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FINAL ADVICE ON SUSTAINABILITY AND MANAGEMENT MEASURES FOR HMS FISHERIES

Purpose:

To provide you with final advice on the following sustainability and management measures for highly migratory species:

- The total allowable catch and allowances for Pacific bluefin tuna; and
- Seabird mitigation provisions for surface longline vessels

Minister	Action Required:	Minister's Deadline
Minister of Agriculture and Forestry	Make decisions on the options outlined in this Final Advice Paper.	None

Contact for telephone discussion (if required)

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Part A: Final advice on catch limit and allowances for Pacific bluefin tuna (TOR1)

Introduction

1 Pacific bluefin tuna (TOR 1) is managed under the quota management system (QMS), with a total allowable catch (TAC), total allowable commercial catch (TACC), and allowances for non-commercial fishing and other sources of mortality that were set in 2004. Since that time, a substantial recreational gamefishery has developed. The existing allowance for recreational fishing is inadequate to accommodate all the catches from this fishery, so it is proposed to increase this allowance.

The Issues

2 Pacific bluefin tuna (*Thunnus orientalis*) is a highly migratory species that seasonally visits New Zealand waters. When present, they form a small but valuable component of a commercial surface longline fishery, and are the principal target of a recreational gamefishery that has rapidly developed off the west coast of the South Island since around 2006.

3 Estimated catches now exceed the allowance for recreational fishing that was set when Pacific bluefin tuna was introduced into the QMS in 2004 (prior to development of this recreational gamefishery), and this final advice paper proposes to address this issue.

International management

4 Pacific bluefin tuna are believed to be a single Pacific-wide stock, whose sustainable management is undertaken by two regional fisheries management organisations, the Western and Central Pacific Fisheries Commission (WCPFC), and the Inter-American Tropical Tuna Commission (IATTC). New Zealand is a member of WCPFC, and is responsible for ensuring that management measures applied within New Zealand fisheries waters are compatible with those of WCPFC.

5 Catches from within New Zealand fisheries waters are very small (generally 25t or less in landed catches – or less than 0.5%) compared with those taken elsewhere in the Pacific Ocean. Most catches are taken in purse seine fisheries north of the equator in the western and central Pacific Ocean and in the eastern Pacific Ocean. These fisheries are generally based on juvenile fish. In comparison, the New Zealand fishery (both commercial and recreational) is based on large, mature fish.

6 The most recent assessment of stock status undertaken by WCPFC concluded the stock was around the biomass level of maximum sustainable yield (MSY), but there were concerns about the level of fishing mortality on juvenile fish.

Domestic management

7 Pacific bluefin tuna is managed under the QMS with a TAC set under section 14 of the Fisheries Act 1996 (the Act), which allows for a TAC to be set that is not directly related to MSY-based reference points. This is because Pacific bluefin tuna is a highly migratory species (s14(8)(iv)).

8 Information on recreational catches of Pacific bluefin tuna is available from a number of sources. Since 2007, charter boat operators have been voluntarily recording the number and weight of fish their clients catch and land. In addition, the Ministry of Agriculture and Forestry (the Ministry) and the New Zealand Sport Fishing Council operate a cooperative gamefish tagging programme, which collects information including estimated weight for fish that are tagged and released. Catch information from these sources is contained in table 2 of the initial position paper.

9 Estimates of recreational catch can vary widely from year to year, both for biological reasons and because of social and economic factors. Overall, the Ministry estimated in the initial position paper that recreational landings of Pacific bluefin tuna could be as high as 20–25 t in some years (although in other years they could be well below this level). Total recreational catches (including fish that are tagged and released) could be as high as 60 t. No new information is available to alter this picture although, as outlined below, some submitters thought additional verification of the data was required before it should be used as a basis for management decisions.

Summary of options

10 The initial position paper outlined proposals to either retain the existing TAC and allowances (**option 1**) or to increase the TAC to accommodate a larger allowance for recreational fishing more in line with recent estimates of their catches (**option 2**). Several submitters also requested an alternative option of retaining the existing TAC and accommodating an increase to the recreational allowance by reducing the Total Allowable Commercial Catch (TACC). More analysis on this option is provided below, although it is not recommended by the Ministry.

Table 1: Management options for Pacific bluefin tuna (TOR 1) TAC, TACC, and allowances

Option	TAC	Recreational allowance	Customary allowance	Other sources of fishing related mortality	TACC
Option 1 – status quo	120	1	0.50	2.5	116
Option 2 – Increase TAC and recreational allowance	145	25	0.50	3.5	116

Ministry's preferred option

11 The Ministry recommends that you set the TAC and allowances for TOR 1 as outlined under option 2:

- Option 2:** set the TAC at 145 t and set the following allowances:
- i. a customary allowance of 0.5 t,
 - ii. a recreational allowance of 25 t,
 - iii. an allowance for other fishing mortality of 3.5 t, and
 - iv. a TACC of 116 t.

Consultation

12 The Ministry released an initial position paper for consultation on 6 July 2011, in order to consult on your behalf with those with an interest in the fishery and/or the aquatic environment, as outlined in the consultation provisions under section 12 of the Act. Submissions were received from six organisations, as summarised below. Copies have also been provided as an attachment to this advice paper.

Overview of submissions

13 The New Zealand Underwater Association (NZUA) and Environment and Conservation Organisations of New Zealand (ECO) do not support any increase to the existing TAC for Pacific bluefin tuna (i.e. option 1).

14 Te Ohu Kaimoana (TOKM) does not support any increase unless a range of complementary measures are also put in place, outlined in further detail below.

15 The Seafood Industry Council (SeaFIC) supports option 2 as a pragmatic approach to the management of Pacific bluefin tuna, which recognises the interests of quota owners. However, like TOKM, SeaFIC has some concerns about the quality and use of information in the proposal.

16 Solander Group Ltd is also willing to accept option 2 as a pragmatic approach to allow for the development of a gamefish charter fishing operation.

17 The New Zealand Sport Fishing Council supports option 2 to increase the allowance for recreational fishers, but would also like you to be provided with an option of allowing 25 t for recreational fishing interests within the existing TAC of 120 t. ECO also proposes this approach.

Total Allowable Catch

18 NZUA submits that all bluefin species (including Pacific bluefin tuna) have been depleted heavily enough to raise concern on an international level. Further, NZUA considers information on stock status and fisheries management (including the information provided in to the initial position paper) to be insufficient to confidently support option 2. NZUA notes that some WCPFC members have recently taken steps to limit their catches of Pacific bluefin tuna, and particularly their catches of juvenile fish, a move NZUA suggests would be incompatible with any move to increase quotas on New Zealand's part.

19 ECO submits WCPFC's conservation and management measure outlines a commitment to retain the current level of fishing mortality and recommends therefore that additional provision be made for recreational fishers within the existing TAC. Maintaining the proposed recreational and other allowances would lead to a reduction of the TACC from 116 t to 91 t (~22%).

20 The Sport Fishing Council also raised this as a possible option, noting this would result in an approximate 20% reduction in commercial quota. The Sport Fishing Council acknowledges this may be a problem for some individual fishers who catch most of their annual catch entitlements (ACE). However, the Sport Fishing Council observes that reducing the TACC would also result in a \$19,000 reduction in cost recovery levies per year for quota holders.¹ The Sport Fishing Council considers the commercial quota was set at a level that has never been caught and probably never will be in New Zealand waters.

21 Solander has previously raised objections to variations in a TAC which alter the proportionality between recreational and commercial catch. However, they consider the development of gamefish charter fishing operations justification for a more pragmatic approach in this instance.

¹ The actual reduction in cost recovery levies if the TACC were reduced is more in the order of \$13,000 based on current levies, since some costs including research and observers are not directly related to the level of the TACC.

Recreational allowance

22 The Sport Fishing Council submits that the recreational landed catch has probably exceeded 20 t in some years, and the proposed new allowance (25 t) will cover the existing catch. It is noted that the fishery has struggled with poor weather over recent seasons (as a winter fishery it is reliant on weather conditions, including the ability to cross West Coast river bars to access the fishery). With the potential for a longer West Coast hoki season (due to increased quotas), and calm weather, the Sport Fishing Council submits that an allowance of 25 t could be caught in some seasons. The gamefishery is noted to provide an important boost to the West Coast economy, with a project underway to investigate the key factors relevant to development of an industry centred on recreational gamefishing on the West Coast.

23 The Sport Fishing Council submits it will continue to promote tag and release of Pacific bluefin tuna caught by recreational fishers, noting some fish will be kept for personal or record purposes. Tag and release is argued to be an effective means of gaining further information on the stock. Prior to the development of this fishery, the Sport Fishing Council notes very few adult Pacific bluefin tuna were tagged and released anywhere in their range. The Sport Fishing Council notes a convention amongst most boats in the recreational fishery that one fish is plenty between four or five anglers per trip, and the remainder should be tagged and released.

24 SeaFIC welcomes the Ministry's acknowledgment (paragraph 28 of the initial position paper) that recreational catch should be constrained by the recreational allowance (note that the Ministry identified the option of constraining catch as one for consideration if you were to decide to retain the existing allowance for recreational fishing for Pacific bluefin tuna). SeaFIC has in the past highlighted the importance of this for the southern bluefin tuna fishery in particular, where SeaFIC argues excess recreational catch has the potential to place New Zealand in breach of its allocation under CCSBT.

Knowledge base for decision-making

25 SeaFIC notes the proposal to increase the recreational allowance is based on limited voluntary reporting of catch, along with tag/release data. SeaFIC comments it is interesting to see this information is accepted as being of sufficient quality to justify a 25-fold increase in the recreational allowance and an associated increase in the TAC. This is contrasted with other situations, particularly for inshore finfish, where data from commercial catch records is deemed to be too uncertain to support increased TACs and TACCs.

26 SeaFIC further submits there appears to be little in the way of rigorous analysis of the accuracy of, for example, the weights of fish released. Nor, SeaFIC submits, is there any discussion of the possibility that recreational fishers may see some advantage in over-reporting catch, given the potential link between reported catches and the recreational allocation.

27 SeaFIC also notes that the total recreational catch in a single year (estimated to be as high as 60 t) could exceed the sum of all commercial catch of this stock over the last four years.²

28 In view of these observations, SeaFIC considers there should be some rational assessment of whether the recreational catch figures are plausible as they stand, and further

² Presumably SeaFIC bases this figure on both fish that are caught and released and those that are landed by recreational fishers.

initiatives put in place to ensure the quality of data from the recreational sector. SeaFIC suggests this should include extension of the mandatory reporting requirements and potential use of observers on recreational vessels.

29 Likewise TOKM submits this is the first time they have seen the Ministry consider and use information collected by the recreational sector to justify a review of sustainability measures. TOKM supports enabling non-commercial sectors (both recreational and customary) to collect, analyse, and submit information for consideration in relation to sustainability measures. TOKM also applauds the efforts the recreational sector has made to contribute information towards improved fisheries management. However, TOKM considers that information generated in this way should meet clear and consistent standards of quality if it is to be used as the basis for management decisions.

30 TOKM submits there is no discussion in the initial position paper about the appropriateness of the methodology used to compile the information, or any scientific scrutiny of its robustness. Because of this, TOKM has reservations about the reliability and validity of the information.

31 TOKM also notes that further information is being collected through compulsory charter boat reporting, which for Pacific bluefin tuna will only be available after the 2011 season concludes later this year.

32 Overall, TOKM submits that because of the uncertainty associated with the information collected by the recreational sector and the lack of results from compulsory charter boat reporting, it is doubtful there is sufficient evidence to support any changes to the status quo.

33 NZUA submits that more research into stock size and distribution is required to effectively manage Pacific bluefin tuna, before proposing an increase in TAC and allowances. ECO is concerned the Ministry is not undertaking adequate research to manage most species under the quota management system, and submits that less than 15% of stocks in the quota management system have estimates of current biomass or yield estimates.

Other matters

34 TOKM notes a West Coast Gamefish Industry Development Plan is being developed to enhance opportunities for visitors to experience gamefishing out of Greymouth. Given the interest shown by Development West Coast and New Zealand Trade and Enterprise, TOKM considers potential exists for a locally-based administrative body to collect comprehensive information about the amount of fish (in number and size) that is caught from this area. TOKM considers the particular characteristics of the fishery (very large fish caught in a relatively localised area) would provide an excellent opportunity for the local community to take responsibility for collecting and monitoring recreational catch information.

35 TOKM submits regulatory support would be needed to ensure all gamefishers were aware of the need to submit catch returns to the local administrative office. TOKM also considers regulatory support would assist with enforcement action where needed, including random or periodic placement of observers. TOKM envisages funding to administer the programme could come from a licensing scheme that could serve as the basis for permitting entry into the fishery and collecting vital catch information.

36 TOKM also advises emerging safety issues are associated with the developing recreational gamefishery. TOKM cites the Chair of the Fishing Industry Safety and Health Advisory Group, who has highlighted the following concerns:

- In some instances recreational spear fishers are free diving in close proximity to large factory trawlers. The vessels range from 60–100 m in length and are towing nets that are often 2,000 m astern of the ship and at a depth of 800 m. Factory trawlers with their gear in the water are largely un-maneuvrable and cannot alter course quickly.
- The activities can take place in excess of 25 nautical miles from the coastline, in the dangerous Tasman Sea and at close quarters. It is dangerous for small vessels to work in close proximity to large vessels even in enclosed and calm waters, let alone in the notoriously dangerous Tasman Sea, where the weather can change rapidly.
- Divers are known to swim into the wake of the factory trawlers in an attempt to find tuna feeding from the trawl net. The divers are in extreme danger of being engulfed within the trawl net, and because the trawler is steaming at between 2.5 and 5 knots while the net is being hauled and collapsed, the divers could become entangled with virtually no means of escape.
- If a recreational vessel or fisher were to get into trouble, the factory trawler would be bound by international safety conventions to provide assistance and attempt rescue, potentially endangering its own crew in the process.

37 TOKM submits that these safety concerns need to be addressed urgently, and prior to sanctioning any further expansion of the recreational gamefishery, including increasing the recreational allowance for Pacific bluefin tuna. TOKM suggests a safety standard could be developed and managed locally, prior to gaining access into the fishery.

38 In summary, TOKM submits the TAC and recreational allowance should only be increased under the following conditions:

- i. Sufficient safety standards in place to control the activities of recreational fishers in the west coast gamefishery;
- ii. Recreational entry into the west coast Pacific bluefin tuna fishery would occur via a locally-administered licensing scheme that requires all recreational fishers to obtain a license prior to going fishing;
- iii. All recreational participants would be required to report their actual catch amount (by number and size) of each fish that is caught from this area; and
- iv. Observers would be randomly or periodically placed onboard recreational vessels as part of the conditions of participating in the fishery, in order to enhance the viability of the information gathering scheme.

39 Solander notes the proposed recreational allowance exceeds actual commercial catches in recent years, with the latter currently levied at \$780 per tonne annually. The levy is applied to the full TACC of 116 t, although commercial catches are less 20% of the TACC. Solander argues that given the recreational catch is primarily taken by charter operations, they too should contribute by way of levy towards the maintenance of the fishery.

40 Solander also encourages maximum "tag and release" in the recreational fishery, noting Pacific bluefin tuna have considerable commercial value when in prime condition (pre-

spawning; the recreational season occurs when fish are post spawning and are generally in lean condition and of limited commercial value).

41 ECO submits that the Ministry's initial position paper did not consider all the obligations on a decision-maker under sections 5, 8 to 10, and 11 to 14 of the Act. In particular, ECO submits the Ministry needs to consider how environmental considerations can be better integrated with single stock assessment considerations, and how further regard can be paid to international obligations (section 5), including the precautionary approach. ECO also raises concerns over the limited number of stocks for which stock assessments are available.

Ministry discussion

Total Allowable Catch

42 The Ministry notes the concerns of submitters, particularly NZUA and ECO, that New Zealand's Pacific bluefin tuna fishery be managed consistently with international best practice, and particularly the conservation and management measures adopted by WCPFC.

43 Although there are some uncertainties in the assessment information available for Pacific bluefin tuna, the assessment is designed to be robust to these uncertainties. For example, alternate assessments are undertaken using different assumptions about key biological parameters. In general, the relative assessment of stock status in relation to biological reference points, such as the biomass level that supports maximum sustainable yields (B_{MSY}) tended to be fairly constant under different scenarios. The Ministry considers the assessment undertaken by the International Scientific Committee and adopted by the WCPFC scientific committee represents the best available information on stock status for Pacific bluefin tuna, and is in line with your requirements under section 10 of the Act to use the best available information.

44 In summary, this assessment indicates that biomass declined between 2006 and 2008 (the latest year for which data were used in the assessment). Effort is also noted to have increased in recent years. In particular, fishing mortality for age 1–4 Pacific bluefin tuna increased by around 30% between 2002–04 and 2004–06. Nonetheless, biomass was estimated to be in the range of 40–60% of the historically observed spawning biomass. Based on projections of stock status under different levels of fishing effort, the International Scientific Committee recommended that the level of fishing mortality be reduced below that of 2002–2004 levels, particularly on juvenile year classes.

45 In response to this advice, WCPFC adopted a conservation and management measure in 2010 that includes both an overall objective for the whole stock, and specific measures targeted at the area of risk identified by the scientific advice – i.e. the increasing catches of *juvenile* Pacific bluefin tuna in the core fishery areas (generally purse seine fisheries north of the equator).

46 The Ministry's proposal to alter the TAC and recreational allowance is consistent with the overall objective of the WCPFC measure. The TAC set for Pacific bluefin tuna under section 14 of the Act should reflect current catches at the time the measure was agreed (2010), rather than any increase. For New Zealand, current catches would include the recreational gamefishery that has occurred since 2007 (but is not yet reflected in the TAC).

47 Section 14 of the Act allows you to set a TAC that you consider appropriate to achieve the purpose of the Act. In this case, the Ministry advises you set the TAC in a manner that provides for all catches from the fishery. In doing so, you would be providing for

utilisation (particularly if you also agree an increase in the recreational allowance under section 21 of the Act). Sustainability would be ensured by

- setting an overall catch limit to reflect the historical interest in the fishery and monitoring its performance both domestically and internationally;
- closely monitoring the recreational fishery (including through compulsory amateur-fishing charter boat reporting);
- taking any steps considered necessary to ensure total catches do not exceed the revised TAC (e.g. continuing to encourage tag and release amongst recreational fishers).

48 Section 20 of the Act relates to the setting of a TACC for a quota management stock, which you may set or vary providing that the TAC has been set under section 13 or 14 of the Act, and that the TACC you set shall not be greater than the TAC. In this case, the Ministry does not recommend any change to the TACC under section 20 of the Act, despite the recommended increase in the TAC under section 14.

49 The Ministry acknowledges an alternative approach (as suggested by ECO and the Sport Fishing Council) would be to accommodate an increased recreational allowance within the existing TAC. Several commentators including the Sport Fishing Council and SeaFIC noted commercial catches have remained well below the TACC since QMS introduction in 2004.

50 However, as noted in the initial position paper, although individual quota holdings tend to be small, some quota holders do catch all or most of their allocation, which suggests a reduction to the TACC would adversely affect them even though the TACC as a whole is under-caught. The Sport Fishing Council suggests these impacts could, at least in part, be off-set by a reduction in cost recovery levies that would be charged for the stock (since the levies are based, in part, on the level of the TACC). However, this effect would be spread across all quota owners, while the costs of a reduction in the TACC would be felt disproportionately by those who tend to catch their quota allocation. Therefore, in considering the provisions of section 20 of the Act for altering the TACC, the Ministry does not recommend you make any changes to the TACC at this time.

Recreational allowance and other allowances

51 Section 21 of the Act outlines that in setting or varying a TACC for any quota management stock, you shall have regard to the TAC for that stock and shall allow for Maori customary non-commercial fishing interests and recreational interests, as well as for all other mortality to that stock caused by fishing.

52 No information was provided by submitters that would lead the Ministry to alter its initial proposal to use 25 t for the recreational allowance. Further analysis of the information on which this estimate is based is outlined below.

53 It is not proposed to change the allowance for customary fishing, since there is no new information to suggest customary catches (if any) exceed the customary allowance. As outlined in the initial position paper, if you choose to increase the recreational allowance a slight increase to the allowance for other sources of fishing related mortality is also recommended, to allow for incidental mortality in the recreational fishery.

Knowledge base for decision-making

54 Both SeaFIC and TOKM voiced concerns that existing information on recreational catches is inadequate or of unknown quality. For example, SeaFIC notes the accuracy of reported weights for released fish has not been assessed.

55 The information reported in the initial position paper is based on voluntary reporting from charter vessel operators. The Ministry has worked very closely with charter vessel operators in this fishery, including holding meetings with industry participants to discuss the importance of effective monitoring of the fishery; regular follow-ups to ensure information is provided; and cross-checking against additional information sources, including the gamefishing tagging database and recreational fishing websites where members discuss their catches. The latter source of information is considered appropriate for this fishery because for many people catching a bluefin tuna could be considered a 'once in a lifetime' experience and certainly one that would be worth discussing in a fishing forum.

56 Despite these varied sources of information, there is some possibility of under-reporting of catches (e.g. not all operators reporting, or some operators failing to report all their catches). The possibility of over-reporting of catches, which SeaFIC suggests, is considered less likely. If however catches were being substantially over-reported, this would be identified through the cross-checking mentioned above.

57 For fish that are tagged and released, only estimated weights are available, which could also lead to some potential inaccuracies in reporting. The fact that reported catches come from a limited number of experienced charter operators (many of them former commercial fishers) helps mitigate this source of potential bias. Further, vessel operators can 'ground truth' their estimated weights with actual measured weights for those fish that are landed (usually around one fish per vessel per trip).

58 SeaFIC and TOKM also recommend further initiatives be put in place to ensure the quality of data from the recreational sector. SeaFIC suggests this should include extension of the mandatory reporting requirements (presumably to private individuals fishing for Pacific bluefin), and potential use of observers on recreational vessels. The Ministry agrees there remains some uncertainty about the relative proportion of catches that come from private individuals (rather than charter vessel operators). The difficulties of accessing the fishery (e.g. rough weather conditions and distance off shore) would appear to favour charter vessels over individual operators. The above-mentioned monitoring would likely identify if there was an increase of private operators over time, which could suggest a need to broaden existing monitoring practices, but at present the Ministry considers compulsory charter vessel reporting is likely to gather information on the bulk of recreational catches in this fishery.

59 ECO and NZUA had more general concerns about the uncertainty of information on stock status, and the need for adequate research. Pacific bluefin tuna is a highly migratory stock, with a Pacific-wide distribution. New Zealand contributes to its sustainable management through WCPFC, including through provision of fisheries data. In addition, as the Sport Fishing Council noted in its submission, the tag and release component of the New Zealand fishery, along with targeted satellite tagging, has also contributed important information on movement patterns, growth, and behaviour (e.g. use of the water column). Much of this information would not be available from other sources.

Other matters

60 TOKM made detailed proposals for additional monitoring and controls in this fishery, including a locally-based administrative body collecting comprehensive catch information, assisted by a licensing scheme and observer coverage. This additional monitoring is likely to impose high costs that do not appear warranted, given the scale of the fishery and the number of vessels involved (up to around 12 charter vessels, although this varies from year to year depending on economic and fishery conditions). Although no observer coverage is in place for non-commercial vessels, other forms of monitoring are carried out by the Ministry's field operations staff, including inspections to ensure charter boat operators are aware of and are complying with their reporting obligations.

61 TOKM is also concerned about safety issues associated with the recreational gamefishery. The Ministry agrees potential safety issues arise from the operation of small recreational vessels (and divers) in close proximity to large commercial vessels. This issue has been discussed with charter vessel operators and others in the recreational sector at various stakeholder meetings, but the primary responsibility lies with those operators, and with Maritime New Zealand.

62 Solander contrasted the levies paid by commercial fishers with the situation for charter vessel operators, who currently collectively have higher catches of Pacific bluefin tuna than commercial operators, but who do not pay equivalent levies. The Ministry notes charter vessel operators do pay an annual registration fee. The proportion of costs met by different components of a fishery is set by specific cost recovery rules. The total cost for commercial fishers is based on the relative proportion between the TAC (all catches) and the TACC (commercial catches). By increasing the recreational allowance, option 2 will therefore lead to a slight reduction in the proportion of total costs recovered from commercial fishers.

63 Solander also encourages maximum tag and release in the recreational fishery, noting the considerable commercial value of Pacific bluefin tuna when they are in season for the commercial fishery. The Sport Fishing Council submitted it intended to continue to encourage tag and release, which the Ministry will also support (e.g. through on-going collaboration on the gamefish tagging programme).

64 ECO submits that the initial position paper did not cover all relevant matters you need to consider when making your decision. In particular, ECO submits the Ministry needs to consider how environmental considerations (section 9) can be better integrated with single stock assessment considerations, and how further regard can be paid to international obligations (section 5).

65 The Ministry outlined the international context for management of Pacific bluefin tuna in detail in the initial position paper (see paragraphs 5-7 and 16-17 in particular), and concluded both options proposed are in line with your international obligations under section 5 of the Act. Likewise, the Ministry outlined its consideration that increasing the recreational allowance would be in line with the purpose of the Act as outlined in section 8 – i.e. to provide for utilisation while ensuring sustainability (see paragraph 25).

66 Section 9 of the Act outlines the environmental principles for decision-makers to take into account, including maintaining associated or dependent species above a level that ensures their long-term viability; maintaining biological diversity of the aquatic environment; and protecting habitat of particular significance for fisheries management. The proposal to increase the recreational allowance to better reflect actual catches is not expected to impact significantly on these environmental principles. Recreational fishing for Pacific bluefin tuna is not likely to threaten populations of associated or dependent species. Likewise, the

recreational fishery is unlikely to cause any damage to habitats of particular significance. The proposal is not considered to raise a problem for maintaining biological diversity, given that no increase in actual catches is proposed, and taking into account the very low volume of New Zealand catches in relation to global catches.

67 In varying the sustainability measures for Pacific bluefin tuna under section 11(1) of the Act, you need to take into account any effects of fishing on any stock and the aquatic environment; any existing controls under the Act that apply to the stock or area concerned; and the natural variability of the stock. As noted, if you increase the TAC as recommended, recreational catches will be better provided for within the TAC, but it is not anticipated that recreational catches will increase. Therefore, this is likely to have a neutral effect on both the stock and the aquatic environment. Relevant existing controls that apply include the requirement for recreational charter vessel operators to report their catches of Pacific bluefin tuna; this is likely to lead to additional information in the future on the quantum of recreational catches. The variability of Pacific bluefin tuna within New Zealand waters relates to its status as a highly migratory species. Its availability may vary from year to year based on oceanographic and other factors. This is recognised by setting and varying its TAC under section 14 of the Act, rather than under section 13.

68 In addition, you should take into account any conservation or fisheries services or any decision not to require such services; and any relevant fisheries plan, as outlined in section 11(2A) of the Act. The Ministry does not consider that existing or proposed services materially affect the proposals outlined in this paper. The initial position paper outlined the relevant provisions of the National Fisheries Plan for Highly Migratory Species, which is a fisheries plan approved under section 11A of the Act (see paragraphs 27 and 28). The plan includes a high priority objective of reviewing non-commercial allowances and management measures when new information becomes available.

69 You should also have regard to any provisions that you consider to be relevant of a regional policy statement, plan, or proposed plan under the Resource Management Act 1991; any management strategy or management plan under the Conservation Act 1987; sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000; and any planning document lodged with you under the Marine and Coastal Area (Takutai Moana) Act 2011 (in line with section 11(2) of the Act). The Ministry does not consider any such provisions to be relevant in this situation, given the location and nature of the fishery.

Conclusion

70 The Ministry concludes that the best available information suggests the existing recreational allowance of 1 t is inadequate to cover current recreational catches. For this reason, the Ministry recommends you increase the TAC to 145 t and within that TAC set the recreational allowance to 25 t in order to provide for recreational interests in the stock, in line with section 21 of the Act.

71 It is not proposed to change the allowance for customary fishing, since there is no new information to suggest customary catches (if any) exceed the customary allowance. If you choose to increase the recreational allowance a slight increase to the allowance for other sources of fishing related mortality is also recommended, to allow for incidental mortality in the recreational fishery.

72 Although some submitters suggested further scrutiny of the recreational data was required, the Ministry is confident that it is basing its recommendation on the best available information. The Ministry's recommendation is also in line with your international obligations and consistent with the conservation and management measure adopted by WCPFC.

73 Several alternative approaches would also be available to you. One would be to make no change to the TAC and allowances at this time, particularly if you consider that compulsory amateur charter boat reporting is likely to provide significant new information that may alter the current picture of an appropriate recreational allowance to set in this fishery. Another alternative, suggested by several submitters, would be to retain the existing TAC but make additional provision for recreational fishers through reducing the TACC, taking into account the provisions of sections 20 and 21 of the Act. The Ministry considers this approach would have an unwarranted effect on some commercial quota holders.

Summary of Recommendations

74 The Ministry recommends that you:

- i. **Agree** to set the TAC for Pacific bluefin tuna (TOR 1) at 145 t. Yes / ~~No~~
and set the following allowances:
- (i) a customary allowance of 0.5 t,
 - (ii) a recreational allowance of 25 t,
 - (iii) an allowance for other fishing mortality of 3.5 t,
and
 - (iv) a TACC of 116 t.
- Or
- ii. ~~Agree~~ to retain the existing ~~TAC~~ ~~TACC~~ and allowances for ~~Pacific bluefin tuna (TOR 1)~~ Yes / ~~No~~



Arthur Hore
for Director General

AGREED / ~~AGREED AS AMENDED~~ / NOT AGREED



Hon Phil Heatley
Minister of Fisheries and Aquaculture

15 09 / 2011

Part B: Final advice on amendments to seabird mitigation measures for the surface longline fishery

Introduction

1 Seabird bycatch mitigation in the surface longline fishery is currently managed through two separate regulatory mechanisms: a notice placed under section 11 of the Fisheries Act 1996 (the Act) and a notice made under Regulation 58 of the Fisheries (Commercial Fishing) Regulations 2001. The Ministry of Agriculture and Forestry (the Ministry) has concluded that the framework in place to regulate seabird mitigation requirements can be simplified and improved by making a number of amendments that provide for enhanced flexibility and remove redundant reporting requirements. It is further proposed to use this opportunity to consolidate a revised framework using specific regulatory powers developed for that purpose.

The Issues

2 Seabird bycatch mitigation in the surface longline fishery is currently addressed by a combination of regulated measures and those that are implemented voluntarily by fishers. Existing regulated measures are:

- i. that tori lines (otherwise known as streamer lines or bird scaring lines) are carried and deployed when setting lines (which can deter birds from approaching the baited hooks as the hooks descend through the water); AND
- ii. either that longlines are set only at night (when most birds are less active and/or find it more difficult to detect baited hooks); OR
- iii. that line weighting is used (with prescribed options for weighting) to increase the sink rate of baited hooks (reducing the period of time they are exposed to seabirds).

3 As well as these basic requirements, specifications are in place to prescribe key characteristics for the type of tori line that may be used (e.g. minimum length), and a requirement for fishers to provide advance notification of their intention to fish using surface longlines (intended to assist coordination of adequate observer coverage of the surface longline fishery).

4 The legislative basis for these requirements is:

- i. The Fisheries (Seabird Sustainability Measures—Surface Longlines) Notice 2008 (No. F429) — this notice is made under section 11 of the Act, and establishes the requirement to use a tori line and either night set or use line weighting, as well as the requirements to give advance notice of fishing.
- ii. The Fisheries (Seabird Scaring Devices Minimum Standard and Procedures) Notice 2007 (No. F414) — this notice is made under Regulation 58 of the Fisheries (Commercial Fishing) Regulations 2001, and establishes the standard and guidelines for the use of tori lines.

5 Any mitigation measures adopted for New Zealand surface longline vessels must also be consistent with the conservation and management measure (CMM) adopted by the Western and Central Pacific Fisheries Commission (WCPFC) in 2007 to mitigate the impact of fishing for highly migratory fish stocks on seabirds. This CMM requires the use of at least

two mitigation measures chosen from a specified list and sets minimum technical standards for various measures.

6 The requirement to use tori lines when setting surface longlines has been in place for many years. Since the promulgation of additional New Zealand seabird mitigation rules in 2007 and 2008 it has become apparent that the regulatory framework could be improved by making a number of changes. Implementation of an amended framework using specific empowering provisions of seabird mitigation regulations developed in 2009 will also provide a mechanism for the possible future implementation of rules that relate to specific vessels and/or classes of vessels. The task of developing a vessel specific framework for consideration is set out in Objective 7.5 of the Operational Management Plan for large pelagic species (developed to support the National Fisheries Plan (approved under section 11A of the Act)).

Summary of Proposals and Recommendation

7 The initial position paper outlined a proposal to revoke the Fisheries (Seabird Sustainability Measures—Surface Longlines) Notice 2008 (No. F429) and instead implement a revised framework using regulatory provisions available under Regulation 58A of the Fisheries (Commercial Fishing) Regulations 2001 (Regulation 58A), which provides for additional flexibility and targeted mitigation tools, and enables all the mitigation rules for surface longlines to be in one place.

8 The Ministry also outlined proposals to amend specific mitigation requirements (to be issued under Regulation 58A) to provide for enhanced flexibility for surface longliners, and remove a redundant requirement for longline fishers to notify the Ministry of their intention to fish.

9 A number of submissions received had some concerns about aspects of the proposed amendments to the mitigation measures, however there was general support for the proposal to consolidate the mitigation rules using the flexibility provided by Regulation 58A.

10 The Ministry therefore recommends that you revoke the Fisheries (Seabird Sustainability Measures—Surface Longlines) Notice 2008 (No. F429).

11 The requirements contained in Notice No. F429 will instead be promulgated by way of a circular issued by the Director General. The circular will be issued concurrently with the revocation of the Fisheries Notice (subject to your approval) to ensure a seamless transition between regulatory frameworks. At the same time, the Ministry will modify specific provisions of the current rules as follows:

- a. Amendment to the standards set for tori lines to better reflect the flexibility provided in the WCPFC measure by allowing either a minimum length of 150 metres (the current rule) or 100 metres if a towed object is attached to the line to maintain its aerial coverage.
- b. Removal of the requirement to notify the use of surface longlines in advance of doing so.

Consultation

12 The Ministry released an initial position paper for consultation on 6 July 2011. Submissions were received from five organisations, as summarised below. Copies have also been provided as an attachment to this advice paper.

Overview of Submissions

13 The Seafood Industry Council (SeaFIC) supported all amendments proposed in the initial position paper and agreed that the regulatory framework should promote flexibility and provide incentives for innovation. The Solander Group (Solander) also supported the proposals.

14 Te Ohu Kaimoana (TOKM) had no concerns with the proposed amendments.

15 Royal Forest and Bird Protection Society of New Zealand (Forest & Bird) supports the broadening of the line-weighting specifications to include non-metallic weights, but would like testing of any new line weighting devices and clear intentions to monitor their effectiveness. Forest & Bird opposes the other seabird mitigation measures proposed for longline vessels. They would like New Zealand to adopt best practice measures which may be approved in August 2011 by the Agreement on the Conservation of Albatrosses and Petrels (ACAP), including:

- a. Tori lines to achieve an *aerial* extent of 100 metres or the distance at which baited lines sink below 10 metres (the initial position paper proposed a minimum tori line length of 150 metres, or 100 metres if a towed object is attached to the end).
- b. Vessels simultaneously use three mitigation measures in areas and seasons of high risk of seabird bycatch: tori lines, night setting and line weighting (the initial position paper did not propose any changes to the current requirement for tori lines and either night-setting or line weighting).

16 Forest & Bird quotes Department of Conservation Marine Conservation Services reports that noted observers have recorded some boat operators are currently not following Ministry requirements for seabird mitigation measures. They recommend that operators are made aware of mitigation regulations prior to departure and know how to apply them, and operators also use additional measures to reduce bird activity around boats and prevent captures.

17 WWF–New Zealand (WWF) does not support the amendments to the line weighting until peer-reviewed trials demonstrate their effectiveness. They are concerned that non-metallic weights could have a similar specific gravity to seawater and either not sink or sink at a much slower rate than metal weights. They further suggest that the absence of any reference to metal is a loophole in the WCPFC conservation measure (the initial position paper proposed removing the requirement for line weights to be metal to bring New Zealand into line with the standards set by the Western and Central Pacific Fisheries Commission (WCPFC)).

18 Like Forest & Bird, WWF recommends that New Zealand adopt ACAP best practice with regard to the requirement for 100 metres of a tori line to be suspended above water, and that tori lines be used in combination with both line weighting and night setting.

19 WWF questions the need to remove the requirement for fishers to notify the Ministry of the intention to fish, given that the cost of notification is low and the risks imposed to seabirds by foreign fishing vessels not familiar with local operations and laws is high. They suggest that the Ministry maintains a register of longline vessels likely to fish and use this to guide observer placement. Any vessel not on this register should continue to be required to notify the Ministry of its intention to fish.

20 Environment and Conservation Organisations of New Zealand (ECO) agree that some flexibility should be encouraged, providing it meets clear performance standards and results in an overall reduction in seabird bycatch. However in their view:

- i. The policy to reduce seabird bycatch in New Zealand fisheries is weak
- ii. The policy fails to live up to New Zealand's obligations under the FAO National Plan Of Action on Seabirds and ACAP
- iii. A commitment to precautionary management is absent when it comes to seabird bycatch in fisheries

Ministry Discussion

Section 11 considerations

21 Before revoking the Fisheries (Seabird Sustainability Measures—Surface Longlines) Notice 2008 (No. F429), you must take into account a range of factors set out in section 11 of the Act. Specifically:

- i. Section 11(1) (a): Before setting or varying any sustainability measure for any stock you must take into account any effects of fishing on any stock and the aquatic environment. While there are ongoing effects of fishing on seabirds, the revocation will not significantly alter these effects, as the seabird mitigation measures are to be re-issued by circular.
- ii. Section 11(1) (b): Before setting or varying any sustainability measure for any stock, you must take into account any existing controls under the Act that apply to the stock or area concerned. Existing controls under the Act include existing measures under Regulation 58 and 58A that apply to trawling and bottom longlining, which make up a suite of measures to protect seabirds.
- iii. Sections 11(2)(a) and (b): Before setting or varying any sustainability measure for any stock, you must have regard to any provisions of any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991 and any management strategy or management plan under the Conservation Act 1987 that apply to the coastal marine area and that you consider relevant. The Ministry is not aware of any such policy statements, plans or strategies that should be taken into account with respect to the changes proposed.
- iv. Section 11(2)(c): Before setting or varying any sustainability measure for any stock, you must have regard to sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 that apply to the coastal marine area and that you consider relevant. The Ministry considers the proposal meets the relevant considerations under the Hauraki Gulf Marine Park Act 2000.

- v. Section 11(2)(d): Before setting or varying any sustainability measure for any stock, you must have regard to any relevant planning document lodged under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011. The Ministry is not aware that any such planning documents have been lodged at this time.
- vi. Section 11(2A)(b): Before setting or varying any sustainability measure for any stock, you must take account of any relevant and approved fisheries plans. The application of the National Fisheries Plan is discussed later in this paper.
- vii. Sections 11(2A)(a) and (c): Before setting or varying any sustainability measure for any stock, you must take into account any conservation or fisheries services, or any decision not to require such services. The Ministry does not consider that existing or proposed services materially affect the proposals outlined in this paper.

Amendments to the seabird mitigation requirements

Line weighting

22 Concerns were raised by WWF that non-metallic weights may not sink as fast as metal weights (i.e. have lower specific gravity), therefore any new materials should be thoroughly tested before approval, and should also be subject to ongoing monitoring once approved for use. The Ministry had considered that any new line weighting devices are unlikely to be adopted by fishers without evidence of their effectiveness and the risk of the use of inappropriate materials was low. The Ministry accepts, however, that while the risk is low the consequences may be severe if the use of non-metal weights with a low sink rate results in significant seabird mortalities.

23 In light of the submissions received in opposition to the proposal the Ministry proposes to retain the current specification that line weights are metal. Fishers with alternative proposals will be encouraged to trial those using the special permit provisions of the Act. If proven to be effective, amendments to the mitigation rules can then be considered.

Tori lines

24 Both Forest & Bird and WWF submitted that New Zealand should adopt ACAP best practice, proposed for adoption in August 2011, which recommends an aerial extent for tori lines of at least 100 metres. This would potentially require a tori line considerably longer than 150 metres. However, longline fishers report tori line tangles with the current requirement of a minimum of 150 metres, especially with smaller vessels. Any extension of the minimum length would likely exacerbate the risk of tangling and therefore fishers' reluctance to use them on smaller vessels. A clear advantage would need to be demonstrated from increased aerial coverage to offset these disadvantages.

25 The current approach is to set minimum performance requirements (including an aerial extent of 50 metres), coupled with additional guidelines on how to achieve the performance requirements, and why it is important to do so. The intention is to give fishers guidance on their obligations, along with the flexibility to tailor their specific vessel and operating conditions to meet the requirements. Allowing an additional means of meeting the aerial extent requirements (by using a towed object, rather than relying on the length of the tori line) is an extension of this approach. The guidelines acknowledge that achieving an aerial extent of 100 metres is desirable, but because the aerial extent achieved can be

dependent on a range of factors including weather and sea conditions, it may not always be achievable.

26 The Ministry also considers that the additional flexibility provided to industry in the deployment of tori lines may encourage compliance with the measures, since the risk of tangles can be an impediment to the use of tori lines, particularly in rougher weather. The promulgation of the tori line regulations under Regulation 58A additionally provides the Ministry with a more flexible regulatory framework to amend tori line requirements in response to confirmed developments in best practise both internationally and at home.

Requirement to use at least two mitigation measures

27 Both Forest & Bird and WWF submitted that New Zealand should adopt the proposed ACAP recommendation of three mitigation measures (tori line, night setting and line weighting) in hotspots of seabird density. The current standard for at least two seabird mitigation measures is consistent with current international best practice standards, but the Ministry acknowledges that as a signatory to ACAP (and other international agreements) these may change in the near future. However, this is not considered reason enough to delay the changes currently proposed. It is the Ministry's intention to more closely consider spatial and/or seasonal mitigation requirements as a better understanding develops of the risks posed by surface longlining. The potential for future amendments to the mitigation framework is a key rationale for the proposal to promulgate seabird mitigation measures through the more flexible framework provided for under Regulation 58A.

Requirement to inform the Ministry of intention to fish

28 The Ministry acknowledges the concern submitters expressed regarding new or rogue vessel operators that may not know of or may not willingly comply with mitigation requirements. However, the Ministry feels that the current requirement for fishers to notify of their intention to fish is a blunt instrument and there are other more effective mechanisms to engage with industry to ensure compliance. The Ministry and SeaFIC have developed a code of practice covering seabird mitigation requirements that has been distributed to vessel operators and licensed fish receivers, and will be regularly updated. The Ministry also provides information on the risk to seabirds from fishing, and required and voluntary measures to mitigate these risks, when vessel operators first register and request fish tags as part of the catch documentation system for southern bluefin tuna. The Ministry will continue to work with industry to find better ways to improve communications of seabird mitigation requirements via workshops, periodical newsletters and other means.

29 Participation in the fishery is now more stable with a consistent and known fleet of vessels operating from year to year and the notification requirement is no longer required as a key component of observer planning. Vessels that are permanent surface longliners should not need to continue to notify the Ministry of their intention to fish. Failing to notify the Ministry leaves them at risk of a substantial fine, without causing any detriment to the successful operation of the observer programme.

30 With regard to WWF's concern about the risk posed by foreign vessels, procedures are in place to avoid this situation from occurring. This includes more rigorous assessment of applications to use foreign vessels under charter to fish in our waters, the ability to impose conditions such as 100% observer coverage and use of regulated mitigation requirements when fishing.

Other matters

31 ECO did not comment specifically on the proposed changes to the seabird mitigation regulations, but did raise a number of general concerns regarding the Ministry's performance in meeting both its international obligations as a signatory to a number of international agreements, its domestic obligations under the Act, and its perceived failure to conduct adequate research into the aquatic ecosystem.

32 The Ministry however notes that in relation to seabird mitigation for longline vessels, the seabird mitigation requirements are aligned with current standards set by international organisations such as the WCPFC. The proposed changes to the regulatory framework will provide the Ministry with increased flexibility to respond to any changes in international standards or if further controls are required to manage risk.

33 Seabird research undertaken in the last couple of years includes trialling the effectiveness of alternative tori line designs, and investigating the effectiveness of alternative mitigation measures, as well as substantial projects assessing the risk to seabirds caused by fishing, enabling a management approach that is targeted at high-risk species. While acknowledging there are gaps in our current knowledge, the Ministry will ensure that future research is directed appropriately, using a risk-based approach to seabird management.

Conclusion

34 The Ministry has concluded that the framework in place to regulate seabird mitigation requirements in the surface longline fishery can be improved by:

- a. Implementing a revised framework using regulatory provisions available under Regulation 58A which provide for targeted and generalised mitigation tools. These will be a useful precursor to further improvement in the regulatory arrangements for seabird mitigation for surface longline fishing if required to address specific areas of risk in the fishery. This has the further advantage of consolidating the mitigation rules for surface longline fishing in one place.
- b. Making the following amendments:
 - i. To provide fishers with greater flexibility to achieve a minimum of 50 metres of aerial extent of the tori line, amending the current rules to set a minimum length of a tori line at 100 metres (currently 150 metres), but where a tori line is less than 150 metres in length, a towed object must be attached to the end.
 - ii. Removing a redundant provision that imposes a compliance cost on industry that is no longer considered to be necessary.

35 Concerns raised by submitters were generally confined to the technical amendments proposed, specifically amending tori line and line weighting requirements, and removing the requirement for fishers to notify the Ministry of their intention to fish. The Ministry accepts that the change proposed to remove the specification that line weights be metal creates a risk (albeit small) and proposes that alternatives be considered using the trial provisions specified in the Act (i.e. the special permit regime). The Ministry considers that the other changes proposed should proceed. It is an ongoing requirement that potential risks to seabirds can be monitored through the observer programme and fisher reporting and the new more flexible regulatory framework will provide for the implementation of enhanced or specific mitigation measures where these may be required. Given the stable surface

longline fishing fleet and measures currently in place to inform new entrants of their obligations with regard to seabirds, the Ministry is comfortable that these risks can be adequately managed.

36 These amendments are consistent with an objective outlined in Fisheries 2030 to review fisheries laws and regulations with a view to reducing compliance costs and improving effectiveness. The amendments are also directed at achieving Objective 7.5 of the Operational Management Plan for large pelagic species developed to support the National Fisheries Plan (approved under section 11A of the Act), which is to "Develop and apply effective seabird mitigation, including options for vessel specific measures and compliance."

Summary of Recommendations

37 The Ministry recommends that you:

- i. **Agree** to revoke the Fisheries (Seabird Sustainability Measures—Surface Longlines) Notice 2008 (No. F429).

Yes / No

- ii. **Note** that the requirements contained in Notice No. F429 will instead be promulgated by way of a circular issued by the Director General under Regulation 58A of the Fisheries (Commercial Fishing) Regulations 2001.

- iii. **Note** that the Ministry will use this opportunity to amend the current provisions specifying seabird mitigation requirements in the surface longline fishery, provide more flexibility in tori line specifications and to remove redundant reporting requirements.



Arthur Hore
for Director General

AGREED / AGREED AS AMENDED / NOT AGREED



Hon Phil Heatley
Minister of Fisheries and Aquaculture

15/09/2011

