



Department of Conservation
Te Papa Atawhai

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Departmental Briefing

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APPROVED

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Minister of Conservation

Subject:	CABINET PAPER ON VARIATION TO WEST COAST NORTH ISLAND MARINE MAMMAL SANCTUARY
Action Sought:	Sign the paper
Deadline:	You have indicated your intention to lodge the paper on 7 November 2013.

Paper Type: (Cabinet, Statutory or Other)	Cabinet	Dept's Priority: (Very High, High, Normal or Low)	Very high
Risk Assessment: (e.g. possible negative reactions/consequences)	Action is needed to prevent extinction of dolphins. Decisions will be controversial.	Level of Risk: (High, Medium or Low)	High

Purpose:

This paper seeks your approval for a Cabinet paper setting out your decisions to vary the West Coast North Island Marine Mammal Sanctuary in order to extend prohibitions on set net fishing within the likely range of Maui's dolphin.

Contacts for telephone discussion (if required)

	Name	Position	Telephone
1	Felicity Lawrence	Deputy Director-General DOC	04 471 3138
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3	Rachael Ennor	Senior Solicitor DOC	

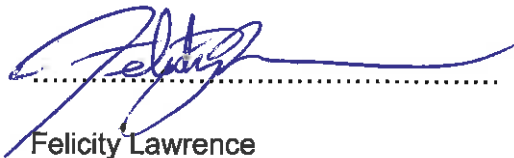
Comment

1. In March 2012, based on concerns for the Maui's dolphin, the then Minister of Conservation and the then Minister for Primary Industries directed officials to bring forward the review of the Maui's dolphin component of the Hector's and Maui's dolphin Threat Management Plan (TMP) – originally scheduled to be undertaken in 2013. That review was undertaken, with advice provided to you in December 2012, and during 2013.
2. After the TMP review consultation was completed, new and improved information relating to sightings and distribution data became available. Given that information, you determined that it was necessary to consider further options to protect Maui's dolphins from risks resulting from set net fishing. You proposed that commercial and recreational set net fishing be prohibited between two and seven nautical miles offshore between Pariokariwa Point and the Waiwhakaiho River, Taranaki.
3. 45,950 submissions were received on this proposal of which 45,933 were in support and 17 were in opposition. Advice was provided to you on 25 October 2013 to assist your consideration of the issues raised by submitters and the options available to you.
4. After considering submissions and the Department's advice, you confirmed that you intend (subject to the consent of relevant Ministers) to proceed with the variation of the WCNI MMS as proposed to address issues relating to set netting.
5. Officials were instructed to prepare two Cabinet papers relating to Maui's dolphin – the paper attached to this briefing which sets out your decisions on the WCNI MMS, and a separate paper setting out your decisions on the review of the Maui's dolphin TMP. It is intended that the two papers will be considered together at EGI and Cabinet, and the decisions announced concurrently.
6. There continues to be significant public and media interest in regard to Maui's dolphins, including internationally. The International Whaling Commission Scientific Committee met in June and expressed its "extreme concern" about the long-term survival of Maui's dolphins and recommended the adoption of a precautionary approach and immediate action to address ongoing threats. Interest is expected to be high when you announce your decisions.
7. The following agencies have been provided with a draft of this Cabinet paper for comment or information: Ministry for Primary Industries, Ministry of Business and Innovation and Employment, Ministry of Transport, Maritime New Zealand, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, Treasury and the Department of the Prime Minister and Cabinet.

Recommended Action

It is recommended that you–

- | | Minister's decision |
|---|----------------------------|
| (a) <u>Sign</u> the attached Cabinet noting paper which sets out your decisions to vary the West Coast North Island Marine Mammal Sanctuary; | (yes / no) |
| (b) <u>Direct</u> the Department to undertake any further work that is required in relation to this matter regarding the public release of any decisions and implementation, including (if appropriate) publishing a notice in the <i>Gazette</i> . | (yes / no) |



Felicity Lawrence
Deputy Director-General
Department of Conservation



Hon Nick Smith
Minister of Conservation

7 / 11 / 13

Chair
Cabinet Economic Growth and Infrastructure Committee

Variation of the existing Marine Mammals Protection (West Coast North Island Sanctuary) Notice 2008 to restrict commercial and recreational set net fishing in north Taranaki for the protection of Maui's dolphins

Proposal

1. This paper sets out my decision to vary the existing restrictions within the West Coast North Island (WCNI) Marine Mammal Sanctuary (MMS) to provide greater protection to Maui's dolphins from the risks posed by set net fishing.

Executive summary

2. Due to concerns about the future viability of the critically endangered Maui's dolphin population, I notified my intention to vary the existing WCNI MMS to prohibit commercial and recreational set net fishing between two and seven nautical miles offshore between Pariokariwa Point and the Waiwhakaiho River, Taranaki (referred to in this paper as the "defined area"). In total, 45,950 submissions were received on the proposed variation to the MMS, of which 45,933 were in support and 17 were opposed. The intended change would be made under Section 22 of the Marine Mammals Protection Act 1978 (MMPA). I am the decision-maker under that section.
3. The purpose of the proposed variation is to provide greater protection to Maui's dolphins from the risks resulting from set net fishing (commercial and recreational) given their threat status and the probable effects of allowing an overlap between set netting and dolphin's range to remain.
4. Experts have assessed set net fishing as being the most significant human-induced risk to Maui's dolphins. There have been mortalities within NZ waters and in 2012 a Hector's or Maui's dolphin was caught in a set net just north of Cape Egmont. The level of risk is a function of spatial overlap between fishing effort and Maui's dolphin range, combined with dolphin abundance and the intensity of set net fishing effort. The experts advised that recovery would be prevented if there is more than one human-induced mortality every 10-23 years.
5. In addition, a review of the Maui's dolphin Threat Management Plan (TMP) has been completed, and is set out in a separate paper. The review of set netting prohibitions in the defined area was not covered in that review because the information that triggered this variation proposal was not received until after the TMP review consultation process was completed. Because that information was not then available, the options considered through the TMP review did not include prohibiting set nets in the area subject to the defined area.

6. Submitters, whether in support or opposition to the particular proposal I notified, generally expressed their concern for Maui's dolphins and supported appropriate recovery steps being taken. Submitters had varying views as to what steps are appropriate.
7. The key matter in dispute in submissions concerned the reliability of the sightings data, and of the distribution data. The low current numbers of Maui dolphins, and the fact that they cannot be visually distinguished from Hector's dolphins, means that distribution data is difficult to obtain and to verify. I am satisfied that public sightings (provided they are independently validated and are weighted according to their graded validation scale) are important to consider, along with other information, to inform decisions on Maui's dolphin.
8. I considered the submissions, my Department's analysis of the relevant issues, and the MPI analysis of economic effects of restricting set netting. I focused on three possible options as set out in the regulatory impact statement – the status quo; prohibiting commercial and recreational set net fishing in the full area south to the Waiwhakaiho Stream; or prohibiting the same activities in a smaller area (i.e. to the Waitara River). Having considered these issues and options closely, I have confirmed my view that prohibiting commercial and recreational set net fishing within the entire area as proposed will appropriately manage the risks to Maui's dolphins in an area where I am satisfied there is an overlap between their marginal range and the activity of set net fishing.
9. In making this variation, I am weighing up three factors. Whilst I accept that the data is uncertain, I am satisfied that the available data shows that Hector's/Maui's dolphins are present or transit through the variation area and that there is a reasonable likelihood that some of those dolphins are Maui's dolphins. I am also satisfied that, given the susceptibility of Maui's dolphins to set nets and the potential overlap with set netting, the risk to Maui's dolphins can be reduced by prohibiting set net fishing from the area of the proposed variation.
10. Finally, I have weighed the reduction in risk against the cost to others in imposing these further restrictions (indicative annual value and capitalised future value losses totalling \$567,144 based on MPI data and calculations). In my view, the reduction in risk that can be achieved through the proposed measures outweighs the economic impact that may result.
11. The decision made on the WCNI MMS Proposal will also be relevant to inform New Zealand's response to international calls for action, including in the contexts of the IWC and IUCN.

Reason for my proposal to vary the Sanctuary

12. The endemic Maui's dolphin is a critically endangered subspecies. Best available information indicates there are approximately 55 individuals over the age of one year, and that the species is declining at a rate of around 3% per annum. The best available scientific advice is that recovery of the species will not be possible unless human-induced mortality is below one dolphin every 10 to 23 years.
13. Their current core range extends between Kaipara Harbour and Raglan off the west coast of the North Island (WCNI). The southern marginal limits of their range may extend to Whanganui.

14. Maui's dolphins are classified as 'nationally critical' by the New Zealand Threat Classification System and 'critically endangered' by the International Union for the Conservation of Nature (IUCN), which has included Maui's dolphin on their red list. In addition, the IWC Scientific Committee has expressed its "extreme concern" about the long-term survival of Maui's dolphins and recommended the adoption of a precautionary approach and immediate action to address ongoing threats.
15. Maui's dolphins are closely related to the endangered Hector's dolphin. Maui's and Hector's dolphins form the two subspecies of the *Cephalorhynchus hectori* species. Hector's dolphins primarily live around the South Island. Evidence shows that Hector's dolphins are also present off the WCNI from time-to-time. The subspecies are visually indistinguishable. Subspecies identification can only be determined by genetic testing or detailed analysis of morphology.
16. In 2007, DOC and the then Ministry of Fisheries (now MPI) developed the Hector's and Maui's dolphin Threat Management Plan to guide management of human-induced threats to Hector's and Maui's dolphins. The 2007 TMP process culminated in the implementation of various management measures including the establishment of the WCNI MMS and restrictions on commercial and recreational set net fishing, and trawling.
17. A review of the full TMP was signalled for 2013, dependent on new information being available. In 2012, the review of the Maui's dolphin component of the TMP was brought forward as a result of new information becoming available (a new, lower population estimate and the accidental capture of a Maui's or Hector's dolphin off the coast of Taranaki in January 2012).
18. In the same year (2012), based on concerns for the Maui's dolphin, the then Minister for Primary Industries implemented interim protection measures from set net fishing in the Taranaki region between Pariokariwa Point and Hawera, including prohibiting set netting out to two nautical miles, and mandatory observer coverage for commercial set netting between two and seven nautical miles.
19. A risk assessment of threats to Maui's dolphins was undertaken by an expert panel of domestic and international experts in marine mammal science and ecological risk assessment to help inform the Maui's dolphin TMP review. The panel concluded that net fishing accounted for around 95% of the risk of human-induced mortality for Maui's dolphins with commercial set netting considered the highest risk (89% likelihood of exceeding the potential biological removal estimate). The panel considered the residual risk to Maui's dolphins from set net fisheries was greatest off the northern Taranaki coastline out to seven nautical miles and close to the entrance of the Manukau Harbour.
20. The review of the Maui's dolphin Threat Management Plan Consultation Paper was published in September 2012 and outlined various proposals to reduce the threats to Maui's dolphins and support the recovery of the dolphin population. The Minister for Primary Industries and I have been considering advice based on this consultation process and have provided a separate paper on that matter.
21. The following information became available after the TMP review public consultation process was completed:
 - a summer season of public sightings including one new reliable sighting;

- validation of existing and new sightings which resulted in a further three sightings being assessed as reliable;
 - the results of DOC-led boat and aerial surveys over the summer of 2012/13; and
 - fisheries observer results.
22. Due to concerns about the future viability of the critically endangered Maui's dolphin population, I notified my intention to vary the existing WCNI MMS to *prohibit commercial and recreational set net fishing between two and seven nautical miles offshore between Pariokariwa Point and the Waiwhakaiho River, Taranaki*. No options which prohibited set netting within this area had been considered within the Maui's dolphin TMP review. I proposed this variation (over and above whatever measures may be decided upon and implemented through the Maui's dolphin TMP review) as being necessary for the protection, conservation and management of the Maui's dolphin, given:
- the critical situation of the Maui's dolphin population (55 individuals aged one-year or greater; 95% CI 48-69);
 - the presence of four reliable sightings of Maui's or Hector's dolphins (three groups and one individual) in the defined area between 2006 and 2013;
 - the susceptibility of Maui's dolphins to entanglement and mortality from set net fishing; and
 - the overlap between set net fishing activity and Maui's/Hector's dolphin sightings in the defined area.

Consultation on the proposed variation

23. I notified my intention to vary the WCNI MMS and prohibit commercial and recreational set netting in the defined area (see **Appendix 1**) off the north Taranaki coast on 6 September 2013. The submission period closed on 11 October 2013. In total, 45,950 submissions were received on my proposed intention, of which 45,933 were in support and 17 were in opposition.
24. The proposition that Maui's dolphins are critically endangered and require protection was not opposed; however, submitters had different views as to what (if any) protection measures are needed or appropriate. A number of key issues were raised by submitters during this process;

Validity of public sightings and validation process

25. Submitters in opposition challenged the validity of public dolphin sightings and the methodology of the validation process.
26. Public sightings are an important source of information particularly in the context of a critically endangered subspecies with an extremely low abundance. A robust validation process is used for Maui's dolphin, with interviews appropriately structured and conducted by an independent cetacean scientist (from the Cawthron Institute).
27. DOC officials have reviewed the Maui's/Hector's dolphin sightings from within the area of the proposed variation, taking into account the matters raised by submitters. They are satisfied that four reliable sightings (one Category 2 and three Category 3) have occurred in the area proposed for variation.

Distributional range of Maui's dolphins

28. The distributional range of Maui's dolphins was a key issue raised by submitters with those in opposition to the proposal indicating that Maui's dolphins do not occur in Taranaki waters, while those in support consider the dolphins should be protected further south, to Whanganui.
29. Five out of six (83%) Maui's/Hector's dolphin mortalities from the Taranaki coast (Mohakatino River – Hawera) were confirmed through tissue analysis to be Maui's dolphins, but the most recent of these five records was in 1989. The remaining confirmed dolphin mortality occurred in 2012 near Opunake and was confirmed as being a Hector's dolphin.
30. Data on the distributional range of Maui's dolphin is uncertain; however, DOC is satisfied that the area of the proposed variation is at the margins of the current range for Maui's dolphins and is not outside their range. It is not unreasonable to consider that at least some of the dolphins sighted in recent years off the north Taranaki coast were Maui's dolphins. The alternative proposition that all the sightings in the defined area are Hector's dolphins (based on a sole Hector's dolphin confirmed mortality in 2012) is considered less likely.

The Risk Assessment Panel process

31. The expert panel's findings were challenged in some submissions.
32. The risk assessment reflects the best available information and meets the legislative requirements of both DOC and MPI. This type of risk assessment is increasingly being used nationally and internationally due to the need to assemble and assess both expert opinion and scientific information from a wide range of sources.
33. The risk assessment panel projection was based on the full distributional range for Maui's dolphin, and was made before the interim measures came into force. It does not relate solely to the Taranaki coast.

Economic impacts

34. Submitters in opposition stated *inter alia* that the proposed variation "*will have serious impacts on the two fishers who concentrate their activity in that area... and see one processor and fisher fail and another pushed to the brink of failure.*"
35. MPI provided an indicative estimate of the economic impacts of the proposed variation (indicative annual value and capitalised future value losses totalling \$567,144) but noted that this is an estimate only and does not account for any shift in effort or for any changes in the volume or composition of the catch that has resulted from the interim measures.
36. Some submissions referred to the potential impacts on natural capital and the tourism industry associated with the decline or possible extinction of Maui's dolphin.

Boundaries of the proposed variation

37. Concern was raised over appropriate boundaries. The great majority of submissions sought the area to be made much larger. Those in opposition largely opposed the variation outright, though there was also some mention of shifting the south-western boundary northwards to Waitara.
38. The proposed variation area covers the area where there remains a reasonable risk of overlap between set net fishing activity and Maui's dolphins.
39. The majority of set net activity effort recorded within the area of the proposed variation (88%) occurred south-west of the Waitara River. One Category 3 Maui's/Hector's dolphin sighting occurred in this south-western portion 2.62 nautical miles offshore in 2013.
40. Decreasing the size of the proposed area could decrease the effect of the proposed variation on commercial fishing depending on the level of fishing activity and where it occurs, but would also decrease the level of protection for Maui's dolphin offered by the proposed variation.

Consideration of options and decision

41. The intended change would be made under Section 22 of the Marine Mammals Protection Act 1978 (MMPA). I am the decision-maker under that section.
42. In making this decision I recognised that there is uncertainty in both the sightings and distribution data. Given its threat status and the provisions of the statute, where there is uncertainty over the presence of Maui's dolphin or impact upon them, I decided that it was necessary to take a cautious approach to protect against impacts to the population. I am satisfied that the available data supports a reasonable likelihood that Hector's/Maui's dolphins are present or transit through the proposed variation area, and that there is a reasonable likelihood that some of these dolphins are Maui's dolphins.
43. I consider, given the level of fishing that occurs in the proposed area, there remains risk to Maui's dolphins given the overlap between the range and abundance of Maui's dolphins and the activity of set netting (including the intensity of that activity).
44. As discussed in the RIS, I have considered the options before me following receipt of submissions, and consider that the *Status quo* carries the risk that the desired level of protection for Maui's dolphin would not be achieved.
45. Implementing the variation but in a smaller area (ie to the Waitara River) would reduce the overall impact on the fishing industry but it would also decrease the level of protection for Maui's dolphin offered by the proposed variation and fail to manage the risks presented by the overlap of fishing activity and the Maui's dolphin range.
46. I am satisfied that the option of varying the WCNI MMS as proposed will achieve the best outcome in terms of reducing risk to Maui's dolphins in the area, though it will have an impact on the fishing industry. I am satisfied that this impact is not disproportionate given the risks presented by an overlap between fishing activity and Maui's dolphins, and the critically endangered status of this subspecies.

47. The decision made on the WCNI MMS Proposal will be relevant in New Zealand's response to international calls for action, including in the contexts of the IWC and IUCN.

Agency consultation

48. The following agencies were consulted or informed, and any comments received are reflected in the paper: Ministry for Primary Industries, Ministry of Business and Innovation and Employment, Ministry of Transport, Maritime New Zealand, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, Treasury, and the Department of the Prime Minister and Cabinet.

Financial Implications

49. Based on my decision to implement the proposed variation to the WCNI MMS, there is likely to be an associated economic impact on the fishing industry in the area. MPI provided advice suggesting that approximately five fishers were operating six to eight commercial set net vessels in the last four years. In the last year, since the interim measures were introduced, four vessels have been operating in the proposed area and would be adversely affected by this proposal.
50. MPI officials estimated the economic impact was a loss of approximately \$81,024 in annual revenue, \$136,121 in annual value add and \$431,024 in capitalised future value, equating to an estimated total cost to the industry of \$567,144. At an industry-wide level the economic impact is modest, but would significantly impact on a small number of fishers.
51. These estimates are different from those quoted in the previous noting paper provided to the Cabinet EGI Committee (EGI (13) 165), as the economic impact assessment for the proposed area was not available in time. The previous economic impact assessment was based on a larger affected area (down to New Plymouth). The economic impact of the proposed variation area, to the Waiwhakaiho River, is considerably lower. This more recent assessment was available for the public consultation process on the proposed variation.
52. Fishing industry submissions stated that they should be compensated for any economic impact that may result from this process. I note that there is no legislative requirement to provide compensation.

Human Rights

53. 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.

Legislative Implications

54. This variation is subject to the consent of the Minister of Energy and Resources, Minister for Primary Industries and Minister of Transport. If consent is granted by those Ministers, the variation would be notified in the *Gazette*. It would come into effect 28 days from the date of publication of the notice.

Regulatory Impact Analysis

55. The Regulatory Impact Analysis for this paper is attached as **Appendix 2**.

Publicity

56. I intend to announce my decision to vary the West Coast North Island Marine Mammal Sanctuary at the same time as I jointly announce with my colleague, the Minister for Primary Industries, our decisions on the wider review of the Maui's dolphin Threat Management Plan. This decision is likely to have a mixed reception, with industry groups considering that further protection measures that have an impact on their industry are unwarranted, and environmental groups concerned that the proposed measures are insufficient to protect Maui's dolphins adequately.
57. This issue is likely to receive considerable local and international public and media attention. As indicated by the high volume of public submissions on the proposal from outside of New Zealand, there is also substantial international interest in New Zealand's management of protected species, particularly interactions with the fishing industry, including from the International Union for the Conservation of Nature (IUCN), the International Whaling Commission, and environmental conservation organisations.
58. DOC officials in consultation with MPI will develop media strategies for the announcement of decisions and will proactively address any concerns which are raised about management of Maui's dolphins.
59. Officials will notify key stakeholders and will post information about my decision to vary the West Coast North Island Marine Mammal Sanctuary on the DOC website.

Recommendations

I recommend that the Committee:

1. **note** that Maui's dolphins are a critically endangered endemic sub-species with a very small population size (estimated 55 animals over the age of one) and the best science indicates that recovery will not be possible if there is more than one human-induced dolphin death every 10 to 23 years;
2. **note** that a joint package of protection measures for Maui's dolphins was consulted on in late 2012 by DOC and MPI as part of the Maui's dolphin TMP review, and the Minister for Primary Industries and I have submitted a separate paper on these issues;
3. **note** that since the earlier TMP process was completed, new and improved information has become available that has warranted further options being considered than were not considered in the earlier TMP process;
4. **note** that I notified my intention under section 22 of the Marine Mammals Protection Act 1978 to vary the existing West Coast North Island Marine Mammal Sanctuary to prohibit commercial and recreational set net fishing between two and seven nautical miles offshore between Pariokariwa Point and the Waiwhakaiho River, Taranaki;
5. **note** that of the 45,950 submissions received on the proposed variation, 45,933 were in support and 17 were opposed;
6. **note** that while there is uncertainty around the range of Maui's dolphins, I am satisfied that the available data supports a reasonable likelihood that Hector's/Maui's dolphins are present or transit through the variation area and that there is a reasonable likelihood that some of these dolphins are Maui's dolphins;
7. **note** that I am also satisfied that risk to Maui's dolphins can be reduced by prohibiting set net fishing from the area of the proposed variation;
8. **note** that I have weighed the reduction in risk against the cost to others in imposing further restrictions (indicative annual value and capitalised future value losses totalling \$567,144 based on MPI data and calculations). In my view, the reduction in risk that can be achieved through the proposed measures outweighs the economic impact that may result;
9. **note** that I intend to vary the West Coast North Island Marine Mammal Sanctuary as originally proposed; i.e. to prohibit commercial and recreational set net fishing between two and seven nautical miles from Pariokariwa Point to the Waiwhakaiho River, Taranaki;
10. **note** that in making my decision on the Proposal I have taken into account international considerations including outcomes reached in the IUCN and IWC contexts related to New Zealand's approach to Maui's dolphins.
11. **note** that my decision is subject to consent of the Minister of Energy and Resources, Minister for Primary Industries and Minister of Transport.
12. **note** that if consent is granted, the variation would be given effect to by notice in the *Gazette*, and come into effect 28 days after publication in the *Gazette*;

13. **note** decisions on this matter will be announced and implemented alongside the wider package of protection measures decided upon by myself and the Minister for Primary Industries as part of the Maui's dolphin Threat Management Plan review process.



Hon. Nick Smith
Minister of Conservation

7/11/2013

Appendix 1: Map of variation

