



Regulatory Analysis Summary: Measures to reduce fisheries bycatch of hoiho

Decision sought	Cabinet decisions to amend regulations under the Fisheries Act 1996 to reduce risk of hoiho bycatch in commercial set net fisheries.
Agency responsible	Ministry for Primary Industries
Portfolio Minister(s)	Minister for Oceans and Fisheries
Date finalised	15 July 2026
Ministry for Regulation ID number	REG-2183

Brief description of the Minister's regulatory proposal (preferred option)

The Minister for Oceans and Fisheries (the Minister) is proposing to introduce long-term measures to reduce bycatch of hoiho/yellow-eyed penguin in the South Island and on Rakiura/Stewart Island (known as the northern hoiho population):

- Prohibit commercial set net fishing around Otago Peninsula (Taieri Mouth to Karitāne) to approximately eight nautical miles offshore, under section 15 of the Fisheries Act 1996 (the Act) (Option 1a).
- Introduce a Fishing-Related Mortality Limit (FRML) for the northern hoiho population under section 15(2) of the Act (Option 2), set at six hoiho in any October fishing year.

Summary of the problem definition

The northern hoiho population is declining. Long-term fisheries measures are needed to reduce the bycatch risk posed by commercial set netting to the northern population.

Hoiho are classified as Nationally Endangered under the New Zealand Threat Classification System, with 115 breeding pairs estimated to remain in the northern population. Monitoring suggests the population has declined by approximately 80 percent since 2008-09.

Factors identified as causing the decline in the northern population include disease, introduced predators, human disturbance, a significant shift in adult diet, fisheries bycatch, and marine predation.

A Fisheries New Zealand¹-commissioned *Spatial Risk Assessment of Threats to Hoiho* (risk assessment) identified set netting in the Otago Peninsula region as posing a higher fisheries bycatch risk than in other areas.

A cross-agency/stakeholder workshop reviewed all threats to the northern hoiho population and concluded that total mortality for adults or juveniles – or a combination of the two – needs to reduce by 50 percent relative to 2022-23 mortality levels to stabilise and rebuild to 90 percent of its unimpacted status (defined as *the population objective*).

¹ Fisheries New Zealand is a branded business unit of the Ministry for Primary Industries.

As a component of the population objective, workshop participants agreed that a 75 percent reduction in fisheries bycatch is needed, relative to the 2022-23 fishing year. This requires a reduction in bycatch from an estimated 17 hoiho in 2022-23 to four hoiho in an October fishing year (defined as *the fisheries objective*).

Summary of options considered for addressing the problem

Both regulatory and non-regulatory (voluntary) options have been considered.

Option	Description
Status quo	No new commercial set net fishing measures (including no FRML for the northern hoiho population).
Spatial measures	
Option 1a	Prohibition of commercial set netting around Otago Peninsula (Taieri Mouth to Karitāne) to approximately eight nautical miles offshore.
Option 1b	Option 1a + prohibition of commercial set netting in North Otago (Karitāne to Hampden) to approximately eight nautical miles offshore.
Modified Option 1b	Option 1a + Option 1b + prohibition of commercial set netting slightly further north (from Hampden to Kakanui) to approximately 8 nautical miles offshore (this option was developed following consultation). <i>Fisheries New Zealand preferred.</i>
Supporting framework	
Option 2	Implementation of an escalating response framework (voluntary and regulatory) underpinned by a regulated FRML across the northern hoiho population per October fishing year. Fisheries New Zealand consulted on a FRML of three or four hoiho. <i>Fisheries New Zealand preferred FRML of four.</i>

Is the Minister's preferred option in the Cabinet paper the same as the preferred option in the RAS?

No, the Minister prefers Option 1a and Option 2, but with a FRML of six hoiho per fishing year.

Summary of the main benefits of the Minister's preferred option

Closure of the Otago Peninsula area to commercial set netting reduces core bycatch risk for the northern hoiho population, with less impact on commercial fishers than the other closure options. The introduction of a FRML provides a regulated 'bottom line' whereby cumulative captures trigger a prompt, multi-agency management response. A FRML set at six hoiho is less likely to result in wider spatial closures throughout hoiho range during a fishing year, providing industry with greater operational certainty.

Summary of the main costs of the Minister's preferred option

The closure of the Otago Peninsula area to set netting will close access to a fishery with an average annual catch value of \$464,000² for set net vessels operating in the area in recent years. Should cumulative hoiho captures during a fishing year trigger wider spatial closures to ensure the FRML is not exceeded, there will be further negative impacts for the wider set net fleet (approximately 15 vessels) operating on the east and south coasts of the South Island.

Does the RAS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

Yes, the Minister's preferred option contributes to the sustainability of the northern hoiho population while still providing for utilisation opportunities for commercial set net fishers.

² Using estimated catch of each stock multiplied by its associated port price for that year. Port price is an average of what commercial fishers receive across a Quota Management Area, not what the fish is worth at market (which is higher). Nor does it reflect the income for licensed fish receivers (including wholesalers and/or processors) and retailers.

Have any potential inconsistencies with the principles of responsible regulation in the Regulatory Standards Act been identified in relation to the Minister's preferred option?

No.

Limitations and constraints on analysis

Condensed timeframes	No	Constrained option set	No
Legislative constraints	No	Data and evidence gaps	Yes
Ministerial direction	Yes	Other	No
Limited public consultation	No		

Summary of limitations and constraints on analysis

- There is uncertainty in the risk assessment, in particular relating to risk modelling, fisher behaviour and hoiho life-history.
- Alternative hoiho distribution models have been produced by other scientists, which differ from the model and conclusions which informed the risk assessment.
- Movement of fishing effort following a spatial closure is difficult to predict.
- The analysis of economic impact on the set net fleet is based on historic port price (an average of the price a commercial fisher receives, not what the fish is worth at market, which is usually higher). Analysis at this level may not accurately capture the wider value of the fishery.
- The economic impact on the set net fleet of a FRML for the northern hoiho population is difficult to quantify. The lower the FRML setting, the greater the likelihood of a regulated closure during any given fishing year, with consequential impacts on industry.
- The ability to undertake a quantitative Cost-Benefit Analysis because some benefits and costs are qualitative, based on public perceptions, or Fisheries New Zealand does not hold the information.

What are the implications of these limitations and constraints, and what has been done – or will be done – to mitigate and manage them?

- Where applicable, sources of uncertainty in the risk assessment are declared and discussed by the authors. Fisheries New Zealand commissioned updates to the risk assessment immediately prior to public consultation incorporating the most recent population and fishing effort data.
- Alternative hoiho distribution models indicate a wider at-sea range for hoiho than that used in the risk assessment. The conclusions of these alternative models were presented to the Minister so that he could consider them in his decisions.
- Movement of fishing effort could increase bycatch risk for hoiho in adjacent areas where set netting is permitted. Displacement is continuously monitored by Fisheries New Zealand via fishers' electronic reporting and geospatial position reporting.
- Advice provided to the Minister included information supplied by industry on the wider value of the Otago set net fishery.

I am satisfied that, given the available evidence, this RAS represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

9(2)(a)

Emma Taylor
Director Fisheries Management
Fisheries New Zealand
Ministry for Primary Industries
15 July 2026

Quality Assurance Statement

Reviewing Agency:

Ministry for Primary Industries

QA rating:

Partially meets.

Panel Comment:

The Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has reviewed the Regulatory Analysis Summary (RAS) *Measures to reduce fisheries bycatch of hoiho*. The Panel considers it partially meets the quality assurance criteria. The RAS is clear, concise and adequate consultation has been undertaken. However, the unquantified nature of many of the costs and benefits of the proposal affects how convincing the RAS is. The Panel notes that quantifying these costs and benefits may, in some cases, not be possible.

Section 1: Diagnosing the policy problem

What is the policy problem?

1. The northern hoiho population is declining. Long-term fisheries measures are needed to reduce the bycatch risk posed by commercial set netting to the northern population.

Decline in the northern hoiho population

2. Hoiho are endemic to New Zealand and are fully protected under the Wildlife Act 1953. They are classified as Threatened-Nationally Endangered under the New Zealand Threat Classification System.³ Around 115 breeding pairs are estimated to remain on the South Island and Rakiura (known as the *northern population*).⁴
3. Monitoring suggests this population has declined by approximately 80 percent since 2008-09. The largest colonies are located on Otago Peninsula and in North Otago, with smaller colonies in the Catlins and on Stewart Island (Figure 1).
4. Factors identified as causing this decline include disease, introduced predators, human disturbance, a significant shift in adult diet, fisheries bycatch, and marine predation. Fisheries bycatch is estimated to be the third largest cause of hoiho mortality in recent years (behind malnutrition and predation).

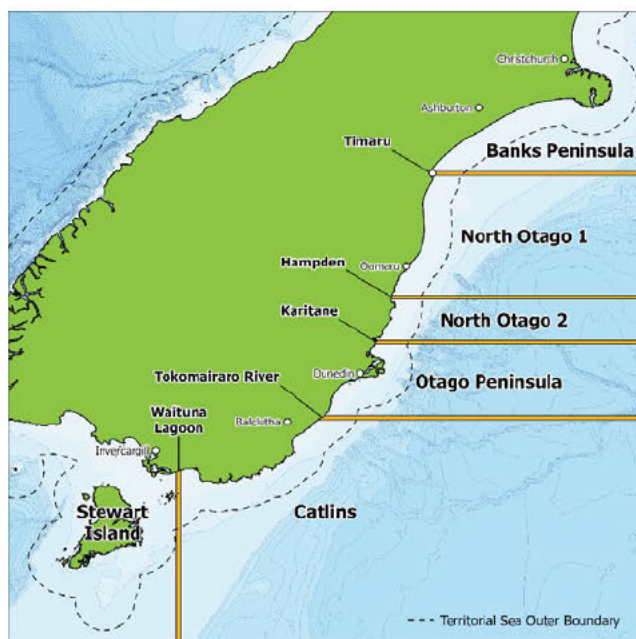


Figure 1: Boundaries of northern hoiho subpopulations.

Strategy to address the decline in hoiho

5. Fisheries New Zealand, the Department of Conservation (DOC), Te Rūnanga o Ngāi Tahu and the Yellow-eyed Penguin Trust have developed a 10-year strategy (2019-2029) to address the decline in hoiho, *Te Kaweka Takohaka mō te Hoiho*, as well as a five-year action plan *Te Mahere Rima Tau*.⁵

³ Nationally Endangered means that hoiho are facing a high risk of extinction in the short-term.

⁴ Based on nest counts from 2025-26 (Hendrik Schultz, Department of Conservation, pers. comm.).

⁵ www.doc.govt.nz/nature/native-animals/birds/birds-a-z/penguins/yellow-eyed-penguin-hoiho/a-strategy-to-support-the-health-of-hoiho/

6. As part of the strategy and associated action plan, a *Spatial Risk Assessment of Threats to Hoiho* (risk assessment) was commissioned by Fisheries New Zealand.⁶ The risk assessment evaluated all threats facing hoiho and how each one affects population size and trends, including modelling the impact of these threats on regional hoiho subpopulations.
7. In April 2025, the risk assessment results were discussed at a cross-agency/stakeholder workshop convened under the auspices of *Te Kaweka Takohaka mō te Hoiho*. The workshop reviewed all threats to the northern hoiho population and concluded that total mortality for adults or juveniles – or a combination of the two – needs to reduce by 50 percent relative to 2022-23 mortality levels. This will allow the northern hoiho population to stabilise and rebuild to 90 percent of its unimpacted status (defined as *the population objective*).
8. As a component of the population objective, workshop participants agreed that a 75 percent reduction in fisheries bycatch is needed, relative to the 2022-23 fishing year. This requires a reduction in bycatch from an estimated 17 hoiho in 2022-23 to four hoiho in a fishing year (defined as *the fisheries objective*).⁷

Results of the risk assessment

9. The results of the risk assessment indicate that long-term measures are needed to reduce the bycatch risk to hoiho. The results identified bycatch risk in commercial set nets as needing further addressing throughout the northern hoiho population's range, with the Otago Peninsula region posing a higher fisheries bycatch risk than other areas.
10. The risk assessment uses a 'risk ratio' to estimate the impact of commercial set net fishing on adult females in each subpopulation. A risk ratio exceeding a value of one indicates that bycatch deaths are exceeding the targeted 75 percent reduction in fishing-related mortality (*the fisheries objective*), affecting the northern hoiho population's ability to stabilise and recover (*the population objective*).
11. The risk ratio for the Otago Peninsula subpopulation has exceeded one since 2016 and approached four times this number in 2020 and 2022. North Otago subpopulations had risk ratios approaching one in recent years, whereas the Rakiura and Catlins subpopulations have consistently remained below a value of one.
12. The risk assessment also defined a Population Sustainability Threshold (PST) for the northern hoiho population. A PST is a scientifically derived metric (not a regulatory measure). It is the maximum number of fishing-related deaths that a population can sustain while still achieving a defined population recovery objective. The risk assessment calculated a PST of approximately four fishing-related deaths per year for the northern hoiho population – establishing a scientifically based benchmark for evaluating progress towards meeting the fisheries and population objectives.

⁶ <https://www.mpi.govt.nz/dmsdocument/70818-AEBR-3702025-Spatial-risk-assessment-of-threats-to-yellow-eyed-penguinhoiho-Megadyptes-antipodes>

⁷ The risk assessment used a Spatially Explicit Fisheries Risk Assessment (SEFRA) model and defines fisheries bycatch risk as the ratio between estimated deaths of hoiho from commercial fishing and a Population Sustainability Threshold (PST). The PST is expressed as a limit on the number of individual deaths (from anthropogenic threats) per year that can occur with reference to a particular population objective. For hoiho, the population objective was set through the April 2025 workshop that looked at all threats to hoiho. The proportion of this reduction that could be achieved by fisheries management measures (*the fisheries objective*) was included in the calculation of the PST so that managing to this number achieved this objective.

Current commercial set net measures

13. There are existing prohibitions on commercial set netting out to at least four nautical miles along the Canterbury, Otago, and Southland coastlines (Appendix One, Figure A). These set net prohibitions were put in place primarily to protect Hector's dolphins from bycatch.
14. Multiple regulations also apply to commercial set netting within the northern hoiho population area, including the duration a net may be set, the length of the net, the size of net meshes, and how it is deployed. These regulations will continue to apply.
15. In September 2025, the Minister took urgent action to reduce the risk of hoiho bycatch by imposing a three-month emergency closure of commercial set netting around Otago Peninsula to approximately eight nautical miles offshore. In December 2025, this emergency closure was extended for a further nine-month period out to 16 September 2026.

How will the status quo develop over time?

16. Under the status quo, the emergency set net prohibition around Otago Peninsula would expire on 16 September 2026 (it cannot be extended beyond this date) and no FRML would be set. Throughout the remainder of the northern hoiho population's range, there would be no change to existing spatial measures prohibiting set netting.
17. Should no additional, long-term measures be implemented, once the temporary set net prohibition ends in September there is a high likelihood of further hoiho captures in the Otago Peninsula area. It is unlikely that the fisheries or population objectives for the northern hoiho population will be achieved under the status quo.

Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992⁸

18. Iwi fisheries plans are a way that tāngata whenua can exercise kaitiakitanga with respect to the effects of fishing on the aquatic environment. The relevant plan that covers the range of the northern hoiho population is the *Te Waipounamu Iwi Forum Fisheries Plan* which supports and provides for the interests of South Island iwi.
19. A key objective of the plan is '*To restore, maintain and enhance the mauri and wairua of fisheries throughout the South Island*', whereby South Island iwi and Fisheries New Zealand work collaboratively with the fishing industry to remedy or mitigate the environmental effects of fishing on the environment (e.g. avoiding the mortality of seabirds and marine mammals).
20. More specifically, Te Rūnanga o Ngāi Tahu is one of four governance partners (with Fisheries New Zealand, DOC and the Yellow-eyed Penguin Trust) that developed the Hoiho Strategy *Te Kaweka Takohaka mō te Hoiho* and the five-year action plan *Te Mahere Rima Tau*.
21. In addition to Te Rūnanga o Ngāi Tahu, Fisheries New Zealand sought and received direct input on the proposals from the three rūnanga within whose takiwā⁹ the proposed set net closures would be implemented: Te Rūnanga o Otākou, Kāti Huirapa ki Puketeraki, and Te Rūnanga o Moeraki. All rūnanga were supportive of Option 1b (the most extensive of the

⁸ Section 5(b) of the Act requires the Minister to act in a manner consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act). The Settlement Act provides that non-commercial customary fishing rights continue to be subject to the Principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown. Section 10 of the Settlement Act also requires the Minister to consult and develop policies to recognise the use and management practices of tāngata whenua in the exercise of non-commercial fishing.

⁹ Traditional territory and tribal boundary.

closures proposed during consultation) and implementation of a FRML (Option 2). Te Rūnanga o Otākou specifically preferred a FRML of two.

Who are the stakeholders?

22. The main stakeholders are commercial fishers, Licensed Fish Receivers, eNGOs/conservation groups, independent/academic experts and the public. Tāngata whenua have a key interest in the protection of hoiho, the activities that may impact hoiho, and how those activities are managed. Recreational fishers do not have a strong interest in the proposals and will not be impacted by the set net prohibition.

Stakeholder view of the problem

23. Stakeholders were consulted on various options to address the problem. Apart from the commercial fishing industry, stakeholders were largely aligned on the need for long-term measures but differed on the nature and extent of any set net measures.
24. Most submissions from individuals, eNGOs and experts consider that set net closures covering all, or most of, the northern hoiho population's range (Banks Peninsula to Rakiura) are needed, and that the FRML should be set at, or close to, zero. These stakeholders consider that these measures are needed to stabilise and rebuild the northern hoiho population.
25. The fishing industry has concerns about the methodology of the risk assessment. They either oppose any new set net closures or believe closures should be smaller in scale to provide for fishing as far as possible. Seafood New Zealand proposed that any FRML introduced should be set at six. They emphasised that, despite the biggest threats to hoiho not being fishing-related, there is strong public interest in implementing fishing measures which industry consider are not legally necessary.

What objectives are sought in relation to the policy problem?

26. The objectives sought are:
- To manage the bycatch risk of hoiho across the entire range of the northern population to meet the fisheries and population objectives; and
 - To support the northern hoiho population to stabilise and rebuild.

What external consultation has been undertaken?

27. Prior to and during the period of public consultation, Fisheries New Zealand met with tāngata whenua, the fishing industry, and some eNGOs, to discuss consultation options.
28. Public consultation on the long-term measures to reduce fisheries bycatch of hoiho ran from 17 November to 12 December 2025.
29. Fisheries New Zealand received 1,111 submissions in total. This included submissions from our Treaty Partners/tāngata whenua, the fishing industry, environmental interests, penguin/seabird experts, wildlife tourism interests and the public. Ninety-seven percent were from individuals (84 percent of which were based on a Greenpeace-designed template).

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options with the status quo?

30. The following criteria were used to assess options:
- **Effectiveness:** The extent to which each option may reduce the risk of hoiho bycatch.

- **Regulatory efficiency:** How easy would it be to regulate and administer.
- **Proportionate:** The extent to which each option matches the risk of hoiho bycatch.
- **Responsiveness:** The extent to which each option can adapt to changes in the risk of hoiho bycatch (spatial and temporal).
- **Reduce impacts on industry:** The extent to which each option reduces impacts to commercial fishers resulting from bycatch reduction measures.

What scope will options be considered within?

31. The Act allows the Minister to use various tools to manage the fishing-related mortality of protected species. These include making regulations to prohibit fishing or the use of certain fishing methods. Specifically, section 15(2) of the Act outlines that the Minister may take such measures as they consider are “necessary to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species, and such measures may include setting a limit on fishing-related mortality”.

Non-regulatory measures

32. Prior to the announcement of the temporary emergency closure in September 2025, the Otago set net fleet announced a voluntary set net closure between Taiaroa Head and Green Island (an area on the Otago Peninsula). The fleet also voluntarily proposed to restrict fishing to night-time only in all other Otago waters to reduce the risk of hoiho bycatch. Based on the risk assessment, these voluntary measures fell well short of what was needed to meet the fisheries objective of a 75 percent reduction in bycatch.
33. Fisheries New Zealand acknowledge that fishers are well-placed to adopt gear and fishing practices to reduce hoiho bycatch and that the incentives to do so will be stronger under the proposed escalating response framework (which has a voluntary aspect) and FRML.

Out of scope

34. The proposed options do not impose restrictions on non-commercial Māori customary fishing and are unlikely to impact recreational fishers given the closure is further offshore than they fish.
35. A review of bottom trawling measures was out of scope of the consultation. However, eNGOs have proposed a prohibition on trawling across the entire foraging range of the northern hoiho population as they consider this may increase the abundance of prey species and reduce hoiho deaths caused by malnutrition.
36. Trawling on the Otago shelf, where hoiho are known to forage, has substantially reduced in the last 15 years, with the last four fishing years having the lowest footprint on record for the Otago shelf. The risk assessment also estimated that the probability of a death in a trawl fishery is almost zero.

What options are being considered?

Status quo – No additional long-term measures to reduce hoiho bycatch

37. No new measures would be implemented to prohibit commercial set net fishing, and the emergency set net prohibition around Otago Peninsula would expire on 16 September 2026. There would be no change to existing spatial measures to prohibit commercial set netting (Appendix One, Figure A), and no FRML would be set.

38. After the expiration of the emergency set net prohibition, there is a high likelihood of further hoiho captures around the Otago Peninsula. The risk assessment and associated modelling indicate that the fisheries and population objectives will unlikely be achieved without any further measures in place.

Impacts on commercial fishers

39. The status quo would enable the Otago set net fleet to regain access to productive and economically important fishing grounds around the Otago Peninsula once the current emergency closure expires on 16 September. Based on port price, the average annual value of the set net catch from all areas fished by the primary vessels in the Otago Peninsula set net fleet is estimated at around \$1.12 million. *Harbour Fish* – the principal Licensed Fish Receiver in the Otago region – estimate that the wider Otago set net fishery generates \$2 million annually and supports quota owners, small operators, processors, retailers, hospitality, and households.

Option 1a – Prohibition of set netting around Otago Peninsula (Minister’s preferred option)

40. A long-term prohibition of commercial set netting out to approximately eight nautical miles around Otago Peninsula (Appendix One, Figure B – equivalent to the current temporary emergency closure area), reduces the risk ratio for the northern hoiho population below a value of one under some model runs. This area is where the majority (nine out of 14) of hoiho captures reported by fishers since 2022-23 have occurred.
41. Under other modelling runs, however, the risk ratio exceeds a value of one. This suggests that Option 1a is less likely to achieve the fisheries objective in comparison to other spatial closure options.

Impacts on commercial fishers

42. Option 1a would negatively impact commercial set net fishers across Otago. Vessels operating inside the proposed set net prohibition area primarily target rig and school shark, which are highly valued by local consumers and other markets. A range of other stocks are also commercially important, including elephantfish, blue warehou, and kingfish.
43. Based on port price, the average annual value of set net catch taken from the proposed set net prohibition area under Option 1a is approximately \$464,000.¹⁰ This value is based on the port price and is not the full value obtained from this catch by the wider fishing industry (e.g. processors, retailers). Vessels in the Otago set net fleet also use a variety of fishing methods in addition to set netting, such as potting for rock lobster, ling and blue cod, as well as bottom trawling. These methods may still be used in the set net prohibition area. As such, the negative economic impact of Option 1a will vary by vessel, as set netting comprises a greater or lesser proportion of each vessels’ catch.

Option 1b – Prohibition of set netting around Otago Peninsula and North Otago (Karitāne to Hampden)

44. A long-term prohibition of commercial set netting out to approximately eight nautical miles around Otago Peninsula (Option 1a) and North Otago (Karitāne to Hampden) (Appendix One, Figure C).
45. North Otago encompasses the second largest number of breeding females in the northern hoiho population (after the Otago Peninsula) and has maintained a stable number of breeding

¹⁰ Five-year average of 2019-20 to 2023-24 October fishing years.

females relative to declines in other subpopulations. After Otago Peninsula, it is the area with the next highest bycatch risk.

46. Option 1b represents a more cautious approach than Option 1a. It reduces the risk to hoiho posed by set netting in North Otago – including important breeding colonies situated between Moeraki and Katiki points. By extending Option 1a to include North Otago, the risk ratio for the northern population falls below a value of one across almost all model runs and periods assessed, providing confidence that the fisheries objective of a 75 percent reduction in bycatch is likely to be achieved.

Impacts on commercial fishers

47. Based on port price, the combined average annual value of set net catch from Otago Peninsula and North Otago to Hampden is estimated at \$566,000, with Otago Peninsula accounting for 82 percent of this total. In their wider operations, the Otago set net fleet use a variety of fishing methods in addition to set netting (such as potting for rock lobster, ling and blue cod, as well as bottom trawling). The negative economic impact of Option 1b will vary by vessel, as set netting comprises a greater or lesser proportion of each vessels' catch.

Modified Option 1b – Prohibition of commercial set netting around Otago Peninsula and North Otago (Karitāne to Kakanui)

48. This option was developed post-consultation. Modified Option 1b extends Option 1b slightly further north to from Hampden to Kakanui, prohibiting set netting out to eight nautical miles along an additional (approximately) 17.6 km stretch of coastline (Appendix One, Figure D).
49. Modified Option 1b includes a small additional area with only a small reduction in the risk ratio for the northern hoiho population. However, it takes into account the proximity of important breeding colonies such as Katiki Point in North Otago, which comprise the second largest number of breeding females in the northern hoiho population after Otago Peninsula.

Impacts on commercial fishers

50. Based on port price, the average annual value of set net catch taken from this additional area is relatively small, with the combined average annual value of set net catch taken from the prohibited area approximately \$589,000. While relatively small in additional area protected and catch value impacted, the closure would also affect some North Otago and Canterbury-based operators.

Option 2 – Introduction of an escalating response framework and FRML

51. An escalating response framework enables a prompt management response to every hoiho capture by Fisheries New Zealand, DOC, Seafood New Zealand and the vessel operator. The nature of the response will vary depending on the circumstances and may involve voluntary changes to reduce the likelihood of further hoiho captures by the vessel operator, to consideration of further regulated closures.
52. A FRML underpins the escalating response framework, enabling the Minister to act quickly to prohibit all or any fishing or fishing methods in an area for the purpose of ensuring that the FRML is not exceeded, in accordance with section 15(5) of the Act. A FRML for the northern hoiho population ensures that residual bycatch risk outside of the areas closed under Option 1 is addressed and is a regulatory 'backstop' with regards to hoiho bycatch.
53. During public consultation, Fisheries New Zealand proposed a FRML of four or three hoiho per October fishing year. A FRML of four hoiho is consistent with achieving the fisheries objective of a 75 percent reduction in bycatch relative to the 2022-23 fishing year. The alternative FRML

proposed of three hoiho was a more cautious option, placing greater weight on the declining trend observed in the northern hoiho population.

54. The majority of submitters during consultation requested a FRML of zero. In practice, this would require the cessation of set netting across the entire hoiho foraging range, which we do not consider is required. Closing the area of highest bycatch risk – around Otago Peninsula and North Otago – reduces core risk to the sustainability of the northern hoiho population, with a regulated FRML of three or four managing residual risk throughout the remainder of the northern hoiho population's range. These measures will enable the northern population to stabilise and rebuild, while still allowing some fishing to occur.
55. Fisheries New Zealand considers that the proposed measures align with the purpose of the Act by allowing utilisation of fisheries resources to occur in an environmentally sustainable manner. We note that the proposed measures also reflect guidance from the High Court following the Environmental Law Initiative's (ELI) challenge to the lawfulness of the September 2025 emergency closure decision¹¹. In his decision, Justice Boldt commented that if commercial fishing cannot occur in an environmentally sustainable manner – which, in this context, means in a way which ensures it poses no material risk to the survival of the northern hoiho population – it cannot occur at all.
56. Seafood New Zealand proposed a FRML of six with no new spatial closures. This would ensure industry retains access to historically productive Otago Peninsula fishing grounds (plus those in North Otago). In their view, it is appropriate given the relatively low impact fishing currently has on the hoiho population and would, on its own, be an appropriate output-based control. Given six is also the Minister's preferred FRML option we have included it in the Multi-Criteria Analysis table below.

Impacts on commercial fishers

57. The economic impact on the set net fleet of a FRML for the northern hoiho population is difficult to quantify. The lower the FRML setting, the greater the likelihood of a regulated closure during any given fishing year, with consequential impacts on industry.

Other set net measures put forward during consultation - Closure of full foraging range

58. Many eNGOs and other submitters proposed a complete closure to set netting across the northern hoiho population's foraging range. This would result in the closure of most of the commercial set net fishery across Otago, Canterbury, and Southland. Notwithstanding the highly significant negative economic impacts for both fishers and the wider commercial fishing industry, we do not consider a complete closure is necessary. As noted above, in concurrence with Fisheries Act obligations, the measures proposed will enable the northern population to stabilise and rebuild, while still allowing some fishing to occur.
59. In each of the three fishing years 2022-23, 2023-24, and 2024-25, the risk assessment estimates the number of annual fisheries deaths (females and males combined) to be approximately one and less than one within the Catlins and Rakiura subpopulations, respectively. Over the same period, the number of annual fisheries deaths in the Otago Peninsula region was estimated to be 11 (2022-23), five (2023-24), and four (2024-25), respectively. This suggests that additional spatial closures in the Catlins and around Rakiura would have relatively less effect on the northern hoiho population's ability to stabilise and rebuild.

¹¹ Environmental Law Initiative v Minister for Oceans and Fisheries [2026] NZHC 80 [3 February 2026].

How do the options compare to the status quo/counterfactual?

		Spatial closures			Supporting framework	
	<i>Status quo</i>	Option 1a - Otago Peninsula (Minister's preferred option)	Option 1b - Otago Peninsula + North Otago (Karitāne to Hampden)	Modified Option 1b - Otago Peninsula + North Otago (Karitāne to Kakanui) (Fisheries New Zealand preferred option)	Option 2 - Escalating response framework + FRML of <u>four</u> (Fisheries New Zealand preferred option)	Escalating response framework + FRML of <u>six</u> (<u>Minister's preferred, included following in-principle decision</u>)
Effectiveness	0 The risk assessment and modelling indicate that the fisheries objective is unlikely to be achieved (following the expiry of the Otago Peninsula temporary emergency closure on 16 September 2026). This has potential ramifications for the northern hoiho population's ability to stabilise and rebuild.	++ Option 1a may achieve the fisheries objective – an outcome unlikely to occur under the status quo. This option covers an area where the majority of hoiho captures reported by fishers since 2022-23 have occurred.	++ Extension of Option 1a northwards to Hampden (North Otago), provides greater confidence that the fisheries objective would be achieved. This outcome is unlikely to occur under the status quo.	++ Extending Option 1b further northwards to Kakanui (North Otago) provides greater confidence that the fisheries objective would be achieved and considers the proximity of important breeding colonies in North Otago. This outcome is unlikely to occur under the status quo.	++ An escalating response framework, underpinned by a FRML of four is more likely to achieve the fisheries objective than the status quo. This is in conjunction with mandatory electronic monitoring of all set net vessels operating within the northern hoiho population's range.	++ A FRML of six is higher than the Population Sustainability Threshold (PST) calculated for the northern hoiho population (four hoiho per fishing year) in the risk assessment. Should fishing-related mortality throughout the northern hoiho population's range exceed the PST, the fisheries objective is less likely to be achieved – a similar outcome to the status quo. ++ An escalating response framework, underpinned by electronic monitoring, enables bycatch risk in areas beyond the status quo to be monitored and managed.
Regulatory efficiency	0 No change. Existing tools and approaches used to regulate and administer.	0 Minimal change (amend regulations). Existing tools and approaches used to regulate and administer.	0 As per Option 1a.	0 As per Option 1a.	- Some additional cost associated with introduction and administration of the escalating response framework. Will be met within baseline funding.	- As per Option 2.
Proportionate	0 No change. Higher risk of hoiho bycatch in comparison to other options. Does not respond to the urgency of the problem (hoiho population decline).	++ Responds to urgency of the problem (hoiho population decline) and reduces bycatch risk. Smallest spatial closure.	++ Responds to urgency of the problem and reduces bycatch risk. Larger spatial closure balanced by reduction in bycatch risk.	++ Responds to urgency of the problem and reduces bycatch risk (most cautious of the spatial closure options). Largest spatial closure balanced by reduction in bycatch risk.	++ Escalating response framework responds to urgency of the problem - cumulative hoiho captures trigger a prompt management response.	++ Escalating response framework responds to urgency of the problem - cumulative hoiho captures trigger a prompt management response.
Responsiveness	0 No change, unless voluntary measures are implemented by a vessel operator or the set net fleet.	0 Some set net effort displacement may occur, primarily to the north of Otago Peninsula. Significant displacement unlikely (potentially limited to one vessel) as Otago set net fleet comprises short-haul vessels.	++ Reduces likelihood of set net effort displacement immediately north of Otago Peninsula. Displacement further north less likely to due to distance from home port for Otago set net fleet and lower value of set net fisheries in area.	++ As per Option 1b.	++ Considers fisheries risk across the entire northern hoiho population, with an escalating response to all captures and a regulated FRML to ensure fisheries bycatch does not affect the northern hoiho population's ability to stabilise and rebuild.	++ As per Option 2.
Reduce impacts on industry	++ No additional utilisation constraints. Enables Otago set net fishers to regain access to productive and economically important fishing grounds around the Otago Peninsula once the current emergency closure expires in September 2026.	- Smallest spatial closure. Removes access to productive set net fishery within close range of the Otago set net fleet. Fishing methods that do not catch hoiho, such as long-lining, potting and trawling, may still be used in the area closed to set netting.	- As per Option 1a, however set net fishers would incur higher fuel costs and increased steaming time to reach set net fishing grounds outside of the prohibited area.	- As per Option 1b. Largest spatial closure.	- Potential negative impacts on the South Island east and south coast set net fleet, and wider industry, if the FRML is triggered.	- As per Option 2. However, a FRML of six is less likely to result in wider spatial closures throughout hoiho range during a fishing year, providing industry with greater operational certainty.
Overall Assessment	0	0	++	++	++	++

Key: ++ much better than the status quo, + better than the status quo, 0 about the same as the status quo, - worse than the status quo

Section 3: Cost-benefit analysis

What are the additional costs and benefits of the preferred option in the Cabinet paper?

60. Table 1 provides a Cost-Benefit Analysis of the additional costs and benefits of the Minister's preferred option. While this analysis is primarily focused on commercial impacts, we acknowledge there are wider impacts including for environmental interests, wildlife tourism and to the sustainability of hoiho themselves (i.e. as noted in the Multi-Criteria Analysis table, above, on the effectiveness of the proposed options). Consequently, there are limitations in this analysis because some of these costs and benefits are qualitative, based on public perception, or Fisheries New Zealand does not hold the information.
61. The Minister's preferred option differs from the agency-preferred option. The additional costs and benefits of the agency-preferred option primarily differ with respect to the annual revenue loss and the possible higher risk of hoiho captures with a smaller spatial closure and FRML of six.
62. Under the Minister's preferred option, the estimated annual revenue loss (based on port price) is approximately \$464,000, while under the agency's preferred option the annual loss is approximately \$589,000.

Are the benefits of the preferred option in the Cabinet paper expected to exceed the costs?

63. Despite the limitations in Fisheries New Zealand's costs and benefit analysis, the benefits of the Minister's preferred option (prohibition of set netting around the Otago Peninsula) are likely to exceed the costs. The Minister's option contributes to the sustainability of the northern hoiho population while still providing for utilisation opportunities for commercial set net fishers. The risk assessment indicates that closing the Otago Peninsula will reduce the core bycatch risk to the northern hoiho population. This closure, combined with a FRML of six and an escalating response framework, will significantly reduce the risk of hoiho bycatch.
64. The Minister's preferred option will have a negative economic impact on commercial set net fishers (estimated at approximately \$464,000 annually). However, the regional set net fleet also uses other fishing methods in addition to set netting, such as potting and bottom trawling. These methods may still be used around the Otago Peninsula and may offset some of the economic impact on the set net fishery.

What are the impacts on different groups of the preferred option compared with taking no action?

65. The Minister's preferred option does not disproportionately affect any particular population group compared to the status quo. It will have a negative economic impact on commercial set net fishers. The impacts have been identified based on analysis of commercial catch data and in consultation with the commercial fishing industry.

Table 1: Cost-Benefit Analysis of the Minister's preferred option.

Nature of the benefit/cost to New Zealand	Dollar value of impact (or quantified impact)	Scale of unquantifiable impact	Nature of impact – one-off or ongoing	Source of evidence
Additional benefits of the preferred option compared with taking no action				
Industry reputation	Not quantified – based on public perception.	Cessation of set netting in areas where there is highest bycatch risk to hoiho could improve fishers' reputation with the public and other interests. It could also improve the reputation of the commercial fishing sector generally.	Ongoing	Anecdotal
Regulatory oversight	N/A	Fisheries New Zealand will have greater regulatory oversight in managing bycatch risk for the Nationally Endangered hoiho. This aligns with regulatory measures in place for Hector's and Maui dolphins (listed as Nationally Vulnerable and Nationally Critical, respectively).	Ongoing	Anecdotal
Consumer confidence	Not quantified – based on public perception.	Set net prohibition may improve reputation with seafood consumers. Minimising fishing-related mortality of hoiho aligns with public expectations.	Ongoing	Anecdotal
Wildlife tourism	2007 research estimated the gross annual turnover for Otago Peninsula wildlife tourism operators at \$6.5 million, with an additional \$100 million in regional expenditure (however, since this report, the northern hoiho population has declined significantly).	Wildlife tourism operators in Otago and Southland likely to benefit from the stabilisation and rebuilding of the northern hoiho population. Research in 2007 noted that the growth in wildlife tourism on the Otago Peninsula was largely driven by the presence of, and interest in, hoiho.	Ongoing	2007 Working Paper ¹²
Total annual benefits	Not quantified.			
Total one-off benefits	N/A			
Additional costs of the preferred option compared with taking no action				
Annual revenue loss	Annual revenue loss of \$464,000 to commercial set net fishers. ¹³	The economic impact may be greater for those vessels with a greater reliance on set netting in their wider fishing operations.	Ongoing (or until a time the set net prohibition is lifted)	Commercial catch data and port price information
Future revenue loss	Potential future revenue loss. Cost unable to be determined until measure initiated.	If cumulative bycatch of hoiho (outside of the proposed set net prohibition area) in a fishing year meets or exceeds the FRML, voluntary, or potentially regulatory, actions will be triggered.	Ongoing (only if FRML triggered)	Commercial catch data and port price information (if required in the future)
Fishing operations	Costs known by fishers. Fisheries New Zealand does not hold the information.	The local set net fleet will incur higher fuel and running costs if they shift to fishing grounds beyond the prohibition area.	Ongoing	Feedback from commercial set net fishers
Environmental interests	Not quantified	Some environmental interests may be disappointed by the proposed measures (e.g. because the set net measures do not cover all, or most of, the northern hoiho population's range and the FRML is not set at zero).	Ongoing	Consultation submissions
Implementation costs (i.e. to monitoring systems)	Not significant - within baseline funding		One-off	Fisheries New Zealand
Administrative education/compliance costs	Not significant - within baseline funding		Ongoing	Fisheries New Zealand
Total annual costs	\$464,000 revenue loss	Potential ongoing annual cost to consumers of potential reduced supply of fish.		
Total one-off costs	Cost to government within baseline funding	Potential one-off costs to fishers (e.g. selling vessel or converting vessel to use methods other than set netting).		
Net impacts compared with taking no action				
Total annual benefits minus costs	Annual benefits not quantified, \$464,000, only revenue loss quantified.			
Total one-off benefits minus costs	No one-off benefits, only one-off implementation costs.			

¹² <https://www.orc.govt.nz/media/3182/economic-importance-of-wildlife-conservation-on-otago-peninsula-20-years-on.pdf>¹³ Based on port price (the price a commercial fisher receives, not what the fish is worth at market, which is usually higher).

Conclusion

Which option is the most effective, efficient, and proportionate response to the problem?

66. All three set net prohibition options – Option 1a (Otago Peninsula (Taieri Mouth to Karitāne) to approximately eight nautical miles offshore), Option 1b (Option 1a + North Otago (Karitāne to Hampden) to approximately eight nautical miles offshore) and Modified Option 1b (Option 1a + Option 1b + Hampden to Kakanui to approximately eight nautical miles offshore) – can achieve the fisheries objective, concurrent with an escalating response framework underpinned by a FRML of four (Option 2).
67. Our analysis suggests Modified Option 1b (alongside Option 2) is the most effective response (of the options proposed) because it provides greater confidence that bycatch risk across the entire range of the northern population is managed effectively. The risk assessment and modelling undertaken indicates that the fisheries objective (that hoiho bycatch will be reduced by 75% relative to 2022-23) is more likely to be achieved if a wider spatial closure is implemented (in comparison to Options 1a and 1b).
68. The agency's preferred option differs from the Minister's preferred option in the Cabinet paper, where Option 1a and Option 2 are preferred by the Minister (but with a FRML of six).
69. Modified Option 1b (alongside Option 2) can be regulated efficiently through existing tools and approaches. Fisheries New Zealand currently manages and enforces a large number of fisheries regulations. This experience will help to ensure the fisheries objective is achieved.
70. We consider that the agency's preferred option represents a proportionate response. It acknowledges the urgency given the decline of the northern hoiho population and provides the highest likelihood (of the options considered) of reducing bycatch to the level necessary to enable the stabilisation and rebuilding of the northern hoiho population.
71. More restrictive options could have been considered (i.e. closure of the entire range of the northern hoiho population and a FRML of zero). However, we do not consider these to be a proportionate response to the problem. Modelling suggests that additional spatial closures (i.e. in the Catlins and around Rakiura) would have relatively little effect on reducing hoiho bycatch. A FRML of zero, as proposed by many submitters, would require the closure of the South Island east and south coast set net fisheries. Based on modelling, targeted set net prohibitions, underpinned by a FRML of four, will not pose a material risk to the northern hoiho population.

Section 4: Delivering an option

What are the next steps for implementing the legislation?

Regulatory measures

72. If the proposed set net prohibitions and FRML are approved, amendments would be required to the:
 - Fisheries (South-East Area Commercial Fishing) Regulations 1986, and
 - Fisheries (Fishing-related Mortality Limits of Marine Mammals and Other Wildlife) Regulations 2022.
73. Fisheries New Zealand will be responsible for the enforcement of the new set net prohibitions. We will also be responsible for operating the escalating response framework

(supported by DOC, vessel operators and Seafood New Zealand) and for providing advice to Ministers to ensure the FRML is not exceeded across all relevant vessels and areas.

74. It is proposed that the amendments that require regulatory promulgation would come into force by 16 September 2026 (when the emergency closure expires). If Cabinet agrees, the Governor-General would then be recommended to make the necessary changes by Order in Council.

Voluntary measures

75. The implementation of voluntary aspects of the escalating response framework will be supported by the existing Protected Species Liaison Programme managed by DOC. Fisheries New Zealand will work with the Liaison Programme and industry to ensure there are Protected Species Risk Management Plans (PSRMPs) on every commercial set net vessel. These plans set out the mitigation measures each vessel will use to reduce the risk of catching hoiho.
76. Along with the vessel operator, we will work with the Liaison Programme Officers, DOC and industry representatives to establish the circumstances associated with every hoiho capture. Where required, we will suggest additional mitigation approaches that may not be in the vessel's PSRMP. Operating procedures will be developed to guide this work.

Communications

77. The Minister intends to publicly announce his decisions on new set net measures for hoiho following Cabinet approval.
78. New measures will be publicised through the Ministry for Primary Industries website and social media channels. Affected fishers, Licensed Fish Receivers and fishing industry representative bodies such as Seafood New Zealand and the New Zealand Federation of Commercial Fishermen will be directly informed, as will Ngāi Tahu, the Yellow-eyed Penguin Trust and eNGOs such as Forest and Bird and WWF-New Zealand¹⁴.

Implementation issues/risks

Effort displacement

79. Set net fishing effort can move from a newly closed area to another area where hoiho are also found (that is, effort is 'displaced'). This can produce a shift of bycatch risk for hoiho, rather than a reduction.
80. Since implementation of the September 2025 emergency closure around the Otago Peninsula (which mirrors the boundaries of Option 1a), 9(2)(b)(ii)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Fisheries New Zealand considers that the risk of effort displacement is mitigated under the proposed escalating response framework underpinned by a FRML.

Litigation

81. The Environmental Law Initiative (ELI) challenged the lawfulness of the Minister's 2025 emergency closure decision. In February 2026, the High Court dismissed this challenge, finding that the Minister's decision was lawful and within his powers under the Act. The Minister's decision on long-term measures could equally be challenged.

¹⁴ Part of the World Wide Fund for Nature (WWF) International Network.

82. We consider that the proposed fisheries measures are consistent with the requirements of section 15(2) of the Act, which enables the Minister “to take such measures as he or she considers are necessary to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species”.

Compliance

83. There are expected to be implementation costs of the measures, including: increased monitoring and compliance activities; and revised educational and promotional material regarding the fisheries changes.
84. Electronic catch and geospatial position reporting requirements for both commercial catch and the incidental capture of protected species are already in place. This information is used to monitor compliance with spatial protection measures, such as the proposed set net prohibitions.
85. All in-scope set net vessels fishing within the northern hoiho population’s range must have onboard cameras operating and uploading footage to Fisheries New Zealand. This is a critical capacity in the operation of the escalating response framework and FRMLs. Onboard cameras provide the most comprehensive means of verifying fishers’ reporting (or non-reporting) of hoiho captures, while electronic geospatial position reporting is used to monitor compliance with spatial measures. Collectively, these tools enable the ability to monitor and verify the effectiveness of the measures.

How will the proposal be monitored, evaluated, and reviewed?

Monitoring

86. The electronic catch and geospatial position reporting requirements for all commercial fishing vessels enables Fisheries New Zealand to assess commercial fishers’ compliance with reporting requirements and prohibited areas. Onboard camera monitoring provides additional means of identifying protected species interactions and assessing whether measures are complied with, as well as the effectiveness of the measures.
87. The new measures would be monitored in terms of their effectiveness in achieving the fisheries and population objectives for the northern hoiho population. The risk assessment significantly improves our ability to estimate bycatch risk for the northern hoiho population, as well as regional subpopulations. Scheduled updates of the risk assessment will enable us to assess performance of the fisheries measures against the fisheries and population objectives.

Assessment

88. An annual, publicly available performance report would assess overall operation of the escalating response framework and FRMLs. Fisheries New Zealand will develop a set of performance measures to monitor the framework’s effectiveness at avoiding hoiho bycatch (i.e. rates of hoiho captures are decreasing, and the FRML is not reached or exceeded).
89. The Department of Conservation undertakes an annual review process of the ten-year strategy *Te Mahere Rima Tau Hoiho* at the conclusion of each hoiho breeding season. *Te Kaweka Takohaka mō te Hoiho* has a five-year review schedule by DOC.¹⁵

¹⁵ Reporting on progress against strategic priorities in *Te Mahere Rima Tau Hoiho* (2024-25) are available at www.doc.govt.nz/nature/native-animals/birds/birds-a-z/penguins/yellow-eyed-penguin-hoiho/a-strategy-to-support-the-health-of-hoiho/

Review

90. A review of the fisheries measures may be proposed if new information on hoiho changes our assessment of the risk of fishing-related mortality. A review may also be proposed if supporting information shows the fisheries measures are not working as intended to meet the fisheries and population objectives.
91. Early reviews of the fisheries measures may also be prompted by new information that indicates:
 - the northern hoiho population is at a greater risk of extinction than previously thought;
 - a sudden increase in hoiho fishing-related mortality; or
 - hoiho fishing-related mortality in areas where it is unexpected.
92. Engagement with tāngata whenua and other interested or affected parties (e.g. DOC, the Yellow-eyed Penguin Trust, and commercial fishing and environmental interests) provides an opportunity to discuss or raise concerns about any fisheries measures, achievement of the fisheries objective, and any other related matters (e.g. research, monitoring, and education).

Appendix One: Maps of existing and proposed spatial commercial set net closures

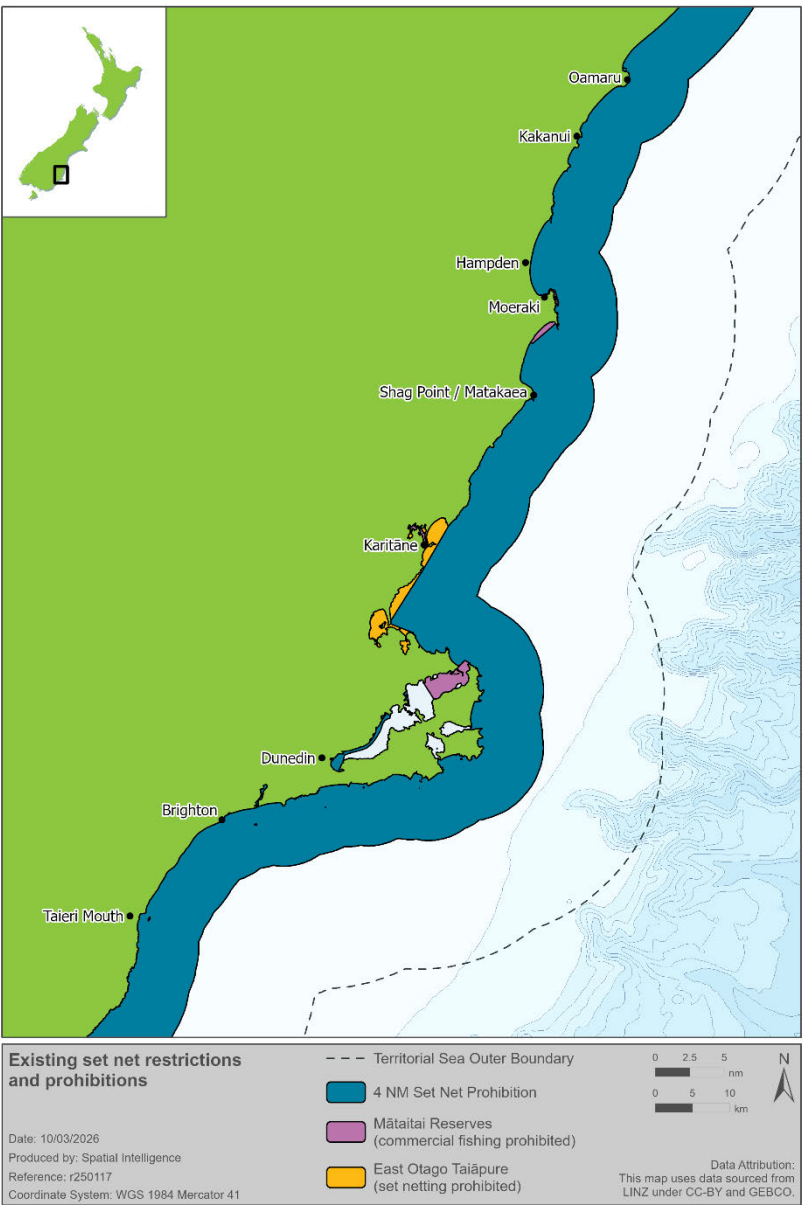


Figure A. Existing set net restrictions and prohibitions (the status quo). Does not show the temporary set net ban which expires on 16 September 2026 (the boundaries for that ban are the same as for Option 1a, shown in Figure B).

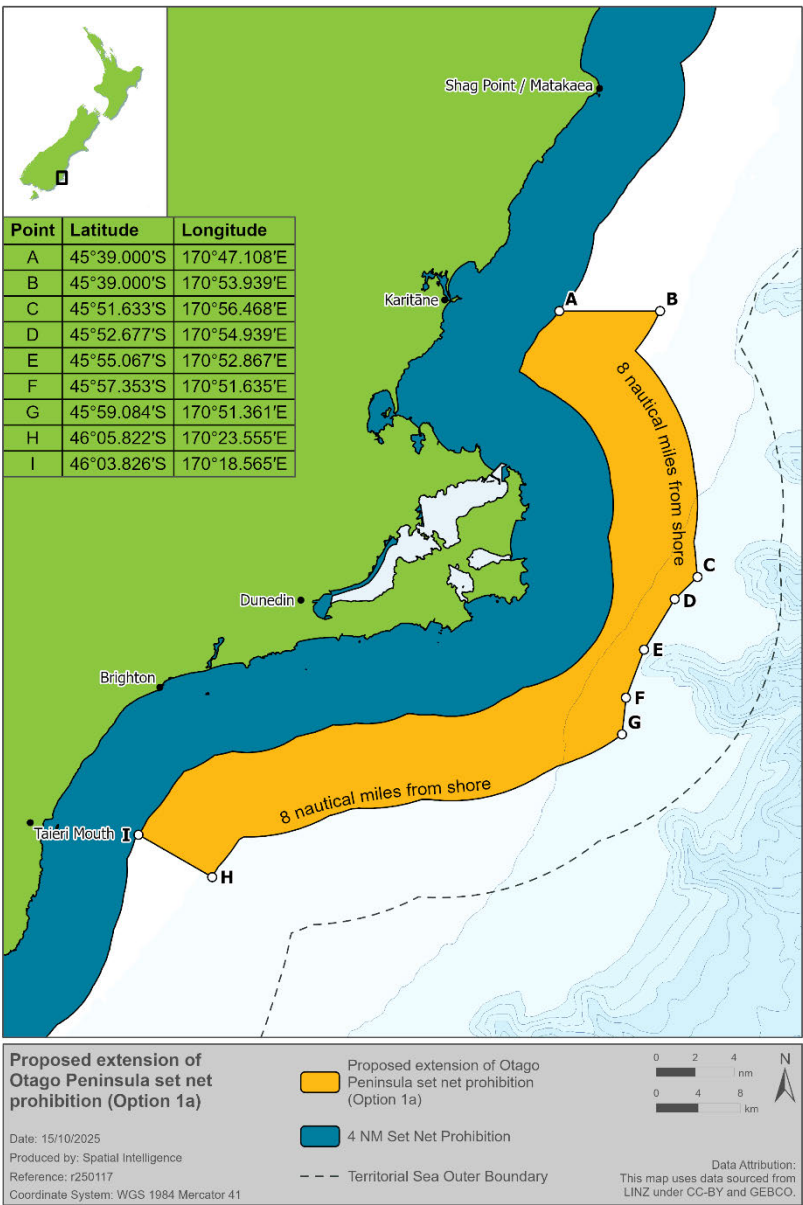


Figure B. Option 1a – prohibition of set netting around Otago Peninsula, from four to approximately eight nautical miles.

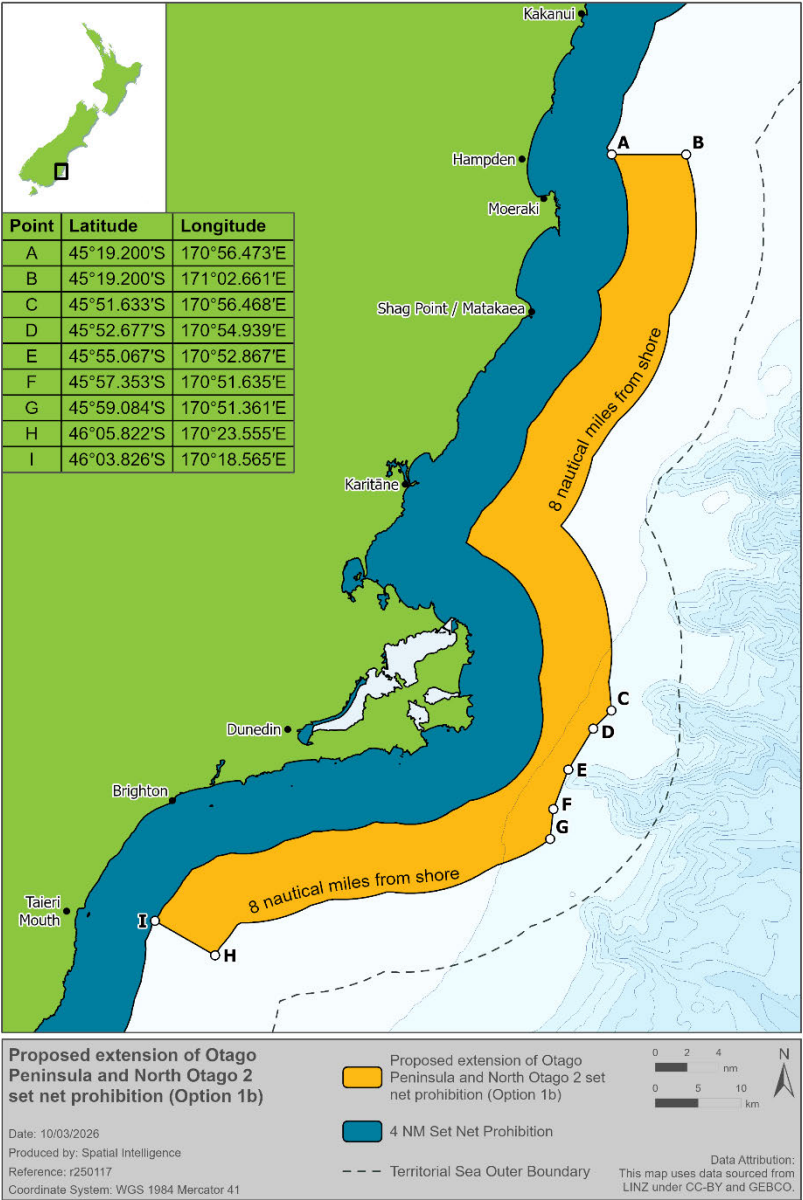


Figure C. Option 1b – prohibition of set netting around Otago Peninsula and North Otago 2 (Karitāne to Hampden), from four to approximately eight nautical miles.

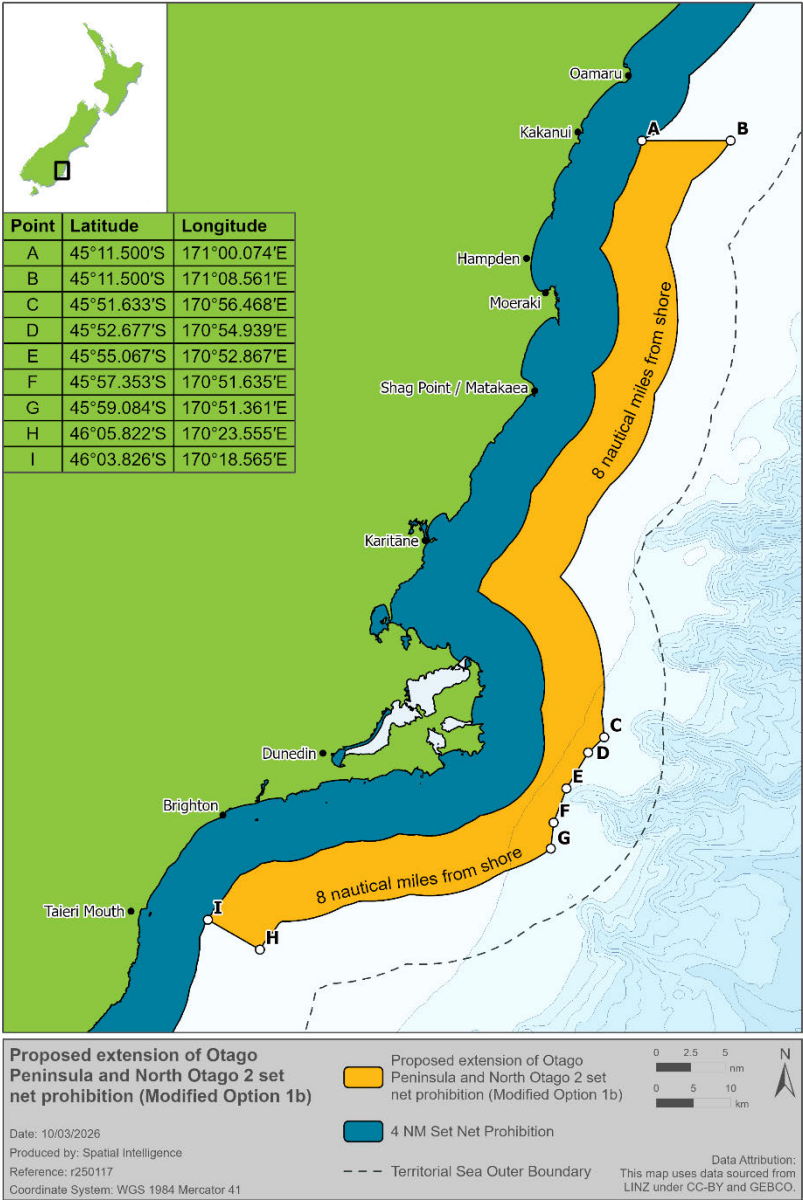


Figure D. Modified Option 1b – prohibition of set netting around Otago Peninsula, North Otago 2 and lower North Otago 1 (Hampden to Kakanui), from four to approximately eight nautical miles.