two tows above the centre of gravity could capsize the vessel.

### *Economic implications of offal restrictions*

96 **SFMC/HFMC** note that vessels will have little practical choice but to cease all processing operations while fishing, which will inevitably have a severe impact on the economic viability of the fishing operations. They estimate that the proposed restrictions will result in lost productivity of between 50-70% and that some operators will see operating under the proposed Gazette notice as uneconomic and not viable. This is supported by **Aurora Fisheries**.

97 **Talleys** state that their 43-metre freezer trawler, operating in Cook Straight and the West Coast hoki fishery, would be forced to exit the fishery if the regulations come in to force. They note that this vessel has a very low seabird bycatch rate due to the use of tori lines and the low risk in those areas – despite having no fishmeal plant and continuously discharging offal.

98 **IFL** also state that if industry cannot discharge waste during fishing operations then this is going to cause significant economic and other risks and costs relating to catch, production, quality, safety of vessels and crew. They note that these are very complex issues.

## ***MFish discussion***

99 MFish reiterates the importance of offal as an attractant of seabirds to fishing vessels and the subsequent risk that this causes. MFish considers that if offal can be reduced or eliminated during fishing it will bring the most benefit in terms of reductions in seabird mortality.

100 MFish's initial proposals for offal management were based on the contents of the hoki and squid Code of Practice. However, in light of submissions, MFish notes that:

- ◆ The proposals were wider than the measures described in the CoP;
- ◆ Submissions indicated that the measures described in the CoP could not be complied with by some companies without significant difficulties;
- ◆ The measures described in the CoP had not been agreed to by some companies because of the difficulties in complying with them;
- ◆ As a consequence the proposals described in the IPP may have significant practical, safety and cost implications which MFish has been unable to verify or quantify.

101 In light of this, the offal management measures described in the CoP and the measures proposed in the IPP cannot now be regarded as agreed best practice. MFish therefore considers that they no longer form a robust basis for implementation by Gazette notice.

102 Furthermore, submissions and subsequent analysis from MFish suggest that offal management is a much more complex problem than anticipated. The level and type of offal discharge varies between classes of vessel and between target species, and offal management procedures may vary from vessel to vessel. Different types of offal and discards and the rates of discharge may also have different effects on foraging seabirds.

103 Given current information, MFish is unable to propose a range of measures to reduce or eliminate offal discharge during fishing and, accordingly, is unable to quantify the costs and benefits of any proposals to enforce changes in offal management regimes. MFish does not therefore recommend proceeding with measures to manage offal via a Gazette notice.

104 In order to make progress on this issue, however, MFish proposes to seek independent advice on possible measures to reduce or eliminate offal discharge during fishing, and the likely costs of these measures. MFish notes that the Conservation Services Programme, administered by DoC, has funding for a project until June 2006 to address offal discharge and suggests that this project could be progressed as a matter of urgency.

105 MFish also notes that independent advice will be beneficial when considering the offal component of the proposed amendment to the Fisheries (Commercial Fishing) Regulations 2001. MFish will provide a timetable to you for the delivery of this independent advice within the next two weeks with the intention that it would be presented to you in time for measures to be in place before the start of the 05/06 squid season.

106 As an interim measures, MFish proposes that, until further advice is provided, you direct officials to progress with industry the development of voluntary measures to address offal discharge. Such measures would be based on minimising offal on a vessel by vessel basis through the use of Vessel Management Plans. Whilst MFish is not in a position to determine whether Vessel Management Plans would contain "best practice" offal management procedures, MFish can make an assessment of the likely effectiveness of the proposed measures to reduce seabird bycatch,

and may be able to audit compliance with any voluntary commitments made. This information would contribute to any future consideration of the need for regulatory intervention.

107 MFish notes that industry have acknowledged the role that offal plays in attracting seabirds and have worked with officials to gain a greater understanding of the complex nature of the problem and the difficulties in resolving it.

## **Mitigation measures: back of boat**

### ***Submissions***

108 **SFMC/HFMC** consider that the proposals disincentivise the development of back-of-boat mitigation measures. They point out that the NPOA recognises that different mitigation devices may mitigate seabird interactions more or less effectively depending on a range of factors. The CoP framework is intended to provide industry with the flexibility to implement those mitigation measures which are the most appropriate in the particular circumstances. Moreover, regulations reduce incentives for fishers to look at developing new measures, and may cause them to discard the mitigation devices that they currently employ if these are not contained as an option within the proposed regulations.

109 **ORMC** support the continued use of bafflers, asserting that they have a proven and significant mitigation effect, particularly for larger birds that are more likely to suffer from warp strikes. They cite a draft report to the Aquatic Environment Working Group, concluding that the use of bafflers reduced large bird warp strikes by 50%.

110 In contrast, **IFL** note that due to the rough weather in QMA's 5 & 6, the brady bird bafflers were destroyed, were not practical in heavy weather, were not practical to maintain and were costly to install and maintain. They feel that "carey mitigation devices" (a form of warp scarer) may be more effective.

111 **WWF** support the proposed introduction of regulatory measures to reduce interactions with fishing gear, as do **Forest & Bird**, however, **Forest & Bird** do not support the use of acoustic devices, which no research has shown to be effective. **SeaFIC** also support the use of a range of mitigation measures to ensure flexibility (though they have reservations about other aspects of the proposals).

### ***MFish discussion***

112 The IPP proposed a range of back of boat measures that replicated the requirements of the squid and hoki Code of Practice - the original intention of the Gazette notice being to enforce the measures that industry had agreed to take voluntarily. However, submissions suggest that many companies were not aware of the need to abide by the Code, meaning that implementing any back of boat measures by Gazette notice carries some risk, regardless of similarity to the contents of the squid and hoki Code.

113 Given this fact, and the given the problems in the short term of introducing measures to reduce offal discharge, MFish considers that only the most effective measure for back of boat mitigation should be considered, as this will now be the principal mechanism open to you for reducing seabird bycatch.

114 The IPP contained an assessment of the effectiveness and cost of a variety of back of boat mitigation measures and concluded that paired tori lines offered the best combination of

affordability and effectiveness when compared to other mitigation measures, including compared to single tori lines. MFish therefore recommends that, should you proceed with a Gazette notice, you only specify the use of paired tori lines, in place of the initial range of measures proposed.

115 The implications for industry of specifying paired tori lines would be relatively minor. Tori lines are freely available, can be bought for around \$40 and can be fitted in most cases for less than \$500. There is also a greater body of evidence that they are effective, particularly when compared to bafflers or acoustic cannons, which have not been shown to be effective in studies to date. MFish considers that this benefit outweighs any disadvantages in terms of the risks associated with moving outside of the measures specified in the voluntary Code of Practice.

116 MFish stresses that the proposed Gazette notice is an interim measure designed to address seabird bycatch risk as quickly as possible, and must be viewed as separate to any proposed changes to the Fisheries (Commercial Fishing) Regulations 2001.

117 MFish agrees that regulations may not deliver the optimum suite of mitigation measures for all circumstances, and that, if properly managed, different mitigation measures could be used at different times to greater effect. However, this relies on the following:

- ◆ Vessels carrying a suite of mitigation measures;
- ◆ Captains and crew being motivated to deploy the most effective combination of measures.

118 MFish believes that this will only be the case for a limited number of vessels and that, on balance, it is preferable for all vessels to be deploying at least one effective mitigation measure at all times. Furthermore, a Gazette notice would not prevent other additional measures from being deployed in high-risk situations, allowing responsible crews to deploy the most appropriate measures for the particular situation. In the longer term, the possible introduction of output controls may allow total flexibility over choice of seabird mitigation anyway.

## **Application of measures: high risk vessels and areas**

### ***Submissions***

#### *Class of vessels*

119 **SFMC/HFMC** believe that the 28m rule captures many vessels which do not process fish and do not have a seabird interaction problem. They cite ‘fresher’ vessels as an example, noting that because these vessels store fish whole on ice, rather than processing them, they do not generally dispose of offal (except for non-ITQ discards and some hand-gutting). Because these vessels are not high risk, they should not be subject to regulation. This is supported by **ORMC**.

120 As an alternative to the 28-metre rule, **SFMC/HFMC** suggest that a voluntary or mandatory regime should only apply to vessels which hold a processing or packhouse licence. At the very least, **SFMC/HFMC** suggest that any consideration of mitigation measures for “high-risk” vessels should distinguish between those with fishmeal plants and those without fishmeal plants. **Sanfords** also believe that the proposals do not take into account variations between vessels in the fleet and within fisheries.

### *Targeting specific fisheries*

121 A number of submissions consider that risk to seabirds could be managed more effectively by targeting specific fishstocks. However, this approach is not supported by **SeaFIC**, who consider that risk should be analysed based on areas and gear-types.

122 **Sealord** suggest that the initial focus (though not necessarily regulations) should be on the squid fishery, as it is the most problematic.

123 **SFMC/HFMC** understand from DoC that there is no known seabird interaction problem relating to the scampi and orange roughy fisheries, and consideration should be given to excluding these vessels when targeting these stocks. This view is supported by **Sanfords** and **ORMC**. **ORMC** also point out that the NPOA does not currently apply to the deepwater fisheries. Furthermore, because the size of the risk-zone behind the trawler is related to the warp angle of entry into the water, fishing for orange roughy and oreo is not as dangerous as for hoki and squid, because the steeper angles reduce the warp-strike risk area.

124 **ORMC** contends that most of the seabird impacts occur in the squid fishery, that a very small number of vessels are responsible for most of the observed interactions and that individual vessel characteristics, including operational, play a significant part in the strike rate of seabirds. They further note that the pattern of a small number of vessels causing most of the problems is a common factor in other fisheries around the world. However, much of the New Zealand data, collected by industry and Government agencies over the last 5-8 years, is not to hand for utilisation in an operational sense.

125 **Aurora Fisheries** point out that their vessels in the southern blue whiting fishery, that discharge offal and wastewater on a daily basis, have had minimal seabird impacts and that this can be further reduced by appropriate mitigation measures. They note that they have had virtually 100% observer coverage and invite inspection of observer reports during this period.

126 **WWF** suggest that, together with the current move to regulate middle depth trawl fisheries, a pilot investigation into the seabird interaction of inshore trawl vessels should take place to identify and subsequently reduce or eliminate the risk to seabirds from the inshore fleet.

### ***MFish discussion***

#### *Class of vessels*

127 MFish notes industry's concern that the Gazette notice as proposed would affect a number of vessels which do not record large numbers of seabird deaths. MFish notes industry's suggestion to change the basis of the Gazette notice from the "28-metre rule" to vessels that have a packhouse licence, in order to remove smaller, "fresher", vessels from being impacted on by the proposed Gazette notice.

128 A similar outcome could be achieved by increasing the minimum size of vessel that the Gazette notice would apply to from 28 metres to 46 metres. Using vessel length would be more straightforward to implement as an interim measure by Gazette notice than relating the Gazette notice to the holding of a packhouse licence.

129 Based on submissions MFish considers that two options are available, which are presented below. In considering these options you should weigh the benefits of the measures in terms of mitigating risk of seabird mortality against the cost of the measures. You should also consider the

degree of risk and uncertainty in the information around the level of seabird mortality.

*Option 1: Change the Gazette notice to only apply to vessels over 46 metres*

130 This option would more closely target the Gazette notice to those vessels that are known to discharge the majority of the offal and cause the greatest risk to seabirds. The number of vessels affected by the Gazette notice would reduce from around 58 to around 42 vessels. Reducing the number of vessels affected by the Gazette notice would also reduce any legal risks associated with implementation of measures by Gazette notice.

131 However, this option would exclude a number of vessels that fish for hoki and squid and are included in the squid and hoki Code of Practice. MFish considers that these vessels still pose a risk to seabirds, albeit a smaller risk than the vessels that would be covered under this option. You will need to weigh this against any extra costs that the Gazette notice might impose on these vessels.

*Option 2: Keep the Gazette notice targeted at vessels over 28 metres, as originally proposed*

132 This approach was proposed in the IPP because MFish considered that smaller vessels, including “fresher” vessels, still posed a risk to seabirds, albeit a smaller risk. “Fresher” vessels will still discard unwanted fish and this has been cited by DoC as a significant attractant for seabirds.

133 Vessels fishing for hoki in the Cook strait area are commonly “fresher” vessels. These vessels have been recorded occasionally catching low numbers of birds (0-2 per year for the four years 1999-2000 to 2002-03). However, observer coverage in these years ranged from 3% - 9%, which limits the ability to make a robust assessment of the average rate of captures of seabirds in this part of the fishery.

134 MFish considers that narrowing the range of vessels that the Gazette notice applies to may reduce the sustainability benefits, as the original analysis of risk determined that a broad approach was justified on the basis of actual, or potential, risk, and was best considered in relation to gear type and area. MFish therefore recommends that the Gazette notice remains targeted at vessels over 28 metres in length.

*Targeting specific fisheries*

135 Submissions from industry stress that the highest risk to seabirds stems from the squid fishery and that measures should not be applied to other fisheries, particularly deepwater fisheries, scampi and southern blue whiting.

136 MFish acknowledges that the highest recorded seabird bycatch is in the squid and hoki fisheries (particularly the more southern hoki grounds), and that the Gazette notice could be directed at a more narrow area or limited to certain fish-stocks.

137 However, SFMC/HFMC’s understanding of the level of seabird interactions with different fisheries, as outlined in their submission, is not correct. DoC’s view is that insufficient observer data from the scampi fishery precludes reaching a conclusion on whether or not a seabird bycatch problem exists in that fishery. For the orange roughy fishery, existing bycatch data does not suggest a problem of the order that occurs in the squid fishery. However, the ability of observers to devote time to monitoring protected species interactions in orange roughy may be compromised by other duties.

138 Accordingly, MFish considers that coverage of seabird captures in the orange roughy, scampi and southern blue whiting fisheries has been insufficient to allow estimation of the size of the effect of any seabird bycatch.

139 In the absence of definitive information, MFish consider area-based measures to be a proactive way of addressing real or potential seabird risk as, generally, some risk occurs when trawl vessels operate in areas where seabirds forage, regardless of species being targeted.

140 MFish acknowledges that this approach may impose costs on fisheries where available information suggests risk is low, but notes that the middle depth fleet shifts between a number of fisheries meaning that the vast majority of vessels will fish in higher risk fisheries at some point during the year. For example, during the 2003–04 fishing year, 58 vessels greater than 28 metres fished for middle depth or deepwater species in FMAs 3-7. The majority of vessels targeted hoki and squid at some point during the year, with only six vessels not targeting hoki or squid.

141 Therefore, costs will be imposed on these vessels whether the Gazette notice is targeted at area or species. Additionally, MFish note that targeting the Gazette notice at fish stocks raises significant compliance issues.

## **IMPLEMENTATION OF MEASURES TO REDUCE SEABIRD BYCATCH**

142 This section discusses issues surrounding the use of a Gazette notice to reduce seabird-fishery interactions. It covers submissions relating to alternatives to the use of a Gazette notice and the disadvantages associated with regulations. The section concludes with an assessment of the options available to you when considering whether or not to proceed with a Gazette notice.

### **Alternatives to the Gazette notice**

#### ***Submissions***

143 All submissions received from **fishing companies, CSO's** and **SeaFIC** support the continued use of voluntary measures, at least in the short term. They also support the use of Vessel Management Plans to ensure that mitigation measures, particularly around offal management, can be tailored to each particular vessel.

144 **SeaFIC** point out that the NPOA is based on the concept of stakeholder solutions where possible, regulations where necessary. Whilst agreeing that regulation can be an appropriate response to persistent and demonstrated non-compliance, or if requested by industry, **SeaFIC** stress that imposed regulation should be the last resort and not the first response.

145 **SeaFIC** suggest a joint industry-government process to examine the reasons behind non-compliance and devise a solution that specifically addresses any identified problems. They are disappointed that such a process has not been followed in this instance, given the many variables involved that may have contributed to non-compliance with the COP.

146 Similarly, **IFL** ask that the work of the joint industry-Government Waste Management Group be allowed to conclude before regulations are considered.

147 **SFMC/HFMC** accept that industry practice was not good enough, however, they assert that the voluntary COP framework contemplated by the NPOA must be given a chance to work. To this end, **SFMC/HFMC** propose to revise the COP to address the problems associated with the draft

and to introduce a comprehensive Management Deed, constituting a contract between quota holders and SFMC/HFMC and providing a robust compliance regime. This approach is supported by **Aurora Fisheries**, **IFL** and **ORMC**. A copy of the revised Code of Practice is **attached** to this paper.

148 **SFMC/HFMC** agree that, in the event that the revised CoP and associated compliance regime are not fully delivered and implemented by the commencement of the new fishing year (1 October 2005), regulatory measures should follow. **SeaFIC** also supports the opportunity for industry to implement their CoP by the end of this year before regulations are considered.

149 **Sanford**, supported by **Talley's** and **ORMC** submit that the voluntary seabird CoP approach will achieve the result of reducing seabird interactions with commercial fishing vessels far more efficiently and effectively than under the proposed regulatory regime. **Sanford** are disappointed that the incentives to continue to develop and progress seabird mitigation measures using industry initiatives will be removed under a regulatory environment. They also reiterate their commitment to the Hoki and Squid Fishery Companies Seabird CoP.

150 **Sealord** believe that the most appropriate course of action is to continue with a revised CoP, backed up by observer auditing of bird mortalities, for the remainder of the fishing year. Should regulations prove necessary, they should be targeted at the known circumstances that cause the greatest mortality.

151 Finally, **SFMC/HFMC** note that, despite the lack of legal powers open to the Minister to recall vessels in the squid fishery back to port, industry voluntarily required the specified vessels to return to port to collect observers.

### ***MFish discussion***

152 MFish notes the strong support by Industry for the continuation of a voluntary framework, at least in the short term, and acknowledges that after you outlined your concerns over actions in the squid fishery and requested the vessels to return to port, with two exceptions, all the vessels requested to return did so in a timely fashion.

153 Additionally, MFish acknowledges that industry have been making considerable effort to work with the Minister and the Ministry to develop an agreed voluntary Code and a more robust compliance regime.

154 MFish observes that, whilst the current regulatory proposals are consistent with the NPOA, they have provided a considerable “wake up call” to industry, who were perhaps unaware of the immediate consequences of non-compliance and lack of urgency in implementing a fully functioning voluntary Code of Practice framework.

155 MFish also acknowledges the willingness of industry to engage with government to resolve outstanding issues relating to the current Code, although this follows a significant period of poor progress and lack of willingness in this area by some parties over the previous eight months.

156 MFish considers that the introduction of a Management Deed into the CoP framework would provide the SFMC/HFMC with greater powers to take action against vessels that did not comply with the Code and would provide a more robust voluntary framework to that currently in operation.

157 MFish notes that the key risks around the proposed voluntary framework are:

- ◆ The level of sign up to the Code;
- ◆ The ability, and will, to enforce a compliance regime;
- ◆ The measures proposed in the Code.

158 You will need to weigh up whether these alternative proposals will deliver your statutory obligations more effectively than gazetted regulatory measures, both in terms of the framework and in terms of the measures proposed.

159 As the Gazette notice was intended to be an interim measure, and consultation is still open on proposed changes to the Fisheries (Commercial Fishing) Regulations 2001, you should consider each option in relation to the risks that may occur over this same interim timeframe.

160 MFish suggests that interim arrangements, whether voluntary or through Gazette notice, are likely to be in place until the end of this year, and possibly extending up to the start of the next squid season. The principal fisheries that will be prosecuted by the middle depths fleet in this timeframe are hoki, jack mackerel and barracouta.

161 Of importance to your decision is an understanding of the difference in risk inherent in the proposed voluntary framework between the periods before and after 1 October 2005.

#### *Risks relating to the voluntary framework before 1 October 2005*

162 The proposed voluntary regime, including the use of civil contracts, is unlikely to be in place until 1 October, meaning that it will not reduce risk in the short term.

163 For the remainder of this fishing year the success of a voluntary framework is largely reliant on industry goodwill. Submissions suggests that a number of fishing companies are committed to the use of mitigation measures. However, as a Code of Practice has not yet been fully agreed by all companies, some vessels may choose not to comply with the measures proposed in the Code and may choose to fish without any mitigation device.

164 MFish also notes the existence of a more general industry Code of Practice in the hoki fishery that has a seabird mitigation component. The Code of Practice for Hoki Target Trawling requires all vessels over 35 metres to deploy a bird mitigation device, and can be enforced through the civil contract that is in place in that fishery.

165 MFish cannot verify the historical levels of compliance with this Code or the effectiveness of the mitigation measures allowable under the Code. Furthermore, the Code only applies to a subset of the vessels and fisheries that would be included in the Gazette notice, although it appears to encompass the highest risk vessels.

#### *Risks relating to the voluntary framework after 1 October 2005*

166 The SFMC/HFMC has signalled its commitment to deliver a Code of Practice agreed by all companies and enforceable by civil contract by 1 October 2005. In considering whether or not industry's proposals will meet your obligations, you should consider risks around the following areas:

- ◆ The measures proposed in the Code;

- ◆ The likelihood that an agreed Code will be delivered by 1 October;
- ◆ The level of adherence to the Code and the success of the compliance regime.

167 The latest version of the Code that has been provided to MFish is attached for your reference.

168 MFish considers that Government proposals to regulate will provide strong incentives for industry to deliver an agreed Code and to put in place an enforceable civil contract regime in a timely fashion. However, in order to achieve agreement, the measures proposed in the Code may not mitigate seabird bycatch to an acceptable level.

169 As currently written, there is a risk that the back of boat measures proposed in the Code may not be as effective as the use of paired tori lines. However, you will need to consider whether the wider benefits of the package of measures contained in the Code, compared to the narrow scope of the proposed Gazette notice, will mitigate this risk.

170 MFish notes that the consultation on amendments to the Fisheries (Commercial Fishing) Regulations 2001 will provide you with a further opportunity to consider the most appropriate management regime in the longer term, following closure of the consultation on 15 July.

171 Finally, you should bear in mind that industry will need to implement seabird mitigation measures through civil contracts as part of the pre-October 2005 ACE tender round/vessel leasing process if they are to implement a more robust code of practice regime for the next fishing year.

## **Implementation of Gazette notice**

### ***Submissions***

172 **SeaFIC** accept that if regulatory measures are to be introduced, the package of measures proposed is generally a pragmatic and reasonable response. However, **SeaFIC** have some reservations:

- ◆ The issuing of a Gazette notice “locks in” a path of subsequent eventual regulation and immediately precludes any further opportunity for industry collective responsibility, which is considered to be premature. This is supported by **SFMC/HFMC**;
- ◆ The Gazette notice does not allow sufficient “phasing in” of compliance, particularly given the potential need for vessels to be modified or removed from the fishery;
- ◆ Vessels should be targeted more directly than using a proxy of 28m, at least in the longer term, in order to tackle the problem of offal discharge more effectively, particularly for inshore vessels;
- ◆ Once offal management is successfully controlled, the use of paired tori lines may not add any value, and may need to be reconsidered. This is a downside of regulations;
- ◆ Best-practice mitigation measures can more easily be implemented under a voluntary framework. This is supported by **Sanford**;
- ◆ The proposal document only provides an outline of the proposed Gazette notice and leaves a lot of questions unanswered. **SeaFIC** expect to be given the opportunity to comment on the draft provisions, should a regulatory approach be adopted;

- ◆ SeaFIC endorses the reference to output controls and would be concerned if the regulations were a disincentive to moving to such a regime.

173 **Forest & Bird** supports the proposals to introduce interim regulatory measures (with the exception of acoustic devices). Further, **Forest & Bird** consider that the proposed measures should apply to all trawlers that currently discharge offal.

174 **WWF** also support the proposed regulatory framework. They look forward to inputting into the standards for back-of-boat mitigation devices. **WWF** also suggest that the cleaning of nets after each haul should be an integral part of the regulatory package.

175 **WWF** consider that the role of advisory officers in assisting fishing crews will be essential for the successful implementation of regulations. **WWF** look forward to commenting on the proposed monitoring and reporting requirements in due course.

176 **Aurora Fisheries** and **ORMC** support the intent of the proposals to reduce seabird interactions, but do not support a regulatory framework. In particular, **ORMC** agree that offal management is the key to mitigation, as offal availability is the most significant factor involved in seabird interactions.

### ***MFish discussion***

177 MFish acknowledges that the Gazette notice does not allow any phasing in time, however, MFish notes that offal management restrictions are not now recommended to be included in the Gazette notice proposal, meaning that little phasing in time is required.

178 MFish also acknowledges that the IPP only provided an outline of the proposed Gazette notice and did not specify in detail how offal would be defined, or how the mitigation measures would be specified. Again, however, as the Gazette notice would now only relate to the use of paired tori lines, MFish does not consider that further consultation is necessary.

179 Finally, MFish notes SeaFIC's concerns over the gazette notice "locking in" a path of subsequent eventual regulation, and stresses that the proposed Gazette notice is an interim step. The proposed changes to the Fisheries (Commercial Fishing) Regulations 2001 will be considered with an open mind following closure of the consultation period on 15 July. You have an obligation to separate the two decisions and to consider each proposal on its own merits.

### **Options for mitigating seabird bycatch in the short term**

180 The Initial Position Paper proposed implementation of mandatory measures via Gazette notice, as the quickest way to manage the impacts associated with failure of the CoP. The appropriateness of the Gazette notice, and the short consultation time provided, reflected the fact that the proposals were not new and should already have been implemented by the majority of vessels affected by the proposals.

181 Without prejudice to the full contents of the submissions, summarized above, MFish considers that the original intent of the Gazette notice is of particular importance to your decision on whether or not to proceed, and submissions should be reviewed with this in mind.

182 Many submitters cast doubt on the reasoning behind the Gazette notice. For example:

- ◆ There is confusion over the status of the voluntary Code of Practice and whether it was in force or not. Given its uncertain status, it is more difficult to rely on the measures in the Code as the basis for the Gazette notice proposals;
- ◆ For a number of reasons some companies may not have taken steps to comply with the voluntary CoP. Hence, they will now have limited time to make changes to vessels in order to comply with the proposals;
- ◆ The offal restrictions proposed in the IPP are stricter than those detailed in the voluntary CoP. Specifically, they do not allow vessels with mealplants to discharge offal during fishing (which is permitted in the voluntary CoP) and they also define offal more broadly than was perhaps intended by the CoP (which does not define offal);
- ◆ Some companies may not have agreed to the voluntary CoP because of the difficulties in complying with the offal management requirements contained within it. Therefore they may not easily be able to comply with the restrictions contained within the proposed Gazette notice;
- ◆ The proposed offal restrictions will have a considerable impact on the fishing industry. MFish is unable to quantify this impact, however, it is likely that vessels will not be able to process catch at the same time as fishing.

183 Given the uncertain status of the Code and the difficulties in implementing an effective Gazette notice to manage offal discharge, MFish does not recommend proceeding as originally specified. It is highly likely that a decision to proceed with offal management measures as outlined in the IPP at this interim stage would be successfully challenged. Therefore, MFish believes that the following courses of action are available to you:

### ***Offal management***

184 MFish considers that, in the medium term, minimum standards should be developed for operational practices relating to offal discharge for each class of vessel in the fishery, to be implemented either through regulation or through a voluntary Code of Practice. In the longer term, the makeup of the fleet may need to change to ensure that a greater number of vessels have a better capacity for managing offal than is currently the case.

185 As a first step, MFish proposes to seek independent advice on how the New Zealand middle depth and deepwater trawl fleet can better manage its offal discharge. Following this advice, MFish proposes to present a range of options for reducing or eliminating offal discharge during fishing, including an assessment of the likely costs and benefits of each option.

186 MFish will provide a timetable to you for the delivery of this independent advice within the next two weeks. MFish also notes that independent advice will be beneficial when considering the offal component of the proposed amendment to the Fisheries (Commercial Fishing) Regulations 2001. However, MFish anticipates that the advice would be presented to you in time for measures to be in place before the start of the 05/06 squid season.

187 In the interim, MFish recommends that you write to industry affirming the importance of offal in reducing seabird bycatch and note that you will be considering the most appropriate course of action following the independent advice that you receive and taking into account the

effectiveness of voluntary measures to tackle offal discharge in the interim period.

188 MFish also recommends that you direct officials to continue to work with industry in the development of voluntary Vessel Management Plans that would set out how each vessel intends to minimise its offal discharge as part of a voluntary Code of Practice framework.

### ***Back of boat mitigation measures***

189 MFish considers that two options are available to you:

#### *Option 1: Proceed with Gazette notice for 'back of boat' measures*

190 MFish acknowledges that offal management is the key concern for fishery-seabird interactions. However, there is still some benefit in proceeding with back of boat mitigation measures. MFish notes that given the difficulties in managing offal discharge, the importance of deploying effective back of boat measures is heightened.

191 The IPP proposed a range of back of boat measures in line with the voluntary CoP, offering a choice of bird bafflers, tori lines or acoustic cannons. However, in light of the uncertain status of the squid and hoki Code of Practice, MFish does not now recommend proposing a choice in this area.

192 MFish therefore recommends that, should you choose to proceed with a Gazette notice, you specify the use of paired tori lines as the mandatory mitigation measure as they have been shown to be the most effective measure available and are also very affordable.

193 MFish recommends that, should you choose this option, you apply the Gazette notice to the vessels and areas that were originally specified in the IPP. However, you may wish to consider narrowing the range of vessels to only those that pose the highest risk. This could be achieved through increasing the minimum vessel size that the Gazette notice applies to from 28 to 46 metres.

194 It is likely that this would reduce the sustainability benefits of the Gazette notice and this should be weighed against a reduction in the number of vessels affected by the Gazette notice

#### *Option 2: Defer Gazette notice*

195 If you choose to defer the Gazette notice you will need to consider whether the voluntary measures in effect for the remainder of this fishing year, and the voluntary measures proposed to take effect from 1 October, will more effectively deliver on your statutory obligations in the short term than the use of a Gazette notice that is restricted to back-of-boat measures.

196 As the Gazette notice was intended to be an interim measure, and consultation is still open on proposed changes to the Fisheries (Commercial Fishing) Regulations 2001, you should consider each option in relation to the risks that may occur over this same interim timeframe.

197 MFish suggests that interim arrangements, whether voluntary or through Gazette notice, are likely to be in place until the end of this year, and possibly extending up to the start of the next squid season. The principal fisheries that will be prosecuted by the middle depths fleet in this timeframe are hoki, jack mackerel and barracouta.

198 MFish considers that risk may be reduced after 1 October. Before this time, the squid and (more importantly) hoki Code of Practice will not be enforceable through civil contracts.

Furthermore, as the Code has not yet been fully agreed by all companies, some vessels may choose not to comply with the measures proposed in the Code.

199 MFish notes that this is somewhat mitigated by the more general Code of Practice for Hoki Target Trawling, which does contain a requirement to use mitigation measures, and could potentially be enforced through the civil contract that is in place. However, MFish cannot verify the historical levels of compliance with this Code or the effectiveness of the mitigation measures allowable under the Code.

200 The SFMC/HFMC has signalled its commitment to deliver a Code of Practice agreed by all companies and enforceable by civil contract by 1 October 2005. If SFMC/HFMC is able to deliver on this commitment, vessels are more likely to comply with the Code and deploy back of boat mitigation measures to avoid civil sanctions.

201 You should note that industry will need to implement seabird mitigation measures within civil contracts as part of the pre-October 2005 ACE tender round/vessel leasing process if they are to implement a more robust code of practice regime for the next fishing year.

202 There is a risk, however, that SFMC/HFMC will not be able to deliver on this commitment. Furthermore, MFish does not consider that the back of boat mitigation measures proposed in the Code will necessarily deliver the same sustainability benefits as the use of paired tori lines.

203 MFish reiterates that your decision relates only to the Gazette notice and that you will need to make a separate decision on proposals to amend the Fisheries (Commercial Fishing) Regulations 2001, following closure of that consultation on 15 July.

### **Monitoring compliance with seabird mitigation measures**

204 MFish notes that, regardless of your decision on whether or not to Gazette back of boat mitigation measures, there is a need for independent verification of compliance with either the Gazette notice or the voluntary Code of Practice.

205 MFish notes that consideration will need to be given to a potential increase in observer coverage if compliance with mitigation measures is to be effectively monitored and capture rates robustly calculated.

206 MFish will provide you with further advice within two months on options for monitoring uptake and effectiveness of mitigation measures.

### **Recommendation**

207 It is recommended that you:

- a) **Agree** to defer proposals to Gazette the management of offal discharge;
- b) **Direct** officials to prepare a range of options for reducing or eliminating offal discharge based on independent advice, including the cost implications associated with each option;
- c) **Direct** officials, in the interim, to continue to work with industry to develop voluntary measures to reduce offal discharge;

- d) **Direct** officials to review the NPOA framework and provide you with advice on options for strengthening it within the next two months; and
- e) **Direct** officials to prepare a range of options for monitoring compliance and effectiveness of mitigation measures, including the cost implications associated with these options; and
- f) **Agree** to:
  - i) Gazette the use of paired tori lines for the areas specified in the Initial Position Paper for all vessels **28 metres** and over in length;  
**or;**
  - ii) Gazette the use of paired tori lines for the areas specified in the Initial Position Paper for all vessels **46 metres** and over in length;  
**or;**
  - iii) Defer the Gazette notice;
- g) **Agree** to copy this note to the Minister of Conservation.

**Tom Chatterton**  
for Chief Executive  
Ministry of Fisheries

**APPROVED / NOT APPROVED / APPROVED AS AMENDED**

Hon David Benson-Pope  
Minister of Fisheries

/ /2005