

Environmental Law Initiative
Submission:

Review of Fisheries (Seabird Mitigation Measures - Surface Longlines) Circular 2019



Environmental Law Initiative
Tiakina te mauri o te taiao

ABOUT US

The Environmental Law Initiative (ELI) is a charitable trust that aims to make a positive difference to the environment through the application and improvement of environmental laws. ELI uses both litigation and advocacy to meet these aims. ELI works across a range of environmental domains, including oceans and coasts, freshwater, biodiversity and conservation, climate change, and environmental pollution.

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OUR SUBMISSION

Introduction

The Environmental Law Initiative (ELI) thanks you for this opportunity to submit on the Review of Fisheries (Seabird Mitigation Measures - Surface Longlines) Circular 2019. ELI welcomes the New Zealand Government reviewing of improvements to seabird bycatch mitigation given that seabirds remain the most globally threatened group of birds. We are also encouraged to see the proposed mitigation approaches moving New Zealand in line with international best practice including measures advised by Agreement for the Conservation of Albatrosses and Petrels (ACAP). We also note that action by the New Zealand Government on seabird bycatch to date has been relatively weak, ineffective at delivering actual significant reductions in bycatch numbers, and has inappropriately relied on voluntary codes of practices.

Option 1: Status quo

ELI strongly opposes Option 1. The existing measures of mandatory and voluntary mitigation have not resulted in any real improvement in the numbers of seabirds caught for most of the last 15 years. This provides adequate evidence that the existing approach is not working and confirms ELI's view that voluntary mitigation measures are ineffective mitigation tools as is clearly indicated in the Review document. We also note that the National Plan of Action – Seabirds 2020 (NPOA Seabirds) sets out a vision of working towards zero fishing-related seabird mortalities. Given there has been no progress towards this vision for more than 15 years, it is time for significant change.

Option 2: Additional mitigation measures

ELI supports any mitigation measures that will result in reduced seabird bycatch and will contribute towards the NPOA Seabirds zero mortality goal.

1. *Regulating discharge management during hauling to align with the Mitigation Standard.* ELI supports this measure. We note the very poor compliance with existing discharge management procedures by commercial vessels. We also note that evidence suggests that discharging during setting and hauling is unlikely to reduce bycatch rates and that ACAP best practice mitigation advises that offal management should be eliminated or restricted to periods when not setting or hauling. We appreciate that compliance with this requirement would require changes for some commercial vessels who are not already implementing them but given the poor compliance with existing measures, mandatory requirements in this area are essential.
2. *Regulating tori line position over bait entry point to maximise effectiveness.* ELI supports this measure but with the caveat that the regulation should be sufficiently clear and flexible to ensure that the tori line is positioned in the place that achieves the most effective location for mitigation, which may not necessarily be over the bait entry point.
3. *Clarifying streamer specifications for colour and durability of materials.* ELI supports this measure. Such specifications should be developed to be consistent with international best practice measures such as ACAP.
4. *Aligning line weight specifications with the Mitigation Standard.* We note that the present mandatory requirement is not consistent with international best practice (e.g., ACAP) and it should be. We also note the poor industry compliance with the application of this measure therefore requiring it to be made a mandatory requirement.

Option 3: Spatial/temporal mandated use of ‘three out of three’

ELI opposes Option 3. ELI recognises that there are likely to be both spatial and temporal patterns in seabird bycatch, the data to evaluate these patterns is, in most cases, not at a sufficient level of resolution and robustness to accurately characterise these patterns. The New Zealand Government has implemented inadequate levels of Government observers in most fisheries to provide this data. Given this lack of robust data on characterising these patterns, there should be no spatial or temporal variability in required mitigation standards and standard mitigation practices should be rolled out consistently. We also return to the

NPOA Seabirds zero mortality goal and believe that only through the widespread roll out of mitigation will New Zealand be able to achieve this goal.

Option 4: Mandate ‘three out of three’ at all times

ELI supports Option 4. Option 4 is consistent with international best practice such as outlined by ACAP. The introduction of these mitigation measures has the best chance of reducing seabird bycatch in New Zealand and moving our fisheries towards our zero mortality target. As noted previously, there is generally poor compliance by commercial fishers with voluntary guidelines and therefore it is essential that ‘three out of three’ should be mandated at all times in all surface long line (SLL) fisheries. It is long overdue for the New Zealand Government to show domestic leadership on this issue as they do internationally and mandate these mitigation measures.

Additional material

While ELI welcomes these proposals for increased mitigation measures, we also suggest that the options weaker than those we support, i.e. Options 1 and 3, may be vulnerable to legal challenge. Specifically:

- FNZ claims its power to make a circular from Regulation 58A of the *Fisheries (Commercial Fishing) Regulations 2001*. Such circulars are secondary legislation.
- Secondary legislation, and decisions on making secondary legislation, must be directed to the purpose of the Act, to the environmental and information principles in the Act, and done in a manner consistent with New Zealand’s international obligations with respect to fishing.

ELI therefore looks forward to any decision-making material recording FNZ’s analysis against these statutory obligations.

Thank you for the opportunity to provide comment on these options.

If you require any further information about our submission, please feel free to contact Simon Childerhouse: simon.childerhouse@eli.org.nz