



# Office of Hon Phil Heatley

MP for Whangarei

Minister of Fisheries and Aquaculture

Minister of Housing

H1089

Dear Stakeholder

This letter outlines my decision on measures to protect Maui's and Hector's dolphins from the effect of fishing-related mortality.

In 2008 a number of measures were put in place by the previous Minister of Fisheries as part of the implementation of a Hector's and Maui's dolphin Threat Management Plan jointly developed by the Ministry of Fisheries (the Ministry) and the Department of Conservation.

As a result of judicial review, the High Court referred two matters back to me for reconsideration, having found that the decision on those matters was based, in part, on inaccurate advice from the Ministry.

These matters were:

1. The extension of a set net closure for commercial fishers on the west coast North Island (WCNI) to include the area between 4 and 7 nautical miles (nm) from shore; and
2. The decision not to exempt targeted butterfish commercial fishing from the closure of part of the east coast South Island (ECSI) to set net fishing.

Specifically, I had to consider whether it is necessary to impose measures to avoid, remedy or mitigate the effects of fishing-related mortality on Maui's or Hector's dolphins under section 15(2) of the Fisheries Act 1996, bearing in mind the purpose and principles of the Act (sections 8, 9 and 10).

I consider that tailoring measures to dolphin populations is the best way to address risks faced by each population whilst minimising the impact on fishers that would arise out of more generic measures.

Key issues in relation to my decision were:

- The status of the dolphins, including i) the size and distribution of the species and populations; ii) trends in abundance; and iii) dolphin biology;
- The nature of the threats facing each population and what is causing those threats;
- The current and potential effect of fishing-related mortality and the impact that this mortality may have on the species and each population; and
- The impact of proposed management measures on utilisation of fisheries resources.

## **West Coast North Island (WCNI) 4 – 7 nm**

### *My decision*

I have decided to retain the prohibition on commercial set netting between 4 and 7 nm on the WCNI (between Pariokariwa Point and Maunganui Bluff).

### *Rationale*

The population of Maui's dolphin is approximately 110. Given this population size, very low levels of mortality can have a significant impact on the population. In this context I consider the risk of mortality from set nets in the 4-7nm area (although likely to be low) to be unacceptable.

I recognise that there is uncertainty in information on distribution of dolphins off the WCNI and within the 4-7nm area. On balance, I consider there is sufficient information to indicate that dolphins are at times present in the area. The extent of their presence is unknown.

There is also considerable uncertainty on the likelihood of mortality from fishing occurring. The SeaFood Industry Council (SeaFIC) considers that based on Maui's population numbers and the amount of commercial set netting that occurs in the area between 4-7nm, the likelihood of mortality is too low to justify closure. I do not consider that current information allows for robust quantitative assessment of the likelihood of mortality as suggested by SeaFIC.

In my view the most current information allows me to determine with any certainty is that there is an overlap between dolphin distribution and fishing activity. This overlap creates a risk of mortality. On balance, I consider that the risk of mortality from fishing occurring is likely to be low. However, the consequence of such mortality on the population is high. Overall, I consider the likelihood and consequence of mortality from fishing to be sufficient, when considered together, to make it necessary to retain the current prohibition on set netting between 4-7nm.

I believe that it is appropriate to take a cautious approach in this case given the potential consequences to the Maui dolphin population on the WCNI and the uncertainty in the best available information.

In making this decision I acknowledge that there will be impacts on fishers that operate in this area. I have carefully considered those impacts but believe that the closure is necessary.

## **Top of the South**

### *My decision*

I have decided to provide an exemption to the set net prohibition on the East Coast South Island (ECSI) to allow commercial fishers targeting butterfish to use set nets in a defined area at the top of the ECSI (map attached).

## *Rationale*

I consider there is an acceptable likelihood and consequence of fishing related mortality from butterfish fishing by commercial fishers at the top of the South Island given the type of fishing gear used, the size of the area under consideration and the size of the ECSI dolphin population.

The nature of the risk to the ECSI population created by limited butterfish fishing at the top of the south island is very different to that posed by use of set nets in areas where Maui's dolphin are present.

Target fishing for butterfish involves using short nets (less than 60 metres in length) fished close to shore (in this case within 200 metres). The nets themselves are often placed in relatively shallow reef areas between or around rocky reefs and are operated for relatively short periods of time. There have been no records of mortalities to dolphins from commercial butterfish nets.

In 2008 a ban was put in place on the use of recreational and commercial set nets on the ECSI out to 4nm. This measure was intended to significantly reduce the likelihood of fishing-related mortality to the ECSI population as a whole. Although mortalities have been observed since the ban was put in place (caused by set nets outside the closed areas), I am confident that allowing butterfish fishing in the defined area will not significantly increase the effect of fishing on the ECSI population. Therefore, I do not consider that closure of this area to commercial set netting is necessary to address the effect of fishing-related mortality on the ECSI Hector's dolphin population.

In addition, I have directed the Ministry of Fisheries to provide advice to me on whether or not to provide an exemption to the use of set nets under the amateur fishing rules to target butterfish in the defined area of the ECSI. My feeling is that if commercial set netters are going to operate in this area, it is appropriate to also review restrictions on recreational set net fishers targeting butterfish in this area.

Kind regards



Hon Phil Heatley  
**Minister of Fisheries and Aquaculture**

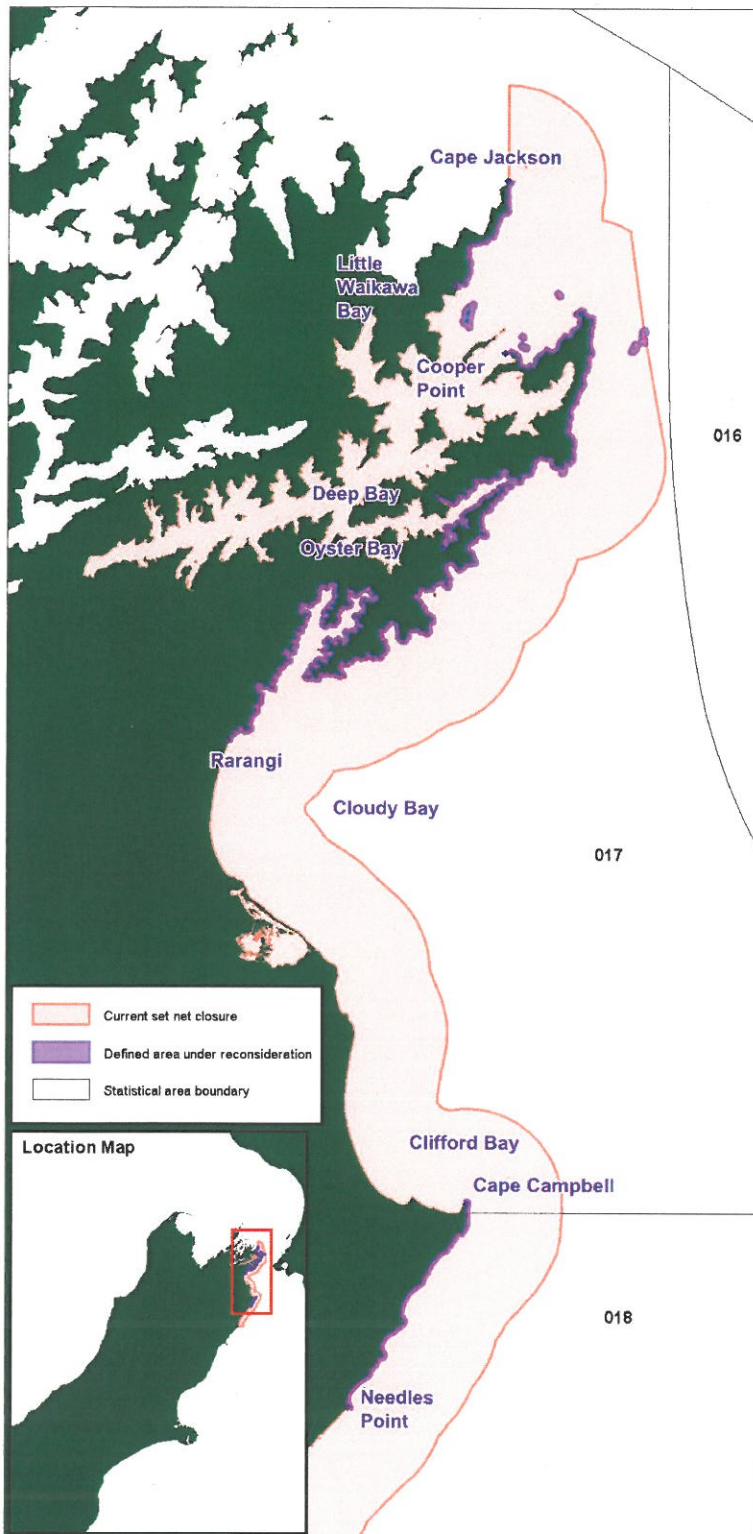


Figure 1:  
 Map showing defined area under reconsideration - the defined areas extends 200 m (red area on map) from areas of the coastline highlighted in purple.