



Office of Hon Nathan Guy

MP for Otaki

Minister for Primary Industries

Minister for Racing

MinOia13-18

31 OCT 2013

Alex Smith
WWF – New Zealand
PO Box 6237
Marion Square
WELLINGTON 6141
alex.smith@wwf.org.nz

Dear Alex Smith

OFFICIAL INFORMATION ACT REQUEST

I refer to your official information request of 22 August 2013 relating to:

- a. ...any documentation (briefing papers, emails, correspondence, cabinet papers etc.), that I, my office or department have that relate to the likelihood or possibility of Maui and/or Hector's dolphins becoming extinct.
- b. ...any advice that I have received on what measures (policies, programmes, regulations etc) are needed to ensure that Maui dolphins and or Hector's dolphins do not become extinct.

I note that following your conversation with the Department of Conservation you have refined your request and removed "Hector's dolphins" and "emails and correspondence" from your request. As a consequence, the following information is released to you under the Official Information Act 1982 (OIA):

- Primary Production Select Committee 2012-2013 estimates hearing
- AM12-438: International Whaling Commission and Maui's dolphin TMP
- B11-488: Reported Hector's/Maui's Dolphin Mortality
- B11-562: Managing impacts on Maui's Dolphins
- B12-972: International Whaling Commission Scientific Committee outcome and Maui's dolphins TMP
- Sub11-065: Interim fishing measures to protect Maui's dolphins
- IWC 2013: Talking points as a response to the International Whaling Commission Scientific Committee meeting.

Sections in B12-972 have been withheld under section 9(2)(f)(iv) of the Act – maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Minister of the Crown and officials.

Sections in B12-972 also have been withheld under section 9(2)(g)(i) of the Act – maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to the Ministers of the Crown or members of an organisation or officers and employees in the course of their duty.

Names and other personal details in AM12-438, B11-488, B11-562 and B12-972 have been withheld under section 9(2)(a) of the Act – the protection of the privacy of natural persons.

Some of the context of the documents may have changed and all portions of the documents which were not related to your request have been removed.

The Ministry for Primary Industries has been either informed or consulted on the following documents but they will be dealt with under the OIA by the Department of Conservation:

- 12-B-0390: Review of Maui's dolphin Threat Management Plan: fisheries measures
- 13-B-0123: Maui's dolphins and their potential for close order management
- DOCDM-672700: Maui's Dolphin Recovery Plan 2012-2017
- Select Committee questions – for marine species and threats
- Sixty-fifth Annual Meeting of the International Whaling Commission Scientific Committee – New Zealand Delegation brief
- Final notes from IWC SC 65(a) – June 2013
- POLI-63-188: 65th International Whaling Commission Scientific Committee meeting: Maui's dolphins and delegation
- POLI-63-120: 65th International Whaling Commission Scientific Committee meeting: update on Maui's dolphins

There are also some documents that relate to the likelihood or possibility of Maui's and Hector's dolphins becoming extinct and which are available online:

- MPI Maui's dolphin fact sheet: [http://www.fish.govt.nz/NR/rdonlyres/8488FFBB-E0DB-41B6-ADA7-DB6DF51EAB52/0/hectors and maui dolphin factsheet 2012 13.pdf](http://www.fish.govt.nz/NR/rdonlyres/8488FFBB-E0DB-41B6-ADA7-DB6DF51EAB52/0/hectors%20and%20maui%20dolphin%20factsheet%202012%2013.pdf)
- 2013 International Whaling Commission Scientific Committee Report: <http://iwc.int/news-2013-iwc-scientific-committee-report-published->
- 2013 International Whaling Commission Scientific Committee – Report of the Sub-Committee on Small Cetaceans: <http://iwc.int/cache/downloads/4r6wjwdcu3uogs4ssqso8soc4/AnnexL.pdf>
- MPI and DOC Review of the Maui's dolphin Threat Management Plan – Consultation document: <http://www.fish.govt.nz/NR/rdonlyres/2ED73A95-5FCD-4A22-AC3D-97A65E0A7557/0/mauisdolphinthreatmanagementplandiscussiondocument201218.pdf>

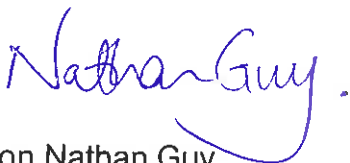
- A Risk Assessment of threats to Maui's dolphins:
<http://www.fish.govt.nz/NR/rdonlyres/BA4A50A2-EC32-4BE4-A53C-EB42205A0B04/0/mauisdolphinriskassessment.pdf>
- Hector's and Maui's dolphin bibliography:
<http://www.doc.govt.nz/upload/documents/science-and-technical/drds332entire.pdf>
- Environmental Defence Society – Wonders of the Sea: the protection of New Zealand's marine mammals: <http://www.eds.org.nz/shop/publication/13.htm>

Release of these documents is therefore refused under section 18(d) of the OIA on the ground that these documents are publicly available.

You have the right under section 28(3) of the Official Information Act to seek an investigation and review by the Ombudsman of the decisions to withhold information. A request must be made in writing to:

The Ombudsman
Office of the Ombudsmen
PO Box 10 152
WELLINGTON]

Yours sincerely



Hon Nathan Guy
Minister for Primary Industries

**PRIMARY PRODUCTION
SELECT COMMITTEE 2012-2013
ESTIMATES HEARING**

VOTE PRIMARY INDUSTRIES

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PRECIS BRIEFS

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What is the issue?	<p>An accidental dolphin mortality occurred in a commercial set net off Cape Egmont on 2 January 2012. There is uncertainty as to whether the dolphin caught was a Hector's or a Maui's dolphin.</p> <p>Fishing-related mortalities of Maui's dolphins are significant because the population is so small it can sustain no more than one human-induced mortality every fourteen years without affecting the ability of the population to rebuild to optimum sustainable levels. Recent population estimates suggest there are approximately 55 adult Maui's dolphins.</p> <p>The environmental principles of the Fisheries Act 1996 (the Act) require associated or dependant species¹ to be maintained at a level that ensures their long-term viability.² Section 15 is the main provision in the Act where the Minister for Primary Industries (MPI) can make decisions to "avoid, remedy or mitigate the effect of fishing-related mortality on protected species."</p> <p>MPI currently has fishing restrictions in place to manage threats to Maui's dolphins, including a set net ban on a large portion of the west coast of the North Island (WCNI). The recent mortality, however, occurred outside of these restrictions.</p>
Steps proposed or being taken to address this issue	<p>MPI has systems in place to ensure that these incidents are reported so that information on mortalities can be used to assess the effectiveness of current measures.</p> <p>MPI is currently working with DOC to undertake a review of threat management for Maui's Dolphins. This review is due to be completed at the end of November 2012.</p> <p>This review will assess all available information and consider what management measures are necessary to mitigate all risks of mortality to Maui's dolphins, including fishing.</p> <p>Interim measures are being implemented while the review of overall threat management is underway. Set net fishing is prohibited between 0-2 nautical miles (nm) between Pariokariwa Point and Hawera. Also fishers are required to have observers or electronic monitoring on board when they are fishing using set nets between 2-7 nm in this area. The measures will be in place by the end of July following a 28 day notification period to allow fishers sufficient time to modify their fishing practices.</p>

¹ The Act defines "associated and dependant species" as – "any non-harvested species taken or otherwise affected by the taking of any harvested species."

² The Act defines "long-term viability" to mean – "there is a low risk of collapse of the stock or species and the stock or species has the potential to recover to a higher biomass level."

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Distribution
Minister
Minister's Advisor
Minister's Office

Date: 27 January 2012

Document Number: B11- 488

Reported Hector's/Maui's Dolphin Mortality

Purpose:

To inform you that an accidental Hector's/Maui's dolphin (a protected species) mortality occurred in a commercial set net off the coast of Mt Egmont that will generate significant stakeholder media interest, and advise you on the process for releasing this information and key messages.

Minister	Action Required:	Minister's Deadline
Minister for Primary Industries	Note the recommendations	As soon as practicable
Cc: Minister for Conservation		

Contact for telephone discussion

	Name	Position	Work	After Hours
9(2)(a) {	Responsible Manager	Scott Gallacher	Deputy Director General Resource Management and Programmes	04 894 0593
	Principal Author			

Key Messages

1. An accidental Hector's/Maui's dolphin mortality has occurred in a commercial set net fishery off the coast of Mt. Egmont. This incident will generate a significant amount of media interest.
2. There is some uncertainty as to whether the dolphin caught was a Hector's or a Maui's dolphin. The location of the incident is outside of the current known range of the Maui's dolphin, but within the historic range of the population. Given the close association with the current known range, MAF considers it likely the dolphin caught was a Maui's dolphin.
3. Maui's dolphins are a critically endangered species with a small population of 111 individuals. This mortality is likely to have a significant impact on the Maui's dolphin population given its small population size and biological characteristics.
4. There are standard procedures in place for the release of this type of information, which includes notifying the Department of Conservation (DOC) of the mortality. MAF has already notified DOC of the mortality and recommends that the remaining procedures be fast-tracked so that we are able to front foot this issue in the media. The next step will be to agree to a joint position and a process for a media release with DOC. We would aim to release the information as early as possible (i.e. week beginning 30 January).
5. Note the following initial key messages have been developed in case the incident becomes public before formal release by DOC/MAF:
 - An accidental fishing mortality of a dolphin in a set net occurred off the coast of Mt. Egmont on 2 January 2012. Given the proximity to the known range of Maui's dolphins, it is likely this dolphin was a Maui's.
 - MAF has fishing restrictions in place to manage threats to Maui's dolphins, including a set net ban on a large portion of the west coast of the North Island (WCNI).
 - The current restrictions were put in place to protect Maui's dolphins from fishing-related threats throughout their known range. The recent mortality occurred outside of the current known range of Maui dolphins, as well as outside the current restrictions designed to protect these dolphins.
 - MAF has systems in place to ensure that these incidents are reported and to monitor the effectiveness of the current measures.
 - MAF and DOC have been investigating the circumstances around the incident.
 - The information will form a critical part of work on a Maui's Recovery Plan which is currently underway.
 - MAF and DOC want to acknowledge the strong co-operation from the fishing industry in this process; firstly, in informing agencies promptly of the capture and supporting further investigation of the circumstances in which it occurred.

Recommendations

6. MAF recommends that you:

- a) **Note** that an accidental mortality of a Hector's/Maui's dolphin occurred in the commercial set net fishery off the coast of Mt. Egmont which will generate considerable media and public interest.
- b) **Note** MAF intend to fast track release of this information jointly with DOC.
- d) **Note** that MAF will keep you informed of this media release.
- e) **Note** that in response to the incident, MAF will investigate the circumstances in which in the mortality occurred and feed this information into development of the Maui Recovery Plan currently underway.

Noted

Noted

Noted

Noted

Scott Gallacher
Deputy Director General
Resource Management & Programmes

Hon David Carter
Minister for Primary Industries

/ / 2012

Issue

7. A Hector's/Mauī's dolphin mortality occurred in a set net fishing operation off the coast of Mt. Egmont. The incident occurred on 2 January 2012 and was outside of the current fishing restrictions designed to protect these dolphins. See Appendix One for a map of where the incident occurred.
8. There are a number of issues around Hector's and Mauī's dolphins at present, including a new population estimate for Mauī's dolphins that is currently being peer reviewed. We will brief you on these issues separately, but consider it important to let you know about this mortality given the likelihood there will be strong public/media interest.
9. Hector's and Mauī's dolphins are protected species listed under the *Marine Mammals Protection Act 1978*. They are endemic to New Zealand and one of the world's rarest dolphins. Hector's and Mauī's dolphins are classified as 'endangered' and 'critically endangered' by the International Union for the Conservation of Nature (IUCN).
10. The environmental principles of the *Fisheries Act 1996* (the Act) require you to maintain associated or dependant species¹ at a level that ensures their long-term viability.² Section 15 is the main provision in the Act where you can make decisions to "avoid, remedy or mitigate the effect of fishing-related mortality on protected species."

Identifying the species caught

11. There is uncertainty as to whether the dolphin caught was a Hector's or a Mauī's dolphin. The magnitude of the impact on the population differs depending the species of the dolphin.
12. While the fisher identified the dolphin as a Hector's dolphin on their reporting form, Hector's and Mauī's dolphins cannot be differentiated visually. Mauī's dolphins are a sub-species of Hector's dolphins and identification of the sub-species can only be accurately determined through genetic testing.
13. The dolphin was returned to the sea after it was discovered by the fisher that it had drowned in a set net, therefore no genetic testing could be undertaken to determine the species.
14. Given the location of the incident, MAF considers that it is likely the dolphin was a Mauī's, because:
 - there is a known Mauī's dolphin population within close proximity to where the mortality occurred; and
 - there are no known Hector's dolphin populations found on the North Island. The nearest known Hector's dolphin populations are found at the top of the west and east coasts of the South Island.

¹ The Act defines "associated and dependant species" as – "any non-harvested species taken or otherwise affected by the taking of any harvested species."

² The Act defines "long-term viability" to mean – "there is a low risk of collapse of the stock or species and the stock or species has the potential to recover to a higher biomass level."

15. However, recent genetic sampling suggests that Hector's dolphins may be present on the WCNI. Two Hector's dolphins were observed and sampled on the WCNI in 2010/11. Little is known about these individuals, but they would appear to be itinerant individuals that have travelled from the West Coast of the South Island.

Why is this mortality significant?

16. Hector's and Maui's dolphins are susceptible to mortality caused by interactions with fishing gear including set nets. Given their small population size, fishing-related mortalities can have a significant effect on long-term viability of these endangered dolphin populations.
17. If the mortality was a Hector's dolphin the impact to the population is not as significant as if it were a Maui's dolphin. A fishing-related mortality of a Maui's dolphin would have a significant impact on the population.
18. The WCNI Maui's dolphin population is very small (estimated to be 111 individuals in 2004 (95% confidence interval 48 – 252)) and has probably declined from higher levels of abundance. DOC is in the process of updating this abundance estimate, and preliminary results suggest that the population has probably undergone further decline.
19. Potential Biological Removal (PBR) analysis is used to determine the vulnerability of a population to the effects of fishing-related and other human-induced mortality. The PBR analysis for the Maui's dolphin population suggests that the population can sustain no more than one human-induced death every 14 years without impacting on the ability of the population to increase to an optimum sustainable population.³
20. The very small population size means that Maui's dolphins may go extinct, even in the absence of human-induced mortality, through stochastic (e.g. disease or catastrophic weather) or depensation effects.⁴

Current management measures

21. In 2007/08 the then Ministry of Fisheries and DOC jointly developed the Hector's and Maui's Threat Management Plan (TMP). The TMP identifies all known human-induced threats to the dolphins and outlines various mitigation initiatives and future research priorities.

³ Optimum sustainable population (OSP) is recognised as a good target population size because it results in the maximum productivity of a population. OSP is not a legislated target and you are not required to rebuild a population to OSP.

⁴ Depensation is a negative effect on population growth that becomes proportionately greater as population size declines. Populations experiencing depensation are prone to further reductions in size, even in the absence of exploitation, and therefore have a greater risk of extinction.

22. A number of fishing restrictions were put in place on the WCNI to protect Maui's dolphins. This included a commercial and recreational set net ban out to 7 nautical miles from Maunganui Bluff (north of Auckland) to Pariokariwa Point (north of New Plymouth). See appendix one for map of fishing restrictions on the WCNI designed to protect Maui's dolphins.
23. The reported dolphin mortality occurred outside of these restrictions.
24. The fishing restrictions linked to the TMP were designed to manage fishing related threats to Maui's dolphins throughout their known range. When designing and consulting on these fishing restrictions, the Ministry of Fisheries considered the best available information on the distribution of the local Maui's dolphin population.
25. The location and extent of the fishing restrictions was a contentious issue during the development of the TMP and a number of submitters argued that they should extend to the southern end of the Taranaki region.
26. MAF is currently working with DOC on a Maui's Dolphin Recovery Plan. Information on this mortality will help inform development of this document and subsequent review of the TMP which is proposed for 2013.

Media Interest

27. Fishing interactions with Hector's and Maui's dolphins have consistently received a considerable amount of attention in the media.
28. The dolphin populations and impacts of fishing has been the focus of campaigns by national and international environmental groups such as WWF, Forest and Bird, and the Nature and Biodiversity Conservation Union.
29. Environmental groups have lobbied the previous Ministry of Fisheries in the past to extend the current fishing restrictions to include the southern Taranaki region. It is likely that that these groups will use the media to publicise this incident as justification for further protection of Maui's dolphins from the impacts of fishing.
30. Therefore, there is likely to be a considerable amount of negative media towards the commercial fishing industry and MAF as a result of this incident.

Process for information release

31. Following the standard process, information on the mortality would be released as part of quarterly reporting on dolphin mortalities undertaken by DOC. This report covers mortalities from all causes and is primarily driven by information on beach cast animals where cause of death has not been determined.
32. MAF considers the possible fishing related mortality of a Maui's dolphin a high media risk issue. MAF proposes that this risk be managed by "front footing" media interest with an immediate media release.

33. Given joint agency interest in fisheries interactions with protected species MAF considers a joint press release should be developed. If you agree, MAF will work with DOC to agree on a joint position, key messages, and process for media release.
34. MAF's initial position key messages relating to the incident are as follows:
- An accidental fishing mortality of a dolphin in a set net occurred off the coast of Mt. Egmont on 02 January 2012. Given the proximity to the known range of Maui's dolphins, it is likely this dolphin was a Maui's dolphin.
 - MAF has fishing restrictions in place to manage threats to Maui's dolphins including a set net ban on a large portion of the west coast of the North Island (WCNI).
 - The current restrictions were put in place to protect Maui's dolphins from fishing-related threats throughout their known range. The mortality occurred outside of the current known range of Maui dolphins, as well as outside the restrictions put in place to protect the dolphins.
 - MAF has systems in place to ensure that these incidents are reported and to monitor the effectiveness of the current measures.
 - MAF and DOC have been investigating the circumstances around the incident.
 - The information relating to the incident will form a critical part of work on a Maui's Recovery Plan which is currently underway.
 - MAF and DOC want to acknowledge the strong co-operation from the fishing industry in this process; firstly in informing agencies promptly of the capture and supporting further investigation of the circumstances in which it occurred.

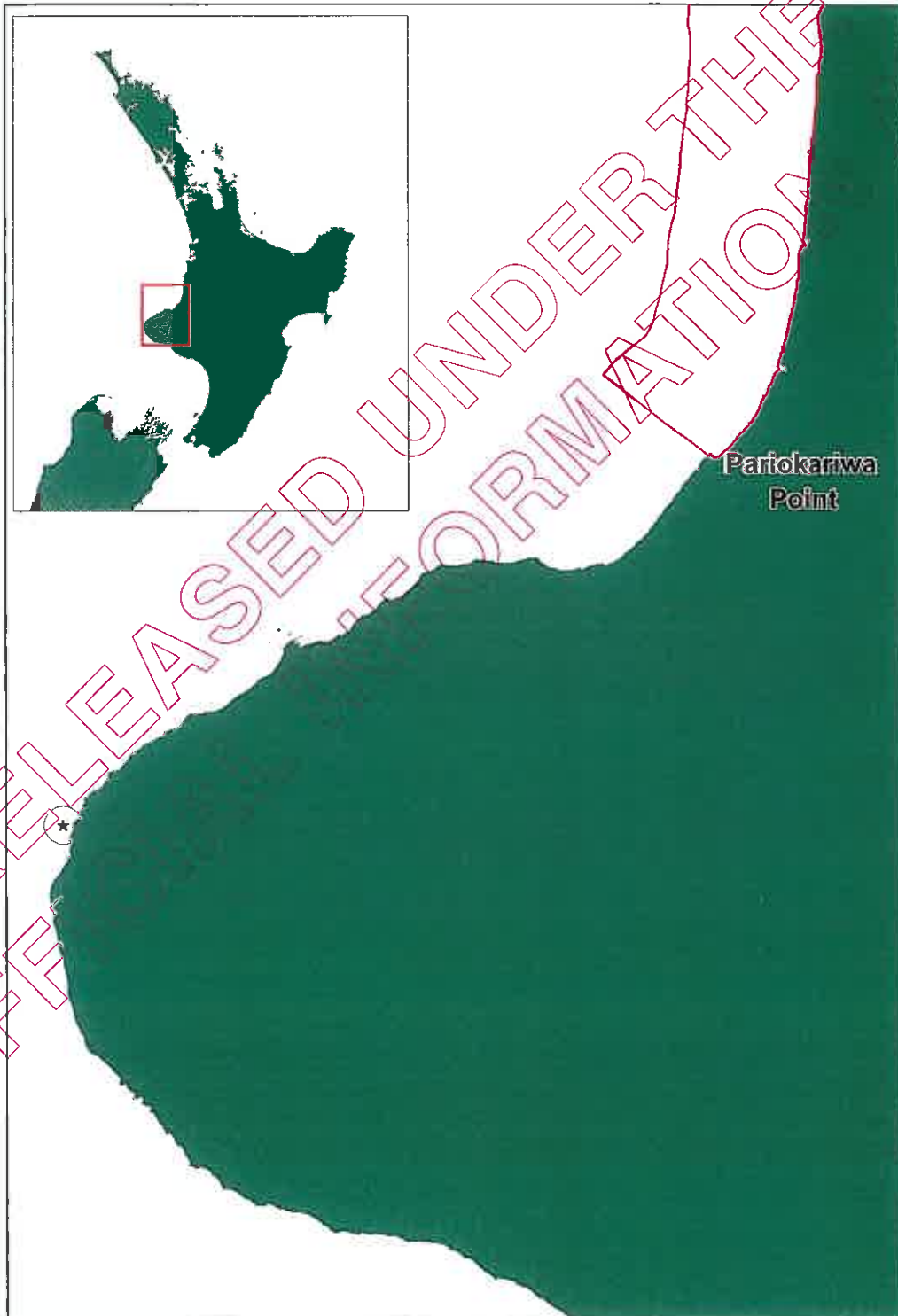
Conclusions

35. If the dolphin was a Maui's dolphin, it would be likely to have a significant impact on the critically endangered Maui's dolphin population. MAF and DOC, with the full cooperation of the fishing industry, have been investigating the circumstances around the incident. We will, however, never have any certainty on the precise identification of the dolphin.
36. Due to high media risk, MAF recommends that you agree that the notification procedures be fast tracked in order to best manage the negative media that this incident will generate. Note that MAF has already informed DOC of the incident. The next step is for MAF to work with DOC to agree on a joint position and process for the release of information on this incident.

Appendices

Appendix One: Location of the Hector's/Maui's dolphin mortality

The below map indicates where the Hector's/Maui's dolphin mortality occurred using a symbol of a star (★). The circle around the star indicates the reporting accuracy that fishers are required to report by. Therefore the mortality could have occurred anywhere within the circle. The area boxed in red shows the southern end the set net restriction which bans the use of set nets out to 7 nautical miles from Pariokariwa Point north to Maunganui Bluff.



Appendix Two: WCNI Set Net Prohibition

Set netting is prohibited between Maunganui Bluff north of Kaipara Harbour and Pariokariwa Point north of New Plymouth – offshore to seven nautical miles. Set netting is prohibited at the entrance of the Kaipara, Manukau and Raglan Harbours as well as at the Waikato River entrance.



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Distribution
Minister
Associate Minister
Minister's Advisor
Minister's Office

2 March 2012

Document Number:

B11-562

Managing Impacts on Maui's Dolphins

Purpose:

The purpose of this briefing is to inform you of MAF and DOC's plans to review the threat management of Maui's dolphins. This briefing also informs and seeks direction from the Minister for Primary Industries and the Minister of Conservation on the need for interim measures to manage the risk of any additional dolphin mortality while the review is being undertaken.

Minister	Action Required:	Minister's Deadline
Minister for Primary Industries	<ul style="list-style-type: none"> Agree that review of Maui's dolphin threat management is necessary in light of new information and that this will be undertaken as a joint agency project between MAF and DOC. Note that MAF and DOC expect that work to undertake this review will be completed by November 2012 with recommendations provided to Ministers. Agree, or not agree, that interim measures may be necessary to manage the risk of any additional mortality while the review is being undertaken If you agree to the above, direct agencies to consult and provide advice on one of the following options: <ul style="list-style-type: none"> <u>Option 1:</u> Interim set net ban from Pariokariwa Point south to Hawera out to 2 nautical miles from shore using section 11 of the Fisheries Act (MAF's preferred option) <u>Option 2:</u> Interim extension of the West Coast North Island Marine Mammal Sanctuary to Hawera with restrictions on seismic surveys throughout the extension and on set netting to 7 nautical miles from shore, using the Marine Mammals Protection Act (DOC's preferred option) <u>Option 3:</u> As an alternative you have the option to instruct officials to prepare advice on using a combination of MMPA and Fisheries Act measures 	A Meeting with DOC and MAF officials should be arranged as soon as possibly convenient to allow a discussion on the recommendations and options.
Minister of Conservation		

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Cc: Associate Minister for Primary Industries

Officials Attending the Meeting

MAF Officials to attend meeting:

- Scott Gallacher - Deputy Director General, Resource Management and Programmes

DOC Officials to attend meeting:

- Kevin O'Conner - Deputy Director General, Science and Technical
- Sean Cooper - Manager Marine Conservation

MAF and DOC contacts for telephone discussion

3(2)(a)

	Agency	Name	Position	Work	After Hours
Responsible Director	MAF	Scott Gallacher	Deputy Director General	04 894 0593	
Responsible Director	DOC	Kevin O'Connor	Deputy Director-General Science & Technical Group	04 494 1464	
Joint Principal Author	DOC	Sean Cooper	Manager Marine Conservation	04 471 3293	

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Recommendations

1. MAF and DOC recommends that you:

- a) Agree that review of Maui's dolphin threat management is necessary in light of new information and that this will be undertaken as a joint agency project between MAF and DOC.

Agreed/Not Agreed

- b) Note that MAF and DOC expect that work to undertake this review will be completed by November 2012 with recommendations provided to Ministers.

Noted

- c) Agree, or not agree, that interim measures may be necessary to manage the risk of any additional mortality while the review is being undertaken

Agreed/Not Agreed

- d) If you agree to the above, direct agencies to consult and provide advice on one of the following options:

- Option 1: Interim set net ban from Pariokariwa Point south to Hawera out to 2 nautical miles from shore using section 11 of the Fisheries Act (MAF's preferred option)

Agreed/Not Agreed

- Option 2: Interim extension of the West Coast North Island Marine Mammal Sanctuary to Hawera with restrictions on seismic surveys throughout the extension and on set netting to 7 nautical miles from shore, using the Marine Mammals Protection Act (MMPA) (DOC's preferred option)

Agreed/Not Agreed

- Option 3: As an alternative you have the option to instruct officials to prepare advice on using a combination of MMPA and Fisheries Act measures

Agreed/Not Agreed

Scott Gallacher
**Deputy Director General
Resource Management &
Programmes**

Hon David Carter
Minister for Primary Industries

/ / 2012

Kevin O'Conner
**Deputy Director General
Science and Technical**

Hon Kate Wilkinson
Minister of Conservation

Executive summary

2. This is a joint briefing developed by the Ministry of Agriculture and Forestry (MAF) and the Department of Conservation (DOC).
3. The purpose of this briefing is to inform you of MAF and DOC's plans to review the threat management for Maui's dolphins. This briefing also informs and seeks direction from the Minister for Primary Industries and the Minister of Conservation on the need for interim measures to manage the risk of any additional dolphin mortality while the review is being undertaken.
4. MAF and DOC consider that there is justification for interim measures while the review is being undertaken.
5. MAF's preferred option is Option 1, extension of the current set net closure from Pariokariwa Point south to Hawera and offshore to 2 nm. MAF recommends that section 11(1) of the Fisheries Act be used to implement this option.
6. DOC's preferred option, Option 2, is an interim extension of the West Coast North Island Marine Mammal Sanctuary to Hawera with restrictions on seismic surveys throughout the extension and on set netting to 7 nm from shore, using the Marine Mammals Protection Act.

Background

7. Maui's dolphins are protected species listed under the Marine Mammal Protection Act 1978. They are endemic to New Zealand and one of the world's rarest dolphins. Maui's dolphins are classified as 'nationally critical' and 'critically endangered' by the Department of Conservation (DOC) and the International Union for the Conservation of Nature (IUCN).
8. Maui's dolphins are susceptible to human-induced threats. Human threats include fishing, boat strike, mining, construction, coastal development, pollution, marine tourism, marine farming and climate change. Fishing is however, the greatest cause of human-induced mortality for Maui's dolphins, where cause of death is known. Fishing-related threats include entanglement in set nets, trawl nets, drift nets and cray pot lines.
9. Published research, in 2005 estimated the Maui's dolphin population to be 111 individuals¹ and to have probably declined from higher levels of abundance. Based on this population size, Potential Biological Removal (PBR)² analysis for the Maui's dolphin population suggests that the population can sustain no more than 1 human-induced death every 5 years without impacting on the ability of the population to rebuild to optimum sustainable population size.³

¹ With a 95% confidence interval that the population was between 48 – 252 individuals

² PBR analysis is used to determine the vulnerability of a population to the effects of fishing-related and other human-induced mortality.

³ Optimum sustainable population (OSP) is recognised as a good target population size because it results in the maximum productivity of a population. OSP is not a legislated target and you are not required to rebuild a population to OSP.

10. The environmental principles in the Fisheries Act 1996 require the Minister for Primary Industries to maintain associated or dependant species⁴ at a level that ensures their long-term viability.⁵
11. The MMPA gives the Minister of Conservation the power to, by notice in the *Gazette*, define any place and declare it to be a Marine Mammal Sanctuary (MMS). When defining and declaring a sanctuary, the Minister may also specify the activities that may or may not be engaged in within the sanctuary, and may impose restrictions in respect of the sanctuary.
12. In 2008, the then Minister of Conservation established the West Coast North Island Marine Mammal Sanctuary. This currently extends from Maunganui Bluff in Northland to Oakura Beach in Taranaki (see Appendix Two). The sanctuary also established restrictions on sea bed mining and on seismic survey activities as both were known to be potential threats to the dolphins.
13. The New Zealand Government is also party to a number of international conventions and agreements, including the Convention on Biological Diversity. These generally require measures to be taken to mitigate human-induced threats to endangered species, to ensure that their conservation status is improved or sustained and that the genetic diversity of the species is maintained.

Current management

14. The Hector's and Maui's dolphin Threat Management Plan (TMP) was jointly developed by MAF and DOC in 2008. Measures to protect Maui's dolphins were put in place through the TMP
15. Set net, trawl and drift net fishing closures (under the Fisheries Act) are in place to protect Maui's dolphins from fishing-related threats on the west coast of the North Island (WCNI). A WCNI Marine Mammal Sanctuary (MMS) is in place to manage the risk of other human-induced mortality from non-fishing sources. Within the MMS there are restrictions on seabed mining activities and acoustic seismic surveying.
16. The boundaries of the above measures vary. See appendix one for more information.
17. The boundaries of the set net closed areas were based on scientific research concerning the range for Maui's dolphins. The TMP noted that while there had been occasional, unsubstantiated public sightings of Maui's dolphins south of the currently closed areas, there had been no recent scientific research sightings in this area. The public sightings were considered to represent isolated and infrequent dolphin excursions. The then Minister of Fisheries decided that Taranaki was unlikely to be part of the Maui's dolphin current range.

⁴ The Act defines "associated and dependant species" as – "any non-harvested species taken or otherwise affected by the taking of any harvested species."

⁵ The Act defines "long-term viability" to mean – "there is a low risk of collapse of the stock or species and the stock or species has the potential to recover to a higher biomass level."

New Information

Maui's dolphin mortality in commercial set net

18. As you are aware, a dolphin mortality, considered by MAF and DOC likely to be a Maui's, occurred in a commercial set net off Cape Egmont, in Taranaki on 02/01/12.
19. The mortality was reported by the fisher to be a Hector's dolphin. It is not possible to verify the taxa of the animal without genetic analysis, as there are no clear morphological differences between the species. MAF and DOC consider that the dolphin was more likely to be a Maui's because of the proximity to the southern extent of the current Maui's dolphin distribution, reports of public sightings and historic records for this area. However, this assessment is uncertain and strongly disputed by industry.
20. This mortality occurred outside of the current set net fishing closure and the MMS.

Maui's dolphin abundance estimate

21. DOC will be releasing new research estimating the population abundance of Maui's dolphins in early March. The research estimates the population abundance of Maui's dolphins to be 55 (with 95% confidence intervals that the population is between 48 and 69), which is significantly lower than the 2005 estimate.
22. DOC is also commissioning an updated PBR estimate based on the new population abundance from independent researchers. This work will be conducted by a world authority on PBR estimation and will be available at the same time as the abundance report (above). A preliminary assessment from MAF suggests that the new PBR will mean the population can sustain 1 human-induced mortality every 10 to 23 years without impacting on the ability of the population to rebuild to its optimum sustainable population size. This supports the need to ensure human-induced mortality is zero.

Need for Review of Threat Management

23. MAF and DOC consider that, in light of the recent dolphin mortality and new research updating the abundance estimate for Maui's dolphins, a review of Maui's dolphin threat management is now necessary. Both agencies consider that the most appropriate mechanism to undertake this is through a staged review of the TMP.
24. A review would be undertaken for Maui's dolphins first, given the new information, followed by a review for Hector's dolphins. This will ensure that proposed research to inform Hector's dolphin management can be taken into account as part of the review.⁶

⁶ MAF will be commissioning research to update the ECSI abundance estimate for Hector's dolphins. This research is due to be completed around October 2013. This will provide valuable information to inform future management of Hector's dolphins for both agencies.

25. The scope of the Maui's portion of the review will include a risk assessment of all impacts on Maui's dolphins (human-induced and non human-induced) and to provide Ministers with advice on various mitigation measures for human-induced threats, research priorities and monitoring required to manage these threats.
26. MAF and DOC expect the review to be completed by November 2012 with recommendations provided to Ministers. This timeframe will provide the best opportunity to develop a robust plan.

Need for interim measures

27. The Minister of Conservation and/or the Minister for Primary Industries may consider that interim measures are necessary while the TMP review is undertaken. There may also be pressure from within and outside of government to implement interim measures if the timing of the review of the TMP is not considered to be responsive enough.
28. The purpose of any interim measure would be to reduce the risk of any additional Maui's dolphin mortality while the review is being undertaken.
29. Human-induced mortality of Maui's dolphins can occur as a result of fishing boat strike, pollution, mining and tourism impacts. All human-induced threats would be reviewed through the review of the TMP.
30. Maui's dolphin mortalities are reported by DOC in the Hector's and Maui's dolphin incident database. Since 1921 44 Maui's dolphin mortalities have been reported in the database. Of these cause of death was established for 11 mortalities and 6 of these were attributed to possible, probable or known entanglement in a fishing net. MAF and DOC consider that interim measures, if necessary, should be focused on managing this threat. However it should be noted that risk of mortality remains from other sources, particularly boat strike.
31. Implicit in your consideration of whether or not interim measures are necessary is deciding whether you consider the likelihood and consequence of any additional mortality from fishing in the interim is acceptable.
32. Where there is overlap between fishing activity and dolphin distribution there is a risk of mortality. The likelihood of a further mortality from set net fishing in the area south of the current fishing restrictions is considered by MAF and DOC to be very low because:
 - a. The area south of the closure is not within the Maui's dolphin's known range, as established by scientific research.
 - b. The TMP noted that Maui's dolphin sightings in this area represent isolated and infrequent dolphin excursions south of their range. There have however been unverified public sightings in this area as well as the January set net mortality since the TMP was finalised (see appendix three).

- c. There has not been any other Maui's dolphin mortalities reported by commercial set net fishers in the DOC incident database.⁷
 - d. There are existing measures in place to protect against fishing-related mortality in areas where the dolphins are most abundant.
 - e. There is relatively low fishing effort occurring in the area south of the set net closure.
33. The consequence of an additional fishing mortality to the Maui's dolphin population is considered by MAF and DOC to be high because:
- a. The Maui's population is at a very low level (latest estimate of 55 individuals) and each or any additional mortality (including natural mortality) increases the chance that the population will not be able to recover.⁸
 - b. Given the new population estimate the PBR analysis now suggests that the population can sustain only 1 human-induced mortality every 10 to 23 years without impacting on the ability of the population to rebuild to its optimum sustainable population size.
 - c. Since 2002, a total of 12 Maui's dolphin mortalities have been recorded in the DOC, incident database. Three of these mortalities were from interactions with set nets (two considered to be from amateur set net and one being the January commercial mortality).
 - d. There is a 75% likelihood that the population has been declining between 2001 and 2011.
 - e. The loss of one or two breeding females diminishes the resilience of the population and its ability to respond to any further impact.⁹
34. You should also note the following factors when considering the necessity of interim measures:
- a. It cannot be confirmed whether the January mortality was a Maui's or Hector's dolphin. This represents an uncertainty or deduction from fact that is open to legal risk.
 - b. You are entitled under the Fisheries Act to take a cautious approach towards the management of impacts on protected species and where information is uncertain.
 - c. A small population size means that Maui's dolphins may go extinct even in the absence of human-induced mortality, through stochastic events (e.g. disease or catastrophic weather) or depensation¹⁰ effects.

Extent of Interim Measures

35. If you considered that extension of the marine mammal sanctuary and the current set net ban further south are necessary interim measures; consideration would need to be given to how far south the extension and any closure would

⁷ Reported mortalities may however only provide an indication of the nature of the threat given that onboard or observer monitoring of commercial fisheries is low and there are mixed incentives to report incidents.

⁸ It is uncertain whether the population is below at or above the point where it may not be able to rebuild.

⁹ The January dolphin mortality was reported by the fisher to be a female and another female Maui's dolphin was discovered dead (cause of death unknown) on the beach in Manukau Harbour in October 2011.

¹⁰ Depensation is a negative effect on population growth that becomes proportionately greater as population size declines. Populations experiencing depensation are prone to further reductions in size, even in the absence of exploitation, and therefore have a greater risk of extinction.

extend beyond the site of the January mortality and how far offshore. The costs and benefits of the interim measures will differ based on these considerations. Four options are outlined below for maps of these options refer to Appendix two:

- **Option a:** Pariokariwa point south to Hawera out to 2 nautical miles
- **Option b:** Pariokariwa point south to Hawera out to 4 nautical miles
- **Option c:** Pariokariwa point south to Hawera out to 7 nautical miles

36. Options for an extension of the marine mammal sanctuary, with or without restrictions are outlined below:

- a. Oakura Beach south to Hawera out to 12 nautical miles with seismic survey restrictions throughout the extension
- b. Oakura Beach south to Hawera and out to 12 nautical miles, with seismic survey restrictions throughout the extension out and set net restrictions out to 7 nautical miles

37. The southern boundary of these proposed options at Hawera is considered appropriate because the maximum alongshore movement of Maui's dolphins is estimated to be 80km. Hawera is approximately 79km alongshore from the site of the January mortality.

38. The primary benefit associated with these options is a reduction in risk of dolphin mortality. The larger the area covered by interim seismic survey regulation and / or a set net closure the greater the risk to Maui's dolphins is managed. The above options are ordered from least cautious (i.e. greatest residual risk to Maui's dolphins) to most cautious.

Economic impacts of options

39. The primary cost associated with these options is the economic impact on the fishing industry and the wider economy. The greater the reduction in risk of mortality from set net fishing the greater the economic impact.

40. The table below estimates the expected economic impacts of each option.¹¹

Annual Impact	Option a	Option b	Option c
Direct harvesting income lost	\$22,408	\$49,667	\$68,636
Processing income lost	\$41,230	\$91,387	\$126,290
Indirect income lost	\$50,193	\$111,254	\$153,745
Induced income lost	\$36,749	\$81,454	\$112,563
Quota value	\$0.00	\$0.00	\$0.00
Total	\$150,580	\$333,763	\$461,234

¹¹ Information to inform this analysis is based on fisher catch reporting data where it is provided by start position with the same methodology applied to it that was used in the development of the TMP. Vessels under six metres in length only report their position by statistical area. Statistical areas are significantly larger than the areas under analysis. It is estimated that these vessels, less than 6m, account for 5.5% of the total catch and 8.9% of total number events occurring in these statistical areas. An additional 9% has been added to the estimates to account for this uncertainty.

41. Information from fisher reporting data in the last fishing year suggests that there are six permit holders operating six vessels in the total area covered by the options.
42. The above assessment does not fully account for the following economic impacts:
 - a. The future impacts on the economy (i.e. the value of quota) if the options were to become permanent or left in place for a period exceeding 12 months.
 - b. The impact of the loss of area on the harvesting sector's ability to obtain catch outside of the closed area, noting that the current set net closure has already resulted in a significant area loss.
 - c. The impact on small scale operators fishing out of New Plymouth. These operators may not be able to continue fishing outside of proposed closures (further offshore or south) in a way that ensures the safety of crew and vessel. This means that such closures may shut them out of the fishery completely.
43. If the Minister of Conservation and/or the Minister for Primary Industries consider an interim measure, as described in the options above, to be necessary there are a number of legislative tools available to undertake this. The decision on what tool should be used to implement any interim measure is dependent on:
 - a. the appropriateness of the tool for the purpose
 - b. the timeframe in which the measure/s could be implemented under the tool
 - c. the ability of the associated agency to enforce the measure.
44. An assessment of these factors is provided in the following sections.

Implementation tool: Fisheries Act (Minister for Primary Industries)

Section 16 Emergency Measures

45. Section 16(1)(b) of the Act says that if satisfied that there is or has been a serious decline in the abundance or reproductive potential of one or more stocks or species the Minister may, by notice in the Gazette, impose such emergency measures in respect of any stocks or areas affected, or both, as the Minister considers necessary or expedient in the circumstances.
46. Emergency measures under s 16(1) can be in force for 3 months and may (after consultation) be extended for a further 9 months (thus can be in force for a total of 12 months). They are therefore a temporary or holding action until a more permanent measure can be put in place if proven necessary.
47. Before giving any notice under s 16(1) the Minister is required to consult to the extent reasonably practicable in the circumstances.

Legal risk and implementation timeframe

48. The above consultation requirement is not strictly necessary in every circumstance however in this particular case a 2-3 week consultation period would be appropriate.
49. The timeframe to undertake consultation, notification and introduction of interim measures under this tool is expected to be 5-6 weeks.
50. The main legal risk with this tool is the ability to establish that there has been a serious decline in the abundance or reproductive potential of Maui's dolphins. The single January mortality alone may not be considered sufficient to meet this requirement. A court may on review decide that there was not in fact a 'serious decline' or that the Minister could not on the facts given to him find that the emergency measures were 'necessary' or 'expedient.'

Section 15 Regulatory Measures

51. Section 15 allows the Minister to impose such measures as he considers necessary to avoid, remedy or mitigate the effect of fishing related mortality on protected species. Such action would result in the making of regulations under s 298 and hence requires Cabinet Committee approval. Before making a decision full consultation as defined in s 12 is required (best practice being 6 weeks with a minimum of 4 weeks).

Legal risk and implementation timeframe

52. General requirements that advice provided to the Minister to inform his decisions is based on best available information and the advice does not contain any reviewable errors are the primary legal risks associated with this tool.
53. The timeframe to undertake this including consultation, preparing advice and the regulatory process is expected to be 10-12 weeks. This assumes a limited consultation period and approval to proceed direct to Cabinet.

Sustainability measure gazetted under Section 11

54. Section 11 of FA 96 allows the Minister to set or vary any sustainability measure for one or more stocks or areas after taking into account the affects of fishing on the environment, existing controls under the Act and the natural variability of the stock concerned.
55. Section 11 sustainability measures can be put in place by either regulation or Gazette notice. The latter option results in a shorter timeframe.

Legal risk and implementation timeframe

56. Generally, this section is not used for the purpose of protecting non-fished species. However there is precedence of this being used in the past to protect

non-fished species. For example the Fisheries (Seabird Sustainability Measures-Bottom Longlines) Notice 2008 (F430) contains quite extensive regulatory type provisions and was stated to come into force 28 days after its notification in the Gazette.

57. Overall there is some ambiguity whether Maui's dolphins are considered to be a stock under the Fisheries Act which is typically used to refer to fished species. Notwithstanding this the wording in s 11 suggests that the provision can be used.
58. The timeframe to undertake consultation, notification and introduction of interim measures under this tool is expected to be 5-6 weeks, again assuming a truncated consultation process.

Implementation tool: Voluntary

59. The fishing sector could choose to take voluntary action by agreeing to a moratorium on set net fishing in southern Taranaki. At a meeting in New Plymouth on February 29th fishers were provided with an opportunity to discuss these voluntary actions.
60. Use of a voluntary tool is likely to be the most responsive as it is not required to be enforced by law prior to operation (or at all). This tool will therefore also avoid any legal risks as it would be supported by the fishing industry, the most likely sector to take legislative action.
61. If you decide to move forward with the implementation of voluntary actions, further discussions would be required. MAF is unsure how receptive the fishers will be towards implementing these actions.

Implementation tool: MMS Extension (Minister of Conservation)

62. Any extension of the Marine Mammal Sanctuary would be done under the provisions of s.22 of the MMPA.
63. In extending the sanctuary, s.22(2) of the MMPA allows you to specify activities that may or may not be engaged in and impose additional restrictions, and these could include restricting the activity of set net fishing. Both the extension of the sanctuary area, and any activities that may or may not be engaged in and any additional restrictions, would require gazettal and could be done at the same time.
64. Seismic surveys, which produce high power sound, are regulated for in the MMS. The potential impacts on marine mammals from seismic surveys include masking of behaviours such as communication and foraging, but at these high levels can also lead to temporary or permanent hearing loss or auditory damage. For this reason the current regulations on seismic surveying within the MMS should be maintained within any further extension (eg, offshore 12nm and to Hawera (see map attached)).

65. We also suggest, again to maintain continuity with the rest of the current set net restrictions and also the available information on the threat to the dolphins, that such set net fishing restrictions extend to 7nm offshore and to Hawera (see map attached).
66. In considering additional measures, the Act provides little guidance for your decision. However, you will need to consider whether the likelihood and consequence of any further fishing-related mortality of Maui's dolphins merits any additional restrictions over and above the status quo. You will also need to consider the socio-economic consequences associated with further restrictions.
67. You may choose to regard any extension to the Marine Mammal Sanctuary and the imposition of restrictions under the MMPA as interim measures that may be subject to future review, including as part of the upcoming review of the Threat Management Plan.
68. Section 22 MMPA provides that where any other Minister of the Crown has the control of any Crown-owned land, foreshore, seabed, or waters of the sea which is declared to be a marine mammal sanctuary or which forms part of one, the consent of that Minister to the declaration must be notified concurrently with the notice. This requirement also applies to any amendment to a sanctuary boundary or its conditions.
69. The proposals you have asked us to advise you on would affect fishing activities and so would require the consent of the Minister for Primary Industries, the Minister of Transport, and of the Minister of Energy and Resources.

Process to be followed for altering an existing marine mammal sanctuary

70. The powers of the Minister of Conservation under section 22(1) of the MMPA provide the authority to alter an existing marine mammal sanctuary. A Ministerial decision to vary, redefine, or abolish an existing marine mammal sanctuary will need to be notified in the Gazette.
71. The public have a chance to make submissions in writing to the proposals in the notice within 28 days from the date of the publication of the notice. A summary of submissions will be provided to you in due course along with any recommendations or changes in the light of those submissions. You must consider those submissions with an open mind without predetermination. You will then need to decide whether to amend the Sanctuary as notified in the Gazette or in any different way from the way it was notified, or not to amend the Sanctuary at all. The next steps following that will be along one of the following lines:
 - a. if you decide to amend the Sanctuary as notified, a Notice will be prepared by Parliamentary counsel for you and your Ministerial colleagues to sign;
 - b. if you decide to vary or redefine the Sanctuary from the way its amendment was notified, a similar process as (a) above will follow;
 - c. if you decide not to amend the Sanctuary, you will need to notify your decision by a notice in the Gazette.

72. Each of these steps must be supported by the consents of your Ministerial colleagues.
73. There is nothing preventing the Department from engaging in more consultation than the minimum 28 day submission period in order to work better with communities and iwi or simply for better administrative purposes. You may decide to allow for additional consultation. (For example, local iwi have an interest in Hector's and Maui's dolphin, which are considered taonga species. They also have interests in marine resources and fishing.)
74. As noted, section 22 of the MMPA requires the consent of relevant Ministers to be obtained when notifying a marine mammal sanctuary. This will include the Minister for Primary Industries, Minister of Transport and the Minister of Energy and Resources.
75. Any process to later review an extension or variation to the sanctuary would be similarly done under s22 of the Act. This could be done at any time, including in conjunction with the upcoming review of the TMP.

Implications for Other Activities

76. A wide review of human-induced threats if relevant, are more appropriately addressed through the upcoming review of the TMP, which will consider sites both within and outside existing marine mammal sanctuaries.

Legal risk and implementation timeframe

77. Following consultation, and should you consider, after taking into account of submissions, that additional measures are necessary, officials consider that any extended Marine Mammal Sanctuary and associated fishing restrictions could be in place by the end of May 2012.

Recommendations

MAF's Preferred Option

78. MAF considers there is rationale for taking step now to further protect Maui's dolphins while the threat management review is undertaken. MAF's preferred option at this point is Option 1, extension of the current set net closure from Pariokariwa Point south to Hawera and offshore to 2 nm subject to the results of consultation. Section 11(1) of the Fisheries Act could be used to introduce a sustainability measure either by gazette notice or by regulation.¹² At this stage MAF prefers the gazette option as it avoids the regulation making timeframes. This is a permanent measure (unlike a section 16 emergency measure) but it can be revoked or adjusted based on the outcome of the review.
79. MAF at this point has a preference for Option 1 because this sufficiently manages the residual risk to Maui's dolphins while allowing continued utilisation of fisheries resources further offshore. Maui's dolphin use of the area south of

¹² The existing set net ban is in place by regulation.

the existing closure is considered by MAF to represent rare and infrequent dolphin excursions south of their known range. Maui's dolphins are protected from the effects of set nets in areas where they are most abundant. Option 1 is therefore considered to be appropriate to manage the low residual risk to the dolphins in this area.

80. Section 11(1) provides a responsive tool to implement this option. MAF also prefers that the Fisheries Act and MAF remain the primary legislative tool and agency for managing the impacts of fishing. In recent times, it has been recognised that MAF is better placed in terms of resourcing (primarily through fisheries officers) to actively enforce and monitor any fishing restrictions. MAF control of fishing restrictions also removes regulatory duplication and any on the water confusion as to who enforces such restrictions.

DOC's Preferred Option

81. DOC's preferred option is, through the MMPA, to extend the boundaries of the current marine mammal sanctuary from Oakura Beach south to Hawera and out to 12 nautical miles, to establish seismic survey restrictions throughout the extension and to establish set net restrictions out to 7 nautical miles.

82. DOC considers that this is the most appropriate option because:

- The very small population size, vulnerability to decline and recent mortality mean that a precautionary approach is appropriate to ensure the continued survival of the subspecies, particularly as an interim measure
- New information is now available that suggest the dolphins may range in the Taranaki area more frequently than previously thought.
- Maui's dolphins are known to range up to 7nm offshore meaning that this distance offshore is ecologically driven. There is no obvious reason, other than socio-economically, to restrict interim measures to 2 or 4 nm offshore
- This option is consistent with existing measures which also impose a 12nm marine mammal sanctuary and a 7nm set net prohibition
- The use of Marine Mammals Act tools to implement fisheries restrictions to address threats to protected marine mammal species carries lower legal risk than the use of equivalently timed Fisheries Act tools
- It is appropriate to use conservation legislation tools to protect critically endangered species such as Maui's dolphins, although Fisheries Act tools are often used successfully

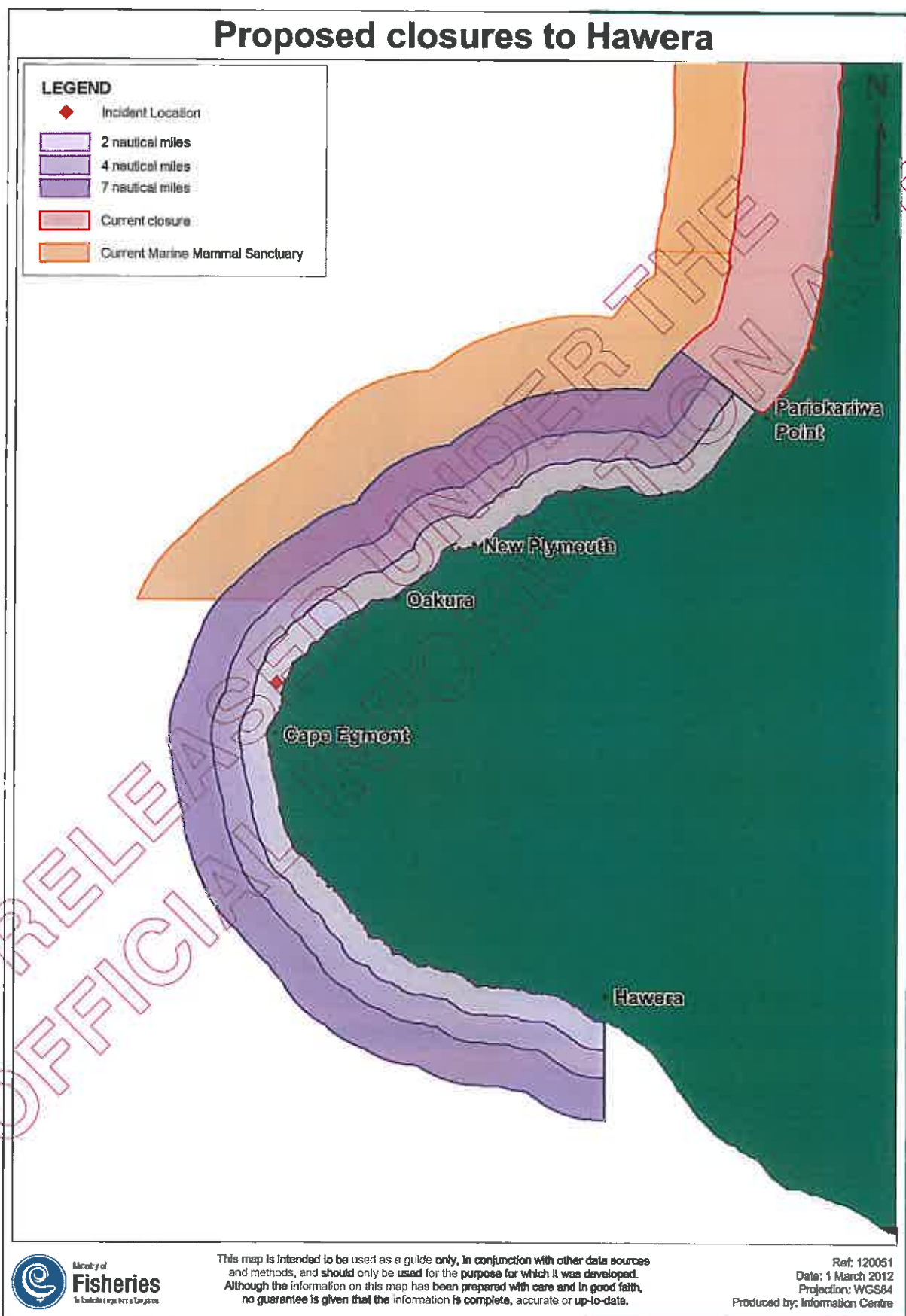
75. DOC notes that additional compliance and monitoring activity will be necessary and that this will require additional resources.

Appendices

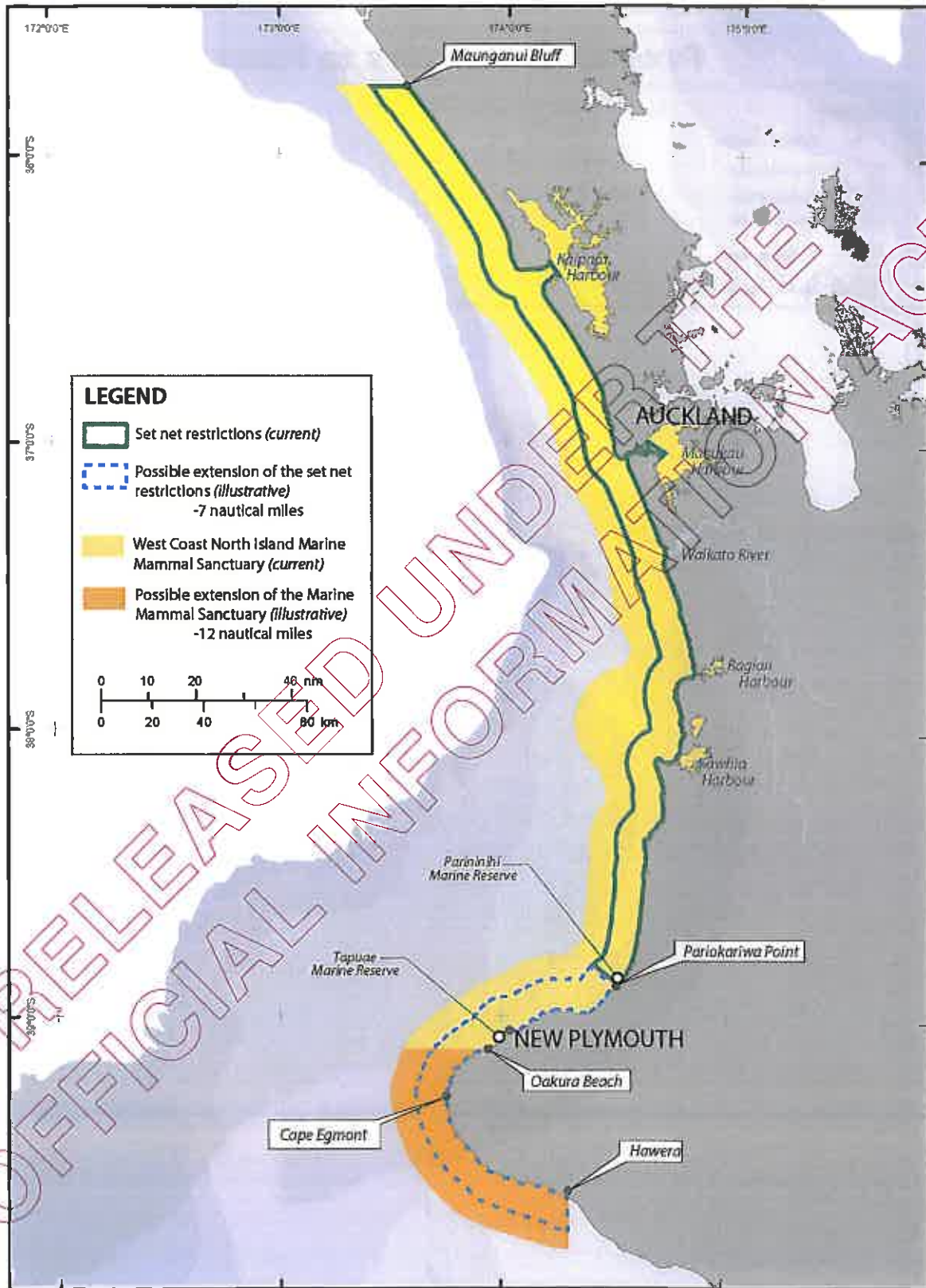
Appendix One: WCNI Fishing Prohibitions and Marine Mammal Sanctuary to Protect Maui's Dolphins



Appendix Two: Map of options for interim fishing measures

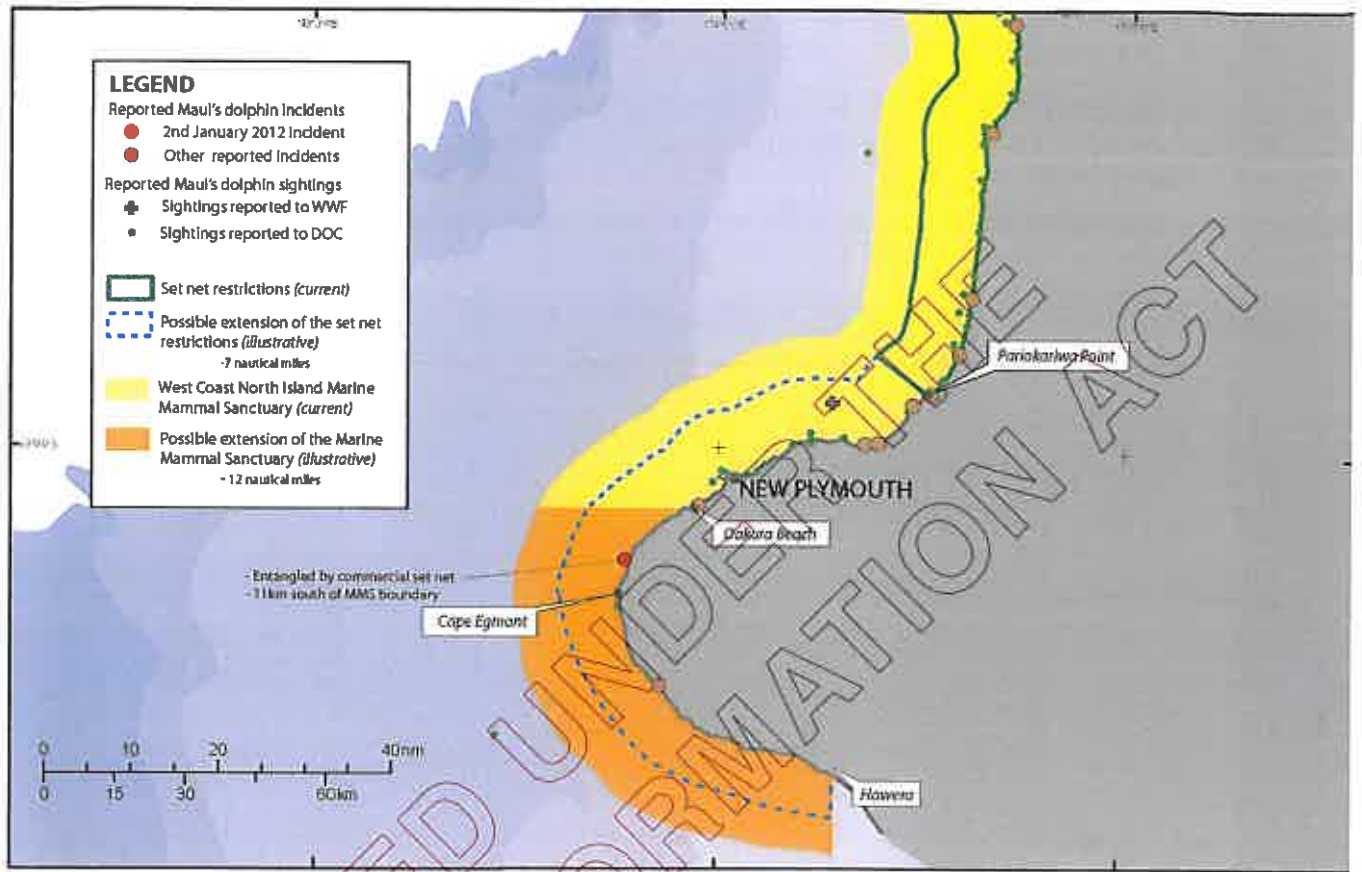


Map 2: Options for MMS changes



Appendix Two

Appendix Three: Sightings and incident data



Appendix Three

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Distribution
Minister
Minister's Advisor
Minister's Office

Ministry for Primary Industries
Manatū Ahu Matua



12 July 2013

Document Number: B12-972

International Whaling Commission Scientific Committee outcome and Maui's dolphins TMP

Purpose:

This briefing provides you with the initial MPI's analysis of the most recent International Whaling Commission (IWC) Scientific Committee (SC) report and recommendations regarding fishing-related issues.

Minister	Action Required:	Minister's Deadline
<p>9(2)(g)(i) Minister for Primary Industries</p>	<p>Note in June 2013 a New Zealand delegation comprising officials from the Ministry for Primary Industries (MPI), Department of Conservation, Ministry of Foreign Affairs and Trade and an independent New Zealand marine biologist went to the International Whaling Commission (IWC) Scientific Committee (SC) meeting</p> <p>Note that MPI will work with your office to support you on responding to any public or media inquiries regarding the IWC SC recommendations and the TMP</p>	<p>Before you meeting with the Minister of Conservation on Monday morning 15 July</p>
<p>CC Associate Minister for Primary Industries</p>		

Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
9(2)(a) {	Responsible Manager	Andrew Doube	Manager, Inshore Fisheries	04 819 0029
	Principal Author			

Key Messages

1. The 65th meeting of the International Whaling Commission (IWC) Scientific Committee (SC) was held in the Republic of Korea from 3-15 June 2013.
2. The 2013 IWC SC report includes an acknowledgement of the erroneous information included in the 2012 IWC report about New Zealand's management of Maui's dolphins.
3. This year's IWC SC report also contains recommendations regarding New Zealand's management of the Maui's dolphins.
4. The Ministry for Primary Industries (MPI) has reviewed the IWC SC report and the recommendations contained therein. The report recommends a precautionary management approach and the full closures of any fisheries within the range of Maui's dolphins that are known to pose a risk of bycatch. If any fisheries with the potential for bycatch were to remain active within the range of Maui's dolphins, 100% observer coverage would maximise the chance of identifying any bycatch and provide information that could be used to trigger immediate further area closures.

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.9(2)(g)(i)

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Recommendations

11. MPI recommends that you:

a) **Note** in June 2013 a New Zealand delegation comprising officials from the Ministry for Primary Industries (MPI), Department of Conservation (DOC) and Ministry of Foreign Affairs and Trade (MFAT) as well as an independent New Zealand marine biologist attended the International Whaling Commission (IWC) Scientific Committee (SC) meeting;

Noted

b) **Note** the Maui's dolphin population is at a critical point;

Noted

c)

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s 9 (2)(f)(iv)

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Noted

d) **Note** that MPI will work with your office to support you on responding to any public or media inquiries regarding the IWC SC recommendations as they relate to fishing-related measures and the TMP;

Noted

e) **Note** that DOC and MFAT have been informed but not fully consulted on this briefing.

Noted

Andrew Doube
Inshore Fisheries Manager
Resource Management &
Programmes

Hon Nathan Guy
Minister for Primary Industries

/ / 2013

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Background

Issue

12. The 65th meeting of the International Whaling Commission (IWC) Scientific Committee (SC) was held in the Republic of Korea from 3-15 June 2013. The Committee reviews scientific research and publication of results, statistics and reports on the world's cetacean populations. A joint submission from the Ministry for Primary Industries (MPI), the Department of Conservation (DOC) and the Ministry of Foreign Affairs and Trade (MFAT) seeking delegation guidance from Ministers was prepared in advance of the meeting.
13. A senior MPI scientist, who is an expert on cetaceans, was a member of the cross-government New Zealand Delegation at this year's IWC Scientific Committee. The delegation was led by DOC and included an MFAT official given that MFAT holds the role of IWC Commissioner. An independent marine biologist was also part of the delegation.
14. MPI attended this year's IWC meeting as it:
 - is the lead agency responsible for managing the impacts of fishing on cetaceans,
 - is one of the largest funders of cetacean research in New Zealand; and
 - jointly undertook a review of the Maui's dolphin Threat Management Plan (TMP) with DOC.
15. Inaccurate information about New Zealand's management of Maui's dolphins, presented to the IWC Small Cetacean Subcommittee in 2012 by a New Zealand non-governmental scientist attending in her personal capacity, resulted in critical comment of New Zealand's approach in the report of the Scientific Committee. Further criticism of New Zealand's management of Maui's dolphins has since occurred at a number of other international meetings. There has also been significant domestic and international media attention regarding New Zealand's approach and public interest both here and abroad is high.
16. At its 2012 meeting, the IWC Scientific Committee recommended a proposal, erroneously attributed to MPI, that there be an immediate extension of the North Island protected area to approximately 80km south of the latest dolphin bycatch site (Maunganui Bluff to Hawera), offshore to the 100m depth contour, including the harbours, for gillnet and trawl fisheries.
17. The New Zealand government could not support that recommendation for a number of reasons, including:
 - The 100 metre depth contour varies in distance from shore. Off the West Coast of the North Island (WCNI) the 100 m depth contour ranges from approximately 3.9 nautical miles to 39 nautical miles offshore. For Maui's dolphins, there is little evidence to suggest that this represents a limit on their range.

- To use the 100 m depth contour would have the effect of closing down much of the New Zealand WCNI inshore fin fish fishery. This would have very serious consequences for many small fishing business owners, their employees, their families and local communities. There are approximately 160 vessels operating in the set net and trawl fisheries off the WCNI.
- The primary costs associated with a set net and trawl ban out to the 100 m depth contour (including harbours) are the economic impact on the fishing industry and the wider economy, estimated to be \$27.8 million (for the coastal and harbour set net fisheries) and \$75 million (for the trawl fishery).

2013 IWC Scientific Committee recommendations and MPI analyses

18. New Zealand's management of the Maui's dolphin was on the agenda of the 2013 IWC Scientific Committee meeting following the tabling of two papers (one by the World Wildlife Fund, and the other by Barbara Maas from NABU International) that are critical of New Zealand's management of Maui's dolphins.
19. New Zealand tabled an already-public paper to ensure scientifically accurate information was available to inform discussion and to correct misinformation about New Zealand's approach to protecting Maui's dolphins. This paper was a risk assessment of threat to Maui's dolphins conducted by domestic and international scientists to inform the review of the Maui's dolphin part of the TMP.
20. The 2013 IWC SC report includes an acknowledgement of the erroneous information included in their report last year:
 - *Maui's dolphin is the North Island (New Zealand) coastal endemic subspecies of Hector's dolphin. The Committee was informed that the management measures it recommended last year were incorrectly attributed to a proposal by the New Zealand Government. The Committee acknowledges and regrets this mistake.*
21. Following discussion of the two critical papers and the risk assessment report, the IWC Scientific Committee made recommendations regarding New Zealand's management of the Maui's dolphins. These recommendations include:
 - *The Committee agrees that management measures must be precautionary. If any fisheries with the potential for bycatch were to remain active within the range of Maui's dolphins, 100% observer coverage would maximise the chance of identifying any bycatch and thus provides information that could be used to trigger immediate further area closures.*
 - *In conclusion, the Committee reiterates its extreme concern about the survival of Maui's dolphins given the evidence of population decline, contraction of range and low current abundance. The Committee agrees that the human-caused death of even one dolphin in such a small population would increase the extinction risk for this subspecies.*

- The Committee therefore **recommends** that rather than seeking further scientific evidence, the highest priority should be given to immediate management actions that will lead to the elimination of bycatch of Maui's dolphins. This includes full closures of any fisheries within the range of Maui's dolphins that are known to pose a risk of bycatch of small cetaceans.
- The Committee **commends** the New Zealand Government on its initial and interim measures to protect Maui's dolphins. However, the sub-Committee **emphasises** that the critical endangered status of this sub-species and the inherent and irresolvable uncertainty surrounding information on small populations require the immediate implementation of precautionary measures. Ensuring full protection of Maui's dolphins in all areas throughout their habitat, together with an ample buffer zone, would minimize the risk of bycatch and maximize the chance of population increase.

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Communications

- 23. Since the public release of the IWC SC report, there has been a significant media and public interest both in New Zealand and internationally.
- 24. Inquiries will likely extend to timeframes on decisions of the TMP review and whether those decisions will reflect the IWC recommendations.
- 25.
- 26. Prior to the IWC meeting, it was agreed by you, the Minister of Conservation and the Minister of Foreign Affairs and Trade that Hon. Nick Smith would be the Spokes Minister to comment on the Maui's dolphins issue if/when it attracts attention during the IWC Scientific Committee.
- 27. Hon. Nick Smith has continued to be the Spokes Minister following the release of the IWC Scientific Committee report.
- 28. MPI will continue to liaise with DOC and MFAT on any communications with respect to the IWC. MPI has requested any fishing-related queries will now come to you and MPI will liaise with your office to support you in responding to the inquiries.
- 29. Once you have made and announced your decision regarding the review of the Maui's dolphin section of the TMP, there is likely to be significant media and public interest, both domestic and international, given the volume of submissions received during consultation. MPI will work with your office to develop a communications plan to announce your decision and to explain how your decisions address the IWC recommendations.

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Appendix 1: Extract of the International Whaling Commission Scientific Committee 65a report – section related to Maui's dolphins

14.3.2.1 MAUI'S DOLPHIN

Maui's dolphin is the North Island (New Zealand) coastal endemic sub-species of Hector's dolphin. The Committee was informed that the management measures it recommended last year were incorrectly attributed to a proposal by the New Zealand Government. The Committee **acknowledges and regrets** this mistake.

SC/65a/SM06 presented an update on the status of Maui's dolphins. The population has declined significantly with the latest genetic mark-recapture analysis in 2010/11 estimating a population size of 55 individuals one year and older (Hamner *et al.*, 2012). The author suggested that unless their full range out to the 100m depth contour (including harbours) is protected against gillnetting and trawling (95.5% of human-caused mortality; Currey *et al.*, 2012), Maui's dolphins will decline to 10 adult females in six years and become functionally extinct (<3 breeding females) in less than 20 years, even under maximum population growth (0.018 according to Slooten and Lad, 1991). Additional threats to Maui's dolphins (besides bycatch) include seismic survey work in or near their habitat and a plan to begin development of the world's largest marine iron sand mining operation.

SC/65a/SM22 reviewed the response of the New Zealand Government to the 2012 recommendations of the Committee for urgent action. Although some measures were taken to limit bycatch, the author considered that they were insufficient because they did not cover the entire range. The paper stated that the protected area should be expanded, all gillnetting and trawling should be banned within it (including harbours), and restrictions should be placed on oil and gas development and on other potentially harmful activities where the dolphins are found, including a buffer zone.

Currey *et al.* (2012) described the risk assessment undertaken in June 2012 to inform the Maui's Dolphin Threat Management Plan. The risk assessment identified 23 activities or processes that pose a threat to the sub-species, with bycatch in commercial set net, commercial trawl, and recreational/customary set net fisheries assessed as likely to have the greatest impacts. The risk posed by the cumulative impact of all threats was assessed as significant, resulting in a high likelihood of, and a potentially rapid rate of, population decline. The spatial overlap between dolphin distribution and commercial fishing effort helped to identify specific areas where risk posed by commercial fishing activities remained given management measures already in place. There was a reported capture of a dolphin in the south end of the Maui's range in January 2012 but no specimen was available to determine whether it was a Maui's dolphin or a specimen of the other Hector's dolphin subspecies. In response, interim measures were put in place in July 2012 that either restrict fisheries activities or require 100% observer coverage in the set net fishery in much of the area where the risk assessment indicated a continuing risk to Maui's dolphins from commercial fisheries.

Maas stated that the 100m depth contour is used to define the offshore limit of the range for Maui's dolphins; this ranges from 4 to 39 n.miles. However, Currey noted that the risk assessment expert panel estimated the offshore distribution as out to 7 n.miles based modelling, public sightings, strandings and historical information on the dolphins' alongshore range. The fishery restrictions are based on distance from shore and vary between 2 to 7 n.miles.

New Zealand has a limited observer programme for Maui's dolphins in the trawl fisheries and the limited data suggests some risk of bycatch in trawl gear. The great uncertainty surrounding aspects of Maui's dolphin ecology and distribution makes evaluation of the efficacy of management very difficult. Emergency measures could be triggered by further bycatch.

The Committee **agrees** that management measures must be precautionary. If any fisheries with the potential for bycatch were to remain active within the range of Maui's dolphins, 100% observer coverage would maximise the chance of identifying any bycatch and providing information that might trigger immediate further area closures.

In conclusion, the Committee **reiterates its extreme concern** about the survival of Maui's dolphin given the evidence of population decline, contraction of range and low current abundance. The Committee **agrees** that the human-caused death of even one dolphin in such a small population would increase the extinction risk for this subspecies.

The Committee therefore **recommends** that rather than seeking further scientific evidence, the highest priority should be given to immediate management actions that will lead to the elimination of bycatch of Maui's dolphins. This includes full closures of any fisheries within the range of Maui's dolphins that are known to pose a risk of bycatch of small cetaceans.

The Committee **commends** the New Zealand Government on its initial and interim measures to protect Maui's dolphins. However, the Committee **emphasises** that the critically endangered status of this sub-species and the inherent and irresolvable uncertainty surrounding information on small populations require the immediate implementation of precautionary measures. Ensuring full protection of Maui's dolphins in all areas throughout their habitat, together with an ample buffer zone, will minimise the risk of bycatch and maximise the chances of population increase.

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AM12-438

Ministry for Primary Industries
Manatū Ahu Matua



Aide-memoire:

From: Andrew Doube
Manager, Inshore Fisheries

Contact 04 894 0029;

To: Hon. Nathan Guy
Minister for Primary Industries

Date: 27 June 2013

S 9(2)(a)

International Whaling Commission and Maui's dolphin TMP

1. The 65th meeting of the International Whaling Commission (IWC) Scientific Committee was held in the Republic of Korea from 3-15 June 2013. The Committee reviews scientific research and publication of results, statistics and reports on the world's cetacean populations.
2. New Zealand's management of the Maui's dolphin was on the agenda of this meeting following the tabling of two papers (one by the World Wildlife Fund, and the other by Barbara Maas from NABU International) that are critical of New Zealand's management of Maui's dolphins.
3. The Ministry for Primary Industries (MPI) was part of the New Zealand delegation at the Scientific Committee. New Zealand tabled an already-public paper as a rebuttal to the criticisms. This was to ensure scientifically accurate information was available to inform discussion and to correct misinformation about New Zealand's approach to protecting Maui's dolphins. This paper was a risk assessment of human impacts on Maui's dolphins conducted by domestic and international scientists to inform the review of the Maui's dolphin part of the Threat Management Plan (TMP).
4. The IWC Science Committee report is expected to be released publicly on 29th June 2013 but is currently **embargoed**. The report includes an acknowledgement of the erroneous information included in the IWC Science Committee report last year:
 - Maui's dolphin is the North Island (New Zealand) coastal endemic sub-species of Hector's dolphin. The Committee was informed that the management measures it recommended last year were incorrectly

Security Level – In Confidence

attributed to a proposal by the New Zealand Government. The Committee **acknowledges and regrets** this mistake.

5. The report also contains recommendations from the IWC Scientific Committee regarding New Zealand's management of the Maui's dolphins. These recommendations include:
 - The Committee **agrees** that management measures must be precautionary. If any fisheries with the potential for bycatch were to remain active within the range of Maui's dolphins, 100% observer coverage would maximise the chance of identifying any bycatch and thus provides information that could be used to trigger immediate further area closures.
 - In conclusion, the Committee **reiterates its extreme concern** about the survival of Maui's dolphins given the evidence of population decline, contraction of range and low current abundance. The Committee **agrees** that the human-caused death of even one dolphin in such a small population would increase the extinction risk for this subspecies.
 - The Committee therefore recommends that rather than seeking further scientific evidence, the highest priority should be given to immediate management actions that will lead to the elimination of bycatch of Maui's dolphins. This includes full closures of any fisheries within the range of Maui's dolphins that are known to pose a risk of bycatch of small cetaceans.
 - The Committee commends the New Zealand Government on its initial and interim measures to protect Maui's dolphins. However, the sub-Committee **emphasises** that the critical endangered status of this sub-species and the inherent and irresolvable uncertainty surrounding information on small populations require the immediate implementation of precautionary measures. Ensuring full protection of Maui's dolphins in all areas throughout their habitat, together with an ample buffer zone, would minimize the risk of bycatch and maximize the chance of population increase.
6. Once the proceedings of the meeting are publicly released, there is likely to be significant media and public interest.
7. Inquiries will likely extend to timeframes on decisions of the TMP review and whether those decisions will reflect the IWC recommendations.

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9. MPI is considering the IWC recommendations and preparing communication responses to possible inquiries that may arise. MPI will liaise with your office on those responses. MPI will provide you with a more detailed briefing upon your return from overseas to support your office in responding to any queries.
10. MPI will continue to liaise with the Department of Conservation (DOC) and the Ministry of Foreign Affairs and Trade (MFAT), which both had members as part of the New Zealand delegation, on any communications with respect to the IWC.
11. Should you get any query while you are away, MPI recommends the following statement: "I am aware of the recently released report of the International Whaling Commission Scientific Committee. I have instructed my officials to provide me with advice on the report's recommendations. The New Zealand government is committed to managing all human-induced threats to Maui's dolphins. The measures currently in place are designed to avoid, remedy and mitigate the effects of fishing-related mortality on Maui's dolphins. I am also considering the advice from my officials on the review of the Maui's dolphin portion of the Threat Management Plan and expect to announce my decisions on this review shortly".

Minister / Minister's Office

Seen / Referred

/ /2013

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Cabinet

Interim fishing measures to protect Maui's dolphins.

Proposal

1. This paper informs Cabinet of my intended decision to implement restrictions on commercial and recreational fishers using set nets in the Taranaki area (see map in Appendix 1) for the purpose of managing the risk to Maui's dolphins from set nets.
2. This paper provides additional information relating to my decision, as requested by Cabinet following discussion of this matter on 11 June 2012.

Background

3. Public consultation on interim measures extending the current set net ban was undertaken following:
 - i. An accidental dolphin mortality in a commercial set net on 2 January 2012 off Cape Egmont. Based on best available information at the time, the Ministry for Primary Industries (MPI) advised that it was likely to be a Maui's dolphin.
 - ii. The release of new research estimating the Maui's dolphin population to be 55 individuals over one year old.
4. Officials have also been directed to bring forward the review of the Hector's and Maui's dolphin Threat Management Plan (TMP) and to prioritise completion of the Maui's portion of the TMP in 2012. The TMP is a long-term management strategy. The proposed interim measures will remain in place until this review is completed and permanent measures are implemented.

Comment

Legislative obligations

5. The purpose of the Fisheries Act 1996 is to provide for utilisation of fisheries resources while ensuring sustainability. "Ensuring sustainability" is defined as including avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment.

Background - Maui's dolphins

6. Maui's dolphins are endemic to New Zealand and are critically endangered. The overall objective for Maui's dolphins is to ensure the survival of this subspecies is not threatened by human activities. There is significant public and

media interest in this matter. Over 30,000 submissions were received regarding the proposed interim measures.

7. Hector's and Maui's dolphins are visually indistinguishable and can only be identified through genetic sampling.
8. Hector's and Maui's dolphins are susceptible to a range of human-induced threats. Where cause of death is known, fishing is the greatest cause of human-induced mortality of Maui's dolphins. In the past ten years there have been three dolphin mortalities where entanglement in set nets has been the established cause of death, including the one in January this year. It has not been determined whether these were Hector's or Maui's dolphins, but they were found in the area where Maui's are believed to be present.
9. The Maui's dolphin population estimate of 55 individuals over one year of age suggests that the population is at high risk of extinction and that any human-induced mortality poses a serious threat to any future recovery.

Current fishing-related measures

10. There are a range of set net, trawl and drift net fishing closures on the west coast of the North Island (WCNI) to protect Maui's dolphins. See Appendices 2, 3 and 4 for maps of current fishing restrictions in place to protect Hector's and Maui's dolphins.
11. The boundaries of these closed areas were based on best available scientific research about the known range of Maui's dolphins and on the assumption that Maui's dolphins were geographically isolated from the South Island Hector's dolphins.

Risk to Maui's dolphins in the Taranaki area

12. Since these existing restrictions were put in place in 2008:
 - i. numerous public sightings of Hector's or Maui's dolphins have occurred south of the current closed area;
 - ii. a mortality occurred in a commercial set net in January 2012;
 - iii. the new population estimate was released; and
 - iv. a dolphin stranding occurred near Opunake in April (after the end of the consultation period on the interim measures). The cause of death of this dolphin is likely to be natural, i.e. not fishing related.
13. Preliminary DNA results of the stranding near Opunake (south of New Plymouth) suggest this dolphin to have characteristics more consistent with a Hector's. Given these findings, MPI now consider the subspecies identity (Hector's or Maui's) of the January mortality to be uncertain and equivocal. No other biopsies of dolphins have been taken south of the current set net ban.

14. Information on Maui's dolphin distribution in the Taranaki area is highly uncertain. The available information suggests the presence of dolphins in this area is rare and infrequent. It also cannot be confirmed whether these are Hector's or Maui's dolphins. The Taranaki area is not considered part of the Maui's dolphin core range.
15. There have been no genetic samples of Maui's dolphins taken in this area. The only biopsy that has been taken in this area is from the Opunake stranding.
16. Due to the proximity of Taranaki to the core range of Maui's dolphins there remains potential for Maui's dolphins to occasionally visit this area.

My intended decision

17. There is considerable uncertainty around the January mortality and Maui's dolphin distribution south of the current set net ban. However, given the small size of the Maui's dolphin population and the consequence of any mortality to the population, I consider interim measures are necessary to manage the risk to Maui's dolphins.
18. I have decided to implement the following suite of measures to manage the risk to Maui's dolphins from set net fishing:
 - i. Extend the recreational and commercial set net ban from Pariokariwa Point south to Hawera with an offshore boundary of 2nm.
 - ii. Prohibit the use of commercial set nets between 2nm and 7nm without an MPI observer on board.
 - iii. Additionally, observers will:
 - report the start and end position of nets between 2 and 7nm from shore; and
 - report dolphin sightings to DOC, allowing DOC to obtain biopsy information for such sightings.
 - iii. Fishers will be asked to voluntarily assist DOC in the obtaining of biopsy information where this is appropriate.
 - iv. Fishers' existing policy of not setting nets when dolphins are sighted will be endorsed and encouraged.
19. A closure to 2nm will mitigate fishing-related risks to Maui's dolphins, if present in the area, close to shore where the January mortality occurred. MPI estimates that this decision will impact on six commercial fishers operating out of New Plymouth and two associated fish processors, resulting in a \$419,578 per annum loss in revenue.
20. In addition, more information is needed between now and the review of long-term management to determine the extent to which dolphins are present in this

area and what subspecies they are. The use of on-board observers on commercial fishing vessels will provide increased opportunities to obtain this information.

21. Should a fishing-related mortality of a Maui's dolphin occur in this area during the interim period, i.e. before final decisions are made on the review of the TMP, I would look to put in place emergency measures to further reduce fishing-related threats to Maui's dolphins.

Consultation

22. Consultation on this matter is required under the Fisheries Act. MPI consulted with government agencies and the wider public on this proposal over a four week period. Key stakeholders consulted with include:
- i. the Department of Conservation (DOC);
 - ii. fishers directly affected by the proposal and the wider fishing industry;
 - iii. tangata whenua; and
 - iv. environmental groups.
23. MPI consulted on extending the current set net ban south to Hawera and offshore to 4nm. Over 30,000 submissions were received. The fishing industry submissions opposed any extension of the set net prohibition, whereas the vast majority of environmental groups submitted in support of more extensive measures than those proposed.¹
24. Since consultation the DNA findings from the dolphin stranding near Opunake has increased the uncertainty relating to Maui's dolphin presence in this area. Subsequently I consider it warranted to consider a balance between utilisation and sustainability, while gathering further information.

DOC comment

25. Given the small population size of Maui's, DOC considers it necessary to protect not just their "core" range, but the extremes of their distribution if the population is to recover. DOC has stated a preference on extending the set net ban out to 7nm, consistent with measures already in place further north.
26. DOC does not believe that a set net ban to only 2nm adequately reduces risk to Maui's dolphins, based upon the best available information on their biology and the alongshore and offshore distribution of the dolphins. Moreover, DOC notes that the vast majority of the 30,000 submissions were supportive of increased protection for the dolphins.

¹ Proposals from environmental groups and the public included set net and trawl prohibitions out to the 100m depth contour and in harbours, and protection of a corridor between the Hector's and Maui's dolphin populations.

27. DOC notes there has been considerable national and international interest. Not introducing adequate protection measures would result in considerable negative reaction globally and impact negatively on New Zealand's international image.
28. I, however, consider my decision provides an appropriate balance between managing the risk and gathering further information to clarify uncertainties relating to Maui's dolphin distribution and presence and the subspecies identification of the January mortality.

Financial Implications

29. The cost of observers is estimated to be between \$86,400 - \$314,000 annually. MPI will meet these costs from within existing baselines.
30. The table below provides an estimate of the annual and future economic impacts of my decision. These estimates are based on fishing catch data reported to MPI by the fishing industry. However, the industry considers the numbers to underestimate the impact that my decision will have.

	2nm prohibition
Annual Value impact	\$419,578
Capitalised future value impact ²	\$1,535,962
Total	\$1,955,540

31. While these estimates are derived from fisher reported information held by MPI, industry argues that these numbers underestimate the economic impacts my decision will have. As recently as 13 June 2012, industry have provided new information which suggests the impact to industry may be greater than estimated above.³

Human Rights

32. The proposals in this paper do not raise any issues in relation to the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

² The MPI methodologies uses different multipliers for the various forms of incomes (direct, indirect and induced). The Treasury methodology discounts these forms of income over 20 years using a discount rate of 10%. Quota value is not discounted or multiplied under either methodology since it is already a discounted value as it reflects the net present value of future revenue from ACE.

³ Industry have provided information not independently verifiable by MPI on where fishing effort occurs. Notwithstanding the difficulty verifying this information, MPI considers the scope of the difference between estimates based on official catch returns and new industry data (13 June 2012) likely to be in the range of hundreds of thousands of dollars in revenue for fish caught by set nets within 2nm from shore.

Legislative implications

33. This decision will be notified in the Gazette and will come into force 28 days after notification is made.

Publicity

34. I propose to announce my decision around the week beginning 25 June. This will be done in consultation with the Minister of Conservation, who may also be announcing her decision relating to the West Coast North Island Marine Mammal Sanctuary.
35. MPI and DOC will also notify key stakeholders and will post their respective advice papers and the relevant decision letter on their websites.
36. I expect this issue will continue to receive significant media attention following announcement of my decision.
37. My decision is unlikely to appease the fishing industry or environmental groups. There is a potential risk that they may legally challenge my decision.

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Recommendations

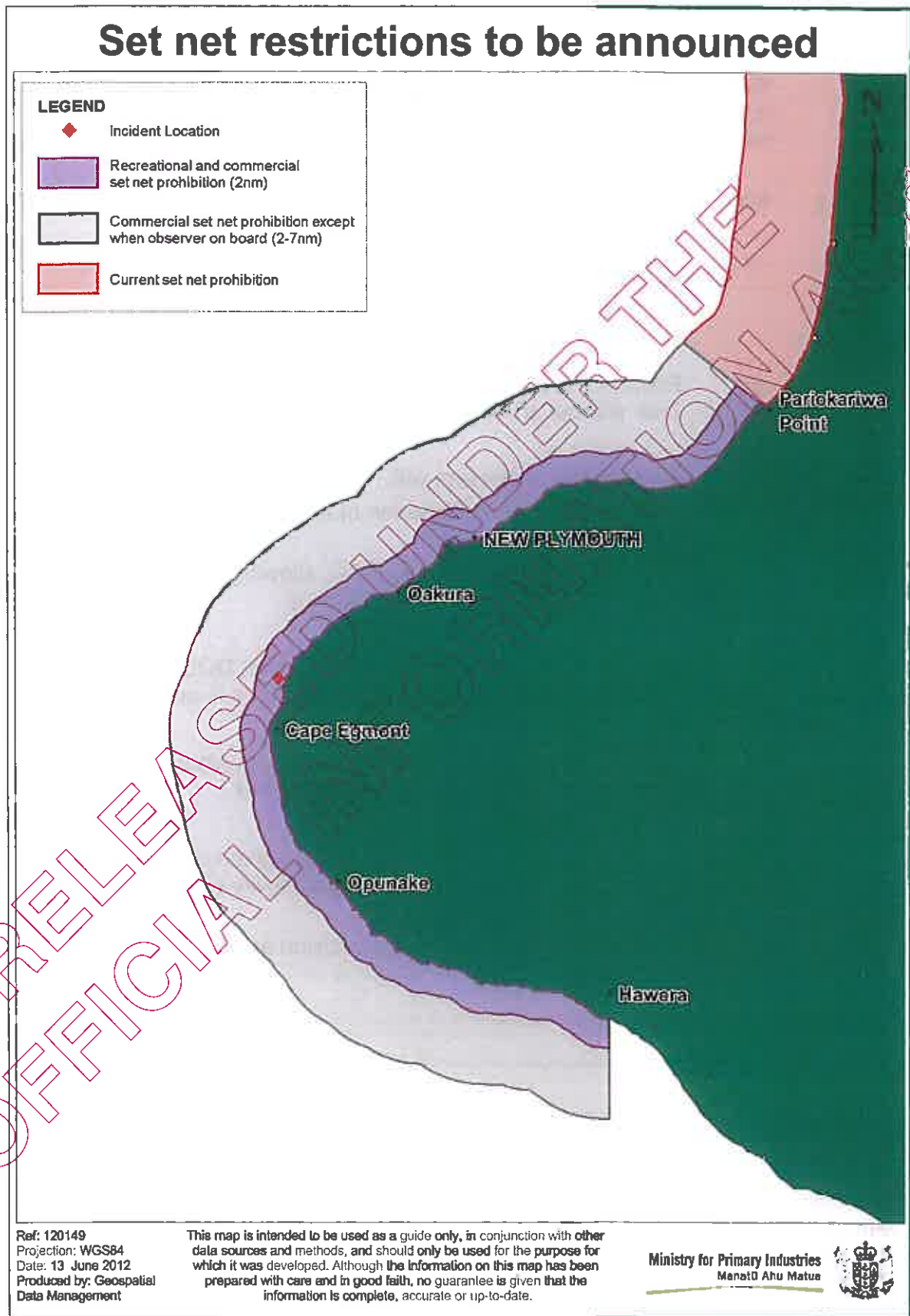
38. I recommend that Cabinet:

1. **Note** that on 11 June 2012 Cabinet sought further information on my decision to implement interim measures to manage the risk to Maui's dolphins from commercial and recreational set nets.
2. **Note** that I have decided to implement the following measures:
 - i. Extend the recreational and commercial set net ban from Pariokariwa Point south to Hawera with an offshore boundary of 2nm.
 - ii. Prohibit the use of commercial set nets between 2nm and 7nm without an MPI observer on board.
 - iii. Additionally, observers will:
 - Report start and end position of nets between 2nm and 7nm from shore;
 - Report dolphin sightings to DOC, allowing DOC to obtain biopsy information for such sightings.
 - v. Fishers will be asked to voluntarily assist DOC in the obtaining of biopsy information where this is appropriate.
 - vi. Fishers' existing policy of not setting nets when dolphins are sighted will be endorsed and encouraged.
3. **Note** that I consider this decision appropriate given uncertainty in information and the need to balance sustainability with utilisation.
4. **Note** that I propose to announce my decision around the week beginning 25 June.

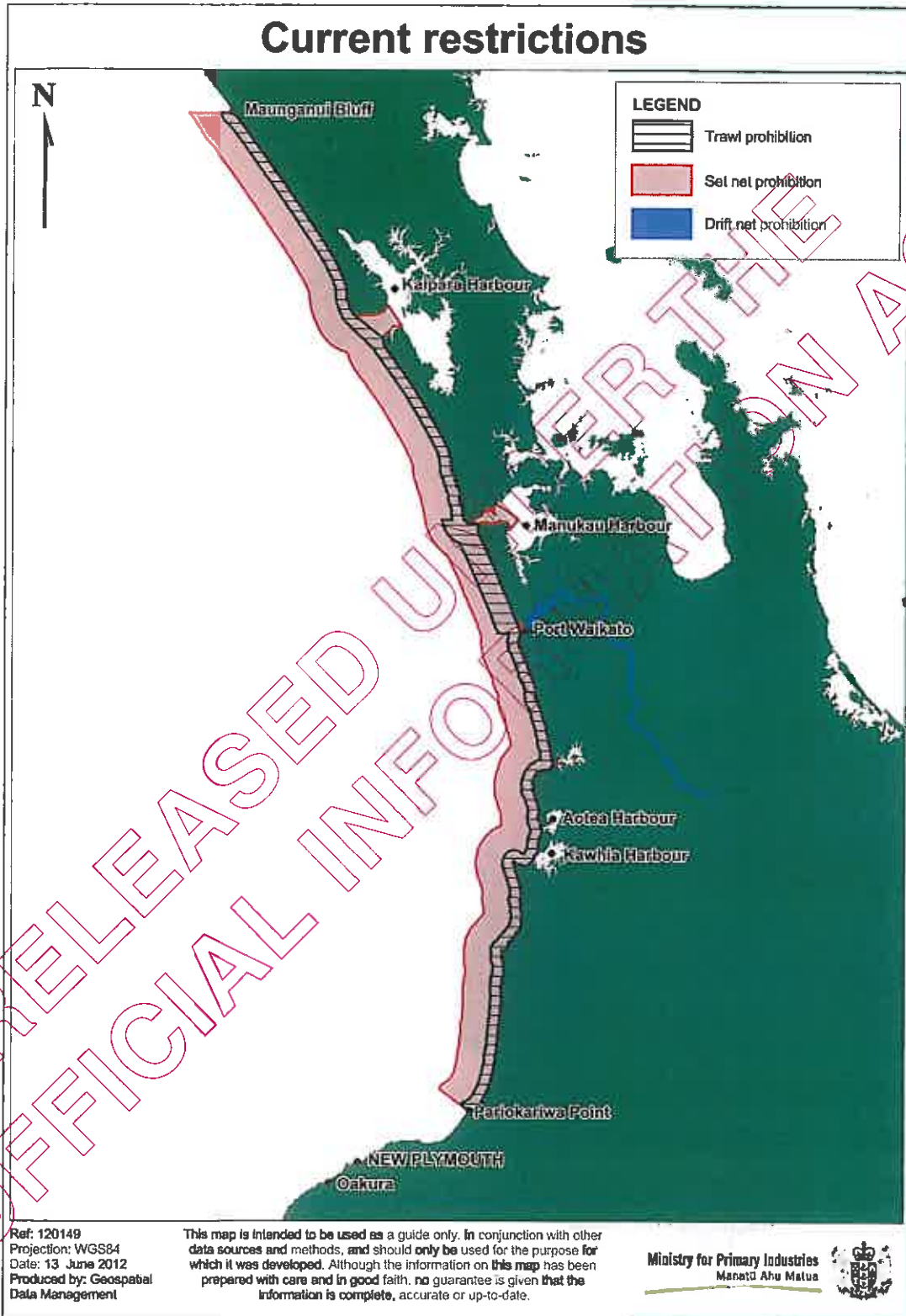
Hon David Carter
Minister for Primary Industries

/ / 2012

APPENDIX ONE: Map of proposed set net restrictions



APPENDIX TWO: Map of current restrictions in place to protect Maui's dolphins on WCNI.



Additional information on map:





- Recreational and commercial set net fishing is prohibited in the area shaded red which extends offshore to 7nm.
- Trawling is banned offshore to 2nm between Maunganui Bluff and Pariokariwa Point and to 4nm between Manukau Harbour and Port Waikato.
- Drift net fishing is prohibited in any part of the Waikato River.

APPENDIX THREE: Map of current set net prohibitions to protect Hector's and Maui's dolphins.

Set net prohibitions to protect Hector's and Maui's dolphins

These restrictions were put in place in 2008 through the development of the Hector's and Maui's Dolphin Threat Management Plan.

LEGEND

-  Recreational and commercial set nets prohibited offshore to 7nm
-  Recreational set nets prohibited offshore to 2nm
Commercial set nets prohibited between 1 Dec and 28 Feb offshore to 2nm
-  Recreational and commercial set nets prohibited offshore to 4nm
-  Exemption to set net ban (harbours of Banks Peninsula for flatfish)






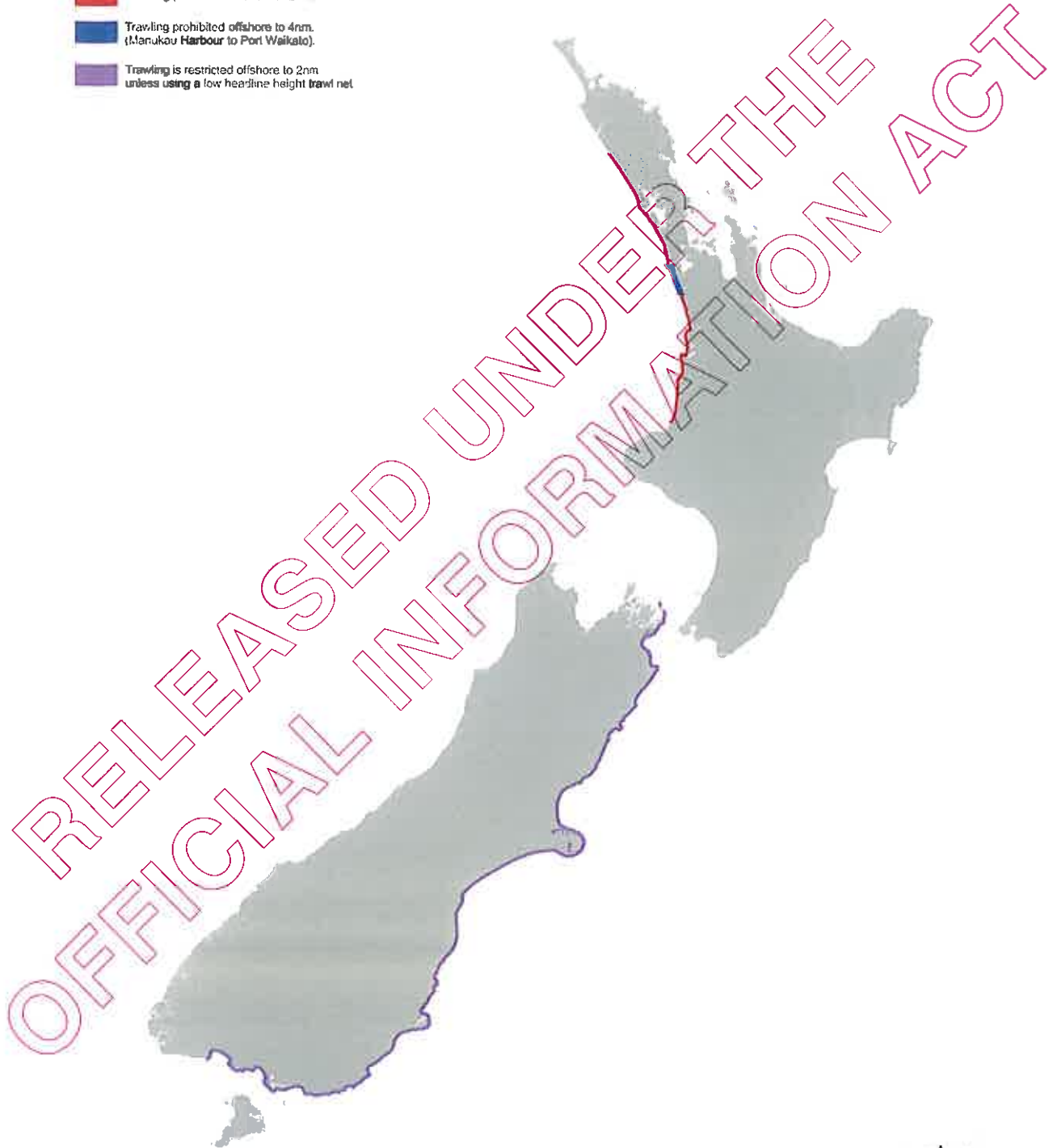
APPENDIX FOUR: Map of current trawling restrictions and prohibitions to protect Hector's and Maui's dolphins.

Trawling restrictions and prohibitions to protect Hector's and Maui's dolphins

These restrictions were put in place in 2008 through the development of the Hector's and Maui's Dolphin Threat Management Plan.

LEGEND

-  Trawling prohibited offshore to 2nm
-  Trawling prohibited offshore to 4nm. (Manukau Harbour to Port Waikato).
-  Trawling is restricted offshore to 2nm unless using a low headline height trawl net



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IWC 2013

- ***Why hasn't New Zealand adopted the recommendations from last year's IWC SC?***

The recommendations from last year's IWC SC were based on incorrect information, which the IWC acknowledged and corrected in its report this year.

- ***Will NZ adopt the recommendations from this year's IWC SC?***

The recommendations of the IWC SC are being considered by Ministers.

The Minister for Primary Industries is considering advice provided as part of the review of the Maui's dolphin Threat Management Plan, which was brought forward in 2012.

The review considers what existing approaches and what additional management strategies and research will support the recovery of the Maui's dolphin population.

- ***Will/are New Zealand's protective measures (be) enough to ensure Maui's dolphins future?***

The New Zealand Government is committed to managing all human-induced threats to Maui's dolphins. The review of the Maui's dolphin Threat Management Plan (TMP) reconsiders the management strategies and/or research that may support the recovery of the Maui's dolphin population. The purpose of the review is to ensure protection and mitigation measures are effective.

A range of fishing and other restrictions extend across the area where Maui's dolphins are most commonly found. Between 2003 and 2012, the areas covered by set net and trawl restrictions increased by approximately 152 percent. Almost 6000 square kilometres on the West Coast of the North Island is closed to set net activity and 1702 square kilometres to trawl activity.

New Zealand has put in place interim restrictions on set net fishing in the Taranaki area in addition to the protective measures already in place while the review is undertaken.

Decisions on the review of the Maui's dolphin portion of the TMP will be made shortly.

- ***Is New Zealand doing anything to ensure that Maui's dolphins are not "functionally extinct" by 2030, given that this will happen with existing protection measures?***

The New Zealand Government has not seen any analysis or evidence to suggest existing protection measures will lead to functional extinction by 2030.

- ***Isn't this international criticism of New Zealand's approach bad for New Zealand's reputation? There's been a death, why aren't you taking more action?***

New Zealand's primary concern is taking a responsible, proactive approach to securing the long-term future of Maui's dolphins.

A range of fishing and other restrictions extend across the area where Maui's dolphins are most commonly found. Between 2003 and 2012, the areas covered by set net and trawl restrictions increased by approximately 152 percent. Almost 6000 square kilometres on the West Coast of the North Island is closed to set net activity and 1702 square kilometres to trawl activity.

In 2012, in light of new information including a new estimate of the population abundance of Maui's dolphins, the New Zealand Government took additional action.

- The review of the Maui's dolphin portion of the Hector's and Maui's dolphin Threat Management Plan (TMP) was brought forward.
- The Minister for Primary Industries put in place interim measures (in addition to existing measures) that ban the use of set net out to two nautical miles between Pariokariwa Point and Hawera, and prohibit commercial set net between two and seven nautical miles unless an observer is onboard.
- To inform the review of the Maui's dolphin TMP, MPI and DOC jointly funded an independent risk assessment of threats to Maui's dolphins, conducted by world-leading international and domestic scientists, and chaired by the Royal Society of New Zealand.
 - The Risk Assessment pulled together best-available information about Maui's dolphin distribution, threats to the population, and their vulnerability to those threats, to form a picture of likely risks and where these would occur.
 - New Zealand tabled this paper at this year's IWC Scientific Committee meeting to ensure scientifically accurate information to inform discussion and correct misinformation about New Zealand's approach to protecting Maui's dolphins.
- ***Isn't this the time that the NZ Government should be acting cautiously and putting in place precautionary measures to protect these dolphins?***

The New Zealand Government is committed to managing all human-induced threats to Maui's dolphins. The measures currently in place are designed to avoid, remedy and mitigate the effects of fishing-related mortality on Maui's dolphins.

The purpose of the review of the Maui's dolphin Threat Management Plan is to consider existing approaches and what additional management strategies and research will support the recovery of the Maui's dolphin population.

- ***Can MPI provide comments on the following points raised in papers presented at the IWC SC? Will the Ministry respond to person X***

calculation that Y will occur in period Z? Will MPI respond to estimated extinction time predictions as presented at the IWC?

- *She reports that currently, 81% of Maui's dolphin habitat is unprotected against gillnetting and trawling fishing methods - or 85% if you count the corridor to the South Island.
- *She reports that fishing mortality of 5 Maui's/year exceeds sustainable limit 75.5 times - but says the TMP ignores this information and has not translated it into effective management actions or even options.
- *She argues the management options in the Maui's TMP are both highly selective (i.e. full protection is not included) and without a scientific rationale, nor does it spell out what the options it presents, or MPI's recommendations, will mean in terms of bringing Maui's dolphin mortality down to a sustainable level of one human induced death every 10-23 years
- She says: "There is not a single sentence in the Maui's TMP that will give either the public or the minister an idea of the anticipated conservation benefits or costs of what has been proposed for the population. How are people meant to make an informed decision without this critical information?"

We are considering all the information that was presented to the IWC SC but don't have any comments on the specific points raised in the papers presented.

If we want to say more to any specific point raised, like above, for example:

Dr Maas' assessment assumes that the 100 m depth contour boundary represents Maui's habitat. Conversely, the estimated range of Maui's habitat as represented in the Risk Assessment extends offshore 7 nautical miles from Maunganui Bluff to Whanganui. However, MPI notes this distribution is not uniform.

Given the uncertainty in the information available it is impractical to determine a change in estimated mortality based on any fishing-related management measures. There are many caveats associated with such an analysis, which are unlikely to reflect possible changes in the natural environment.

- ***Given the uncertainty around aspect of Maui's dolphin ecology and distribution, how can you be sure the current management is effective? Or evaluation of the efficacy of management of Maui's is difficult so, how can you be sure what you're doing is working? Does the government believe the current management measures will lead to the elimination of bycatch of Maui's dolphin?***

The review of the Maui's dolphin portion of the Threat Management Plan has been developed using the best available information and was informed by an independent risk assessment of threat to Maui's dolphins conducted by world-leading international and domestic scientists.

The only way to assess if management is effective is to monitor long term trends in the population.

Uncertainty:

The uncertainty relates particularly to the margins of the Maui's dolphins range.

This is because of the difficulty in detecting a small inconspicuous dolphin at the extremes of its range. This is made more difficult by its small population size.

It is impossible to pinpoint the exact size of the population because we simply can't definitively count every dolphin in thousands of square kilometres of sea off the North Island's West Coast.

The recent abundance estimate and risk assessment account for this uncertainty in their conclusions.

This is why MPI is currently funding 100% observer coverage on commercial set net vessels off Taranaki, and DOC and MPI are conducting aerial and boat surveys in that area.

In light of this uncertainty, the Government is committed to continued monitoring and improving the information that is available to keep an eye on the abundance of the population and how human-induced threats are or may interact with the population. This information allows government to respond and put in place additional management measures as necessary to avoid, remedy or mitigate those interactions.

- ***The IWC SC recommends immediate management actions rather than seeking further scientific evidence so why are undertaking research and observer coverage when you should just close these fisheries? Why are you focused on information gathering when the IWC recommends you should focus on action?***

The Minister for Primary Industries will take action where he considers it necessary to avoid, remedy or mitigate the effect of fishing-related mortality on the Maui's dolphin population.

Maintaining and increasing monitoring through observer coverage provides the Government with an opportunity to respond and put in place additional management measures as necessary to avoid, remedy or mitigate any interactions within fishing-related activities.

The only way to assess if management is effective is to monitor long term trends in the population, which requires research.

There are approximately 160 vessels operating in the set net and trawl fisheries off the WCNI. Closing fisheries can result in substantial economic impacts that affect local business owners, their employees, families and communities.

The impacts need to be considered in conjunction with the effectiveness of any additional management measures. For example, the primary costs associated with a set net and trawl ban out to the 100 m depth contour (including harbours) are the economic impact on the fishing industry and the wider economy, estimated to be \$27.8 million (for the coastal and harbour set net fisheries) and \$75 million (for the trawl fishery).

- ***What is dolphin habitat? What are the boundaries of a 'buffer zone'?***

Our best understanding of dolphin distribution comes from the independent risk assessment of threat to Maui's dolphins that was presented to the IWC SC.

- ***Does the government have emergency measures in place? How will the government respond if another mortality occurs?***

The Ministry for Primary Industries is assessing the provisions in existing legislation to put in place emergency measures should a fishing-related mortality of a Maui's dolphin occur.

Establishment of an emergency measures protocol will ensure the Government can follow clear decision-making frameworks, respond quickly and decisively should a fishing-related mortality occur, and provide all stakeholders with far greater clarity on these frameworks.

- ***Is government going to do anything about the low observer coverage in the trawl fisheries as mentioned in the IWC report?***

We are committed to increasing observer coverage in the inshore trawl fleet off the west coast of the North Island.

The Ministry for Primary Industries proposed in the discussion paper released as part of the review of the Maui's dolphin portion of the Hector's and Maui's dolphin Threat Management Plan (TMP) to increase observer coverage in the trawl fishery. MPI considers extensive monitoring coverage would be required because of the low likelihood of an interaction between Maui's dolphins and trawl gear.

The Minister is currently considering advice on the review of the Maui's dolphin TMP, which includes discussion on observer coverage. The Minister is expected to announce his decisions shortly.

- ***Did MPI attempt to get the IWC SC water down its previous recommendations from 2012? Previous IWC recommendations misrepresented? Why did MPI attend this year's IWC meeting?***

MPI attended this year's IWC meeting as it:

- is the lead agency responsible of managing the impacts of fishing on cetaceans,
- is one of the largest funders of cetacean research in New Zealand and
- jointly undertook a review of the Maui's dolphin threat management plan with the Department of Conservation.

MPI sought to only correct erroneous information presented at last year's meeting. In no way did MPI seek to water down recommendations.

- ***Will the Minister consider and his decisions reflect the recommendations made by the IWC?***

The Minister will consider the information and recommendations made by the IWC. Decisions should be announced shortly.

- ***Why/what scientific evidence is being gathered currently? What will this information give you?***

Observer coverage and aerial surveys around Taranaki are underway to assess the southern distribution of Maui's dolphins and possible interactions with set net fisheries.

- ***If Mexico has introduced gear switching and the banning of gill nets to protect the Vaquita, why isn't NZ doing the same or similar?***

MPI understands alternative gear technologies are being explored by industry but are not yet fully developed to enable harvest of target species while reducing risk to the Maui's dolphin population.

MPI is supportive of alternative gear technologies that would avoid, reduce or mitigate the risk of entanglement and/or mortality of Maui's dolphins with fishing gear.

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