

*Challenger Finfisheries'*  
*Management Company Ltd*

**COMMERCIAL SET NET FISHERS**

**CODE OF PRACTICE**

*The Challenger Finfisheries' Management Company Limited is dedicated to the conservation, management and development of living marine resources through representation and management support to stakeholders and operators in the Fisheries Management Areas 7 & 8.*

*This Voluntary Code of Practice is directed at the incidental capture of Hector's dolphin by the fishing method of set netting. Seabirds and seals may occasionally be caught in setnets but are not considered to be a significant source of mortality and will be included in additional documents developed to address the issues in the same manner as this Code.*

*The Challenger Finfisheries' Management Company Limited greatly appreciates the co-operation and efforts made by the set net fishers by monitoring their fishing operations, data reporting and adoption of this Code.*

*The Challenger Finfisheries' Management Company Limited gratefully acknowledge the permission of the South-East Finfish Management Company Limited for the use of their set netting code of practice as a base document for this Code.*

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## **1.0 INTRODUCTION**

- 1.1. The Challenger Finfisheries' Management Company Limited has developed the Voluntary Code of Practice for use by all commercial set netters operating within Fisheries Management Areas 7 and 8 (FMA 7 and 8) and encompassing Fisheries Statistical Areas 017, 018, 033, 034, 035, 036, 037, 038, 039, 040, and 041.
- 1.2. The Code is voluntary except where legal obligations by means of agreements or legislation are mandatory.
- 1.3. The Code of Practice was incorporated in 2002 by commercial set net fishers committed to "world best practice" and the mitigation and reduction of the incidental capture of Hector's dolphin in set nets.

## **2.0 BACKGROUND**

- 2.1. The Minister of Conservation declared Hector's dolphin a "threatened" species under the Marine Mammals Protection Act in late 1999.
- 2.2. Both the Minister of Conservation and the Minister of Fisheries are determined to see a reduction in the level of fisheries related bycatch of Hector's dolphin and have requested the fishing industry to put in place voluntary measures through which incidences of bycatch will be reduced.
- 2.3. A long term strategy for the interaction of fishing and Hector's dolphin for all the South Island will be undertaken by the Department of Conservation (DoC) when it develops and implements a population management plan (PMP) for this "threatened" species.

## **3.0 PURPOSE**

- 3.1. The purpose of this Code of Practice is to provide guidance to commercial set net fishers active in the inshore finfish set net fisheries of Fisheries Management Area 7 and 8 to avoidance and mitigation of the incidental capture of Hector's dolphin.

## **4.0 STATUTORY REQUIREMENTS**

- 4.1. The Marine Mammal Protection Act prescribe that it is an offence to kill marine mammals except in the case that the death occurred as a result of unintentional by-catch resulting from legal fishing operations, (refer Appendix 2, 10.5; Section 16).
- 4.2. The Marine Mammal Protection Act prescribes it to be an offence to fail to report the death or injury of a protected marine mammal, (refer Appendix 2, 10.5; Section 16).
- 4.3. The accidental or incidental death or injury of a marine mammal resulting from fisheries related activity is to be recorded in the vessel's log and reported to a Ministry of Fisheries officer and/or Department of Conservation officer in writing not later than 48 hours after the arrival of a vessel in port, (refer Appendix 2, 10.5; Section 16, No 1(a), No 3 (a) (b) (c), No 4)

4.4. Set net fishers shall comply with the Fisheries(Commercial Fishing) Regulations and amendments thereto and specifically, (refer Appendix, 10.9 and 10.10)

- Regulation 65 – Length of Set Net
- Regulation 66 – Set Net Soak Time

## 5.0 FISHING AREA

- 5.1. Set net fishers will observe **caution** when operating in areas where interaction with Hector's dolphin is possible.
- 5.2 Set net fishers will avoid fishing in shallow estuaries, harbours, and river mouths when water is not clear or is discoloured.

## 6.0 GEAR DEPLOYMENT

- 6.1. An active and alert lookout shall be maintained to spot Hector's dolphin active near the vessel during fishing operations.
- 6.2. Set nets shall not be deployed when Hector's dolphins are active around the vessel.
- 6.3. Where necessary, acoustic pingers shall be deployed with all shark set nets in accordance with pinger specifications for the particular model being used. (refer Appendix 4 for general use)

Pingers are available from:

Safe Sea Systems

Telephone: 021 334 382  
Facsimile: 03 328 9595  
6 Hyllton Heights  
PO Box 45  
LYTTELTON

Electronic Navigation Ltd

Telephone: 03 548 4987  
Facsimile: 03 548 2116  
78 Vickerman Street  
PO Box 94  
NELSON

- 6.4. Set nets are to be set with the tide where practicable.
- 6.5. Set net duration shall be kept as short as possible and at an absolute minimum nets shall be under run at least every 18 hours, (refer Appendix2, 10.10; Regulation 66).
- 6.6. Keep fish finders turned on and set at full gain throughout setting and recovery.
- 6.7. Set nets are to be set as tight as possible to avoid loose mesh and enveloping patterns.
- 6.8. Set nets are to be kept in good repair to avoid large holes, which may entice dolphins to attempt to go through the nets.
- 6.9. Nets are to be recovered as rapidly as possible.

## 7.0 FISHERY MONITORING

- 7.1. Set net operators will support the voluntary set net fishery observer programme.
- 7.2. Set net fishers will co-operate with Challenger Finfisheries' Management Company in maintaining accurate records as part of the voluntary logbook programme.
- 7.3. Reports as required by statute and by this Code of Practice will be provided in an accurate form and in a timely manner.

## 8.0 ACTION ON CAPTURE OF DOLPHIN

- 8.1. Every attempt must be made to quickly release animals alive with the minimum of stress and injury.
- 8.2. All incidents of capture, death or injury of any marine mammal must be recorded and reported pursuant to the Marine Mammal Protection Act reporting requirements. It is a serious offence to fail to report, (refer Appendix 2, 10.5; Section 16).
- 8.3. Details of the event are to be recorded in the vessel's log and on the back of the Challenger Finfisheries' Management Company Multi Species Log Book Form. The following details must be included:
  - Location (latitude & longitude)
  - Date
  - Time
  - The species (if known) of the marine mammal killed or injured, and/or a general description of the mammal
  - A detailed description of conditions and circumstances of the event.
  - How the carcass is marked (e.g. net twine tied around lower jaw)
- 8.4. The Department of Conservation operates a Marine Mammal Carcass Recovery and Autopsy Programme. If an officer or observer (refer Appendix 2, 10.2) is present on board a commercial fishing vessel, the officer or observer has the mandate under the Marine Mammal Regulations to retain and land marine mammal carcasses.
- 8.5. If however, an officer or observer is **not** on board a commercial fishing vessel, under the Marine Mammals Protection Act it is an offence to take any marine mammal, whether alive or dead, unless an appropriate permit is obtained, (refer Appendix 2, 10.3; Section 4).
- 8.6. If an officer or appropriate permit is not present advice must be sought from an officer **before** disposal, (refer Appendix 2, 10.6; Section 18 (2)). Contact details for the Ministry of Fisheries and Department of Conversation Office are listed in Appendix 1.
- 8.7. If an officer gives direction to bring in a marine mammal carcass, keep a phone log and a detailed record of your discussion.

If an officer gives direction to dispose of the marine mammal carcass at sea make certain that it is clearly marked. This is important because if the carcass is washed into another net or beach cast it is not counted for a second time. The preferred method of marking is to tightly and securely tie coloured net twine around the lower jaw as far to the back of the mouth as possible to prevent the mark from becoming loose or torn off.

## **9.0 ANNUAL EVALUATION**

9.1. The Challenger Finfisheries' Management Company Limited will evaluate the Code of Practice annually and advise all set net fishers of any amendments or developments with mitigation measures.

**APPENDIX 1. OFFICER CONTACT DETAILS**

<p><b>[Postal Address]</b> Ministry of Fisheries Nelson Regional Office Private Bag 14 Nelson</p> <p><b>[Location]</b> 118 Vickerman Street Port Nelson</p> <p>Phone: 03 548 1069 Fax: 03 546 9327</p>	<p><b>[Postal Address]</b> Ministry of Fisheries Dunedin Regional Office Private Bag 1926 Dunedin</p> <p><b>[Location]</b> 1<sup>st</sup> Floor 45 Filleul Street Dunedin</p> <p>Phone: 03 474 0333 Fax: 03 477 6275</p>	<p><b>[Postal Address]</b> Ministry of Fisheries Auckland Regional Office PO Box 3437 Auckland</p> <p><b>[Location]</b> 4 Bond Street Grey Lynn Auckland</p> <p>Phone: 09 361 4100 Fax: 09 361 4143</p>
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Conservation Emergency: 0800DOCHOTline (0800 36 24 68)

<p><b>[Postal Address]</b> Department of Conservation Nelson/Marlborough Conservancy</p> <p>Private Bag 5 Nelson</p> <p><b>[Location]</b> Munro State Building 186 Bridge Street Nelson</p> <p>Phone: 03 546 9335 Fax: 03 548 2805</p>	<p><b>[Postal Address]</b> Department of Conservation Wellington Conservancy</p> <p>PO Box 5086 Wellington</p> <p><b>[Location]</b> 2<sup>nd</sup> Floor Bowen State Building Bowen Street Wellington</p> <p>Phone: 04 472 5821 Fax: 04 499 0077</p>	<p><b>[Postal Address]</b> Department of Conservation Auckland Conservancy</p> <p>Private Bag 69908 Auckland</p> <p><b>[Location]</b> Cnr Karangahape Rd &amp; Liverpool Street Newton Auckland 1</p> <p>Phone: 09 307 9279 Fax: 09 377 2919</p>
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## **APPENDIX 2. EXTRACTS FROM THE MARINE MAMMALS PROTECTION ACT 1978 RELATING TO THIS CODE OF PRACTICE**

### **Interpretation:**

*“Marine mammal”* includes -

- (a) Any mammal which is morphologically adapted to, or which primarily inhabits, any marine environment; and
- (b) All species of seal (Pinnipedia), whale, dolphin, and porpoise (Cetacea), and dugong and manatee (Sirenia); and
- (c) The progeny of any marine mammal; and
- (d) Any part of any marine mammal.

*“Take”* includes -

- (a) To take, catch, kill, injure, attract, poison, tranquillise, herd, harass, disturb, or possess;
  - (b) To brand, tag, mark, or do any similar thing;
  - (c) To flense, render down, or separate any part from a carcass;
- To attempt to do any act specified in paragraph (a) or paragraph (b) or paragraph (c) of this definition.

*“Officer”* means a Marine Mammals Officer declared or appointed as such under section 11 of this Act:

### Section 4

Restrictions on holding or taking marine mammals –

- (1) Notwithstanding anything in any other enactment, but subject to this Act, no person shall –
  - (a) Hold a marine mammal in captivity; or
  - Take any marine mammal, whether alive or dead, in or from its natural habitat or in or from any other place – without first obtaining a permit to do so from the Minister or from any person or persons authorised in that behalf by the Minister.

### Section 11

Marine Mammals Officers –

- (1) Every warranted officer, and every Fisheries Officer appointed under section 76 of the Fisheries Act 1983, and every constable, shall be a Marine Mammals Officer for the purposes of this Act.
- (2) For the purposes of this Act, the Director-General may from time to time appoint any person to be a Marine Mammals Officer on such terms and conditions as may be approved.

### Section 9

Offence to take marine mammal without permit-

- (1) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$250,000, and to a further fine not exceeding \$10,000 for every marine mammal in respect of which the offence was committed, who takes, has in possession, exports, imports, has on board any vessel,

vehicle, aircraft, or hovercraft, or has control of any marine mammal, otherwise than under this Act or a permit.

- (2) Upon the conviction of any person for an offence against subsection (1) of this section, any marine mammal unlawfully taken, in possession, under the control of any person, or on board any vessel, vehicle, aircraft, or hovercraft, and all vessels, vehicles, aircraft, hovercraft, gear, nets, tackle, equipment, and apparatus used in respect of the commission of the offence shall be forfeit to the Crown, and shall be disposed of as the Minister thinks fit.

### Section 16

Reporting of accidental or incidental death or injury-

- (1) Where any person, in the course of fishing pursuant to any licence, permit, or permission granted or given under the Fisheries Act 1983, accidentally or incidentally kills or injures a marine mammal he shall—
  - (a) If fishing from a vessel, record the event in the vessel's log and report the event in writing to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) not later than 48 hours after the arrival of the vessel in port; and
  - (b) In any other case, report the event in writing to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) as soon as practicable.
- (2) Any person (not being a person to whom subsection (1) of this section applies) who, by any means whatsoever, accidentally or incidentally kills or injures any marine mammal shall report the event to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) as soon as practicable.
- (3) Every report under subsection (1) or subsection (2) of this section shall include—
  - (a) The location of the area where the event took place; and
  - (b) The species (if known) of the marine mammal killed or injured, or a general description of the mammal; and
  - (c) A description of conditions and the circumstances of the event.
- (3A) In addition to providing the particulars required by subsection (1) or subsection (2) of this section, a person required to report an event to which that subsection applies shall provide to the Director-General such other particulars relating to the event as the Director-General may require for the purposes of this Act.
- (4) Every person commits an offence against this Act who contravenes subsection (1) or subsection (2) of this section.

### Section 18

Treatment or disposal of sick or dead marine mammals –

Nothing in this Act shall affect –

- (a) Any person who gives any humane assistance, care, or medication to any stranded, sick, or injured marine mammal if (where known) details of the mammal's species, length, sex, and condition, or a general description of the mammal, and details of the treatment and any results of the treatment are forwarded to the Director-General or an officer as soon as practicable: The moving of any marine mammal by or under the direction of an Officer in the interests of public safety or the well-being of the mammal: The destruction of any aged, sick, distressed, or

troublesome marine mammal by or under the direction of an officer or person authorised by the Minister.

- (2) Dead marine mammals shall be disposed of in accordance with the advice of an officer or person authorised by the Minister, which advice shall be given, where practicable, after consultation with the occupier of the place where the marine mammal is found.

## **APPENDIX 3. EXTRACTS FROM THE COMMERCIAL FISHING REGULATIONS 2001 RELATING TO THIS CODE OF PRACTICE**

### **Interpretation:**

*“Commercial fisher”* - for the purposes of these regulations, means a person who has a fishing permit issued under section 91 of the Act entitling that person to take a species or class of fish, aquatic life, or seaweed; and includes –

- (a) a person who is engaged in any capacity on a New Zealand fishing vessel or a foreign-owned New Zealand fish vessel; and
- (b) a person, whether or not on board a fishing vessel, who takes fish, aquatic life, or seaweed for the purposes of sale

*“Fishing gear”* - includes a net, line, pot, trap, dredge, apparatus, device, or thing that is used, or is capable of being used, for the purpose of taking fish

*“Fishing method”* - means the way in which fishing gear is used to take fish or any other practice that may reasonably be expected to result in fish being taken

*“Net”* - means a net or part of a net used, or capable of being used, to take fish; but does not include a whitebait net

*“Set net”* - includes a gill net or other sort of net that acts by enmeshing, entrapping, or entangling fish; but does not include a fyke net or hinaki

*“Stalling”* - means the process of setting a net so that fish enclosed or entangled by the net are left stranded by the falling tide or are enclosed or entangled so that, at any stage of the tide, there is an insufficient depth of water at either end of the net to enable the fish to pass from the waters above the net to the waters below the net

*“Static fishing gear”* - means fishing gear not drawn through the water by mechanical means of by hand

### **Regulation 65 –**

#### Length of set net

- (1) Commercial fishers must not use set nets or a combination of set nets if the total length of a net or a combination of nets, whether attached together or otherwise, is more than 1 000m.
- (2) Subclause (1) does not apply if all of the upper edge of each set net is more than 2 m below the surface of the water
- (3) Commercial fishers must not use set nets or a combination of set nets in New Zealand fisheries waters if the total length of a net or a combination of nets, whether attached together or otherwise, is more than 3 000m.
- (4) Subclause (3) does not apply if the chief executive authorises the use of the net or nets under subclause (5).
- (5) The chief executive may, in writing, authorise a commercial fisher to use a set net or a combination of set nets in New Zealand fisheries waters, whether attached together or not, with a total length of not more than 6 000m

- (6) In subclauses (3) and (5), New Zealand fisheries waters does not include a river, stream, lake, lagoon, or estuary.
- (7) Before issuing an authorisation under subclause (5), the chief executive must be satisfied that the commercial fisher has previously used a set net or a combination of set nets, whether attached together or otherwise, whose total length was not less than 3 000m.
- (8) Commercial fishers must not use or possess set nets with a total length of more than 500m if, when the nets are set, they have part of their upper edge more than 2 m from the surface of the water unless the nets have surface floats attached at intervals of 500 m or less.
- (9) Commercial fishers must not, in rivers, streams, lakes, lagoons, or estuaries, -
  - (a) use set nets or a combination of set nets if the total length of a net or a combination of nets, whether attached together or otherwise, exceeds 1 000m; or
  - (b) set a set net within 60 m of another set net.

## **Regulation 66 –**

### Set net soak time

Commercial fishers must not leave set nets in the water for more than 18 hours without under-running the net and removing fish that have been caught.

## **APPENDIX 4. PINGER USE ON SET NETS**

One of the positive aspects for the use of set nets is the very low impact this fishing technique has on the ocean floor and the ability for many juvenile fish species to swim through the meshes. There is however an accepted downside with the incidental capture of marine mammals.

The trend in more recent times is to alert the marine mammal or Hector's dolphin in this instance to the set net by the use of acoustic deterrent devices. These devices have been developed to a point where habitual noise patterns and destructive noise levels are not used. A random signal is emitted from the device at a set frequency.

The Challenger Finfisheries Management Company Limited is committed to the investigation of the use of acoustic pingers and the development of other mitigation methods that may serve the preservation of the fisher and marine mammal.

### A. Pinger Supply and Structure

There are a number of pinger types on the market today. As noted under section 6.0 both Safe Sea Systems and Electronic Navigation can advise on the best pinger for your application. The following is just a brief description of the pinger and maintenance requirements. Talk to your supplier for full instructions on their use etc.

In general, the pinger is cylindrical in shape with a screw top and an O-ring to prevent leakage. A number of batteries are secured inside the housing with the other electronics. Once the top is tightened and secured properly a high pitched ping will be emitted to show it is fully functional.

### B. Pinger attachment

From various trials conducted with pingers it is suggested they should be attached at least every 100 metres along the top of the netting section. Most pingers have a hole at one end for attachment by passing a line through it and lacing either end to the main attachment line. This method allows for easy access to the unit to change the batteries but does allow for excessive movement. The lower section can be laced or taped to the attachment line as well if needed. Alternatively, the pinger can be secured inside a netting bag that is in turn laced to the top of the netting section.

### C. Pinger maintenance

The manufacturers will advise when the batteries should be changed but it is best that they are checked on a regular basis possibly every four weeks. It is best that the internal workings of the pinger is not exposed more than required. Take extreme care when changing the batteries to not allow any moisture inside the housing. This will cause damage not only to the battery unit but the electronic section.

The setting and haul-back procedures will vary amongst the fishers but adding extra pressure to the housing unit when hauling can cause distortion and leakage. If possible, it is best to remove the pingers on hauling and put them on when setting.