

# OFFICE OF HON **Jim Anderton**

Minister of Agriculture, Minister for Biosecurity, Minister of Fisheries, Minister of Forestry,  
Associate Minister of Health, Associate Minister for Tertiary Education, Minister responsible for Public Trust

2 July 2008

Dear Stakeholder

1 I recently decided to introduce new fishing rules that are intended to avoid, remedy, or mitigate the effect of fishing-related mortality on Hector's and Maui's dolphins. The new fishing rules include a mix of bans and other restrictions on set netting, trawling, and drift netting in areas where the dolphins are found. I intend that the new rules take effect from 1 October 2008.

2 In reaching my decisions, I considered:

- a) the draft Hector's and Maui's Dolphin Threat Management Plan (TMP) that the Ministry of Fisheries and Department of Conservation released for consultation in August last year;
- b) the final advice paper on fisheries measures for the TMP that the Ministry of Fisheries provided me on 2 May 2008, and further information I sought from officials following my review of the final advice;
- c) information presented by tangata whenua and stakeholders as part of the consultation process around the draft TMP, and;
- d) information provided by the Minister of Conservation, whose views I am required to consider prior to making these types of decisions.

3 In reaching my decisions, I also gave regard to the legislative provisions of the Fisheries Act 1996 (the Act). In particular, I gave regard to the provision about fishing-related mortality of marine mammals (s 15) in light of those provisions relating to the purpose and principles of the Act (ss 8, 9, and 10).

## **Process**

4 Managing threats to Hector's and Maui's dolphins is a complex issue. This process started over two years ago when the Ministry of Fisheries and the Department of Conservation developed a TMP process as part of a strategic and cross-departmental framework to effectively manage human-induced threats to Hector's and Maui's dolphins. Although the two departments worked together, they addressed separately the different powers and responsibilities contained in the legislation that they each administer. In August 2007, the Ministry and the Department released a draft TMP for consultation, which identified threats to the dolphins and contained proposals to manage the threats. The information in the draft TMP identified fishing (in particular set netting) as the biggest threat, and hence included a range of proposals to better manage fishing threats.



5 The draft TMP attracted over 2000 submissions, including hundreds of form letters, and a number of petitions. I thank everyone who participated in the consultation process around the draft TMP. I appreciate the amount of work and effort that went into formulating submissions.

## **Section 15 of the Fisheries Act 1996**

6 Section 15 of the Act enables me to implement measures I consider necessary to avoid, remedy, or mitigate the effects of fishing-related mortality on protected species (Hector's and Maui's dolphin are two subspecies of the same protected species). I considered the need for new and additional measures for Hector's and Maui's dolphins by reviewing best available information at both the species level and the population level (genetic and demographic information indicates there are four distinct dolphin populations). I concluded that tailoring measures to populations was the best way to address risks faced by each population and minimise impacts on fishers that may have occurred from more generic measures. I consider that tailoring measures to populations was the best way to give effect to my overall obligations at the species (national) level. This approach was pragmatic and consistent with my legal obligation under s 9 of the Act to maintain biological diversity.

7 Key issues in relation to my consideration were:

- a) issues relating to the status of the dolphins, including (i) the size and distribution of the species and populations (ii) trends in abundance, and (iii) dolphin biology;
- b) the nature of the threats facing each population and what is causing those threats;
- c) past, present, and future effects of fishing-related threats, including the risk of mortality from fishing, and the impact that future mortality may have on the species and each population;
- d) the effectiveness of current management (three of the dolphin populations already have measures in place to manage the effects of fishing-related mortality), and;
- e) the impact of management measures on utilisation of fisheries resources.

8 Having regard to these key issues at a national level, I note in particular that:

- a) the biological and behavioural characteristics of Hector's and Maui's dolphins mean they are not very productive and are susceptible to the effects of human-induced mortality, and;
- b) Hector's and Maui's dolphins are one of the rarest dolphin species in the world and occur only in New Zealand. There are no comparative population surveys that track abundance over time, but population modelling (although very uncertain) and declining genetic diversity in two of the populations suggests there are fewer dolphins now than in the past, and;
- c) there is good evidence that there is a risk of fishing mortality where the dolphins and certain fishing methods overlap. There is considerable uncertainty in the extent of fishing-related mortality but those cases for which the cause of death is known indicate that fishing-related mortality has been significant. In addition, I consider that known fishing-related mortalities underestimate actual fishing-related mortalities because:

- i) clinical protocols used in dolphin necropsy require very conclusive signs of fishing-related mortality before fishing is recorded as the cause of death (many more of the reported mortalities may be fishing-related);
- ii) although fishers are required to report fishing-related mortality, there is good evidence that, at least historically, not all mortalities are reported, and;
- iii) only a very small proportion of commercial fishing effort has been monitored in areas where there are dolphins. The bycatch of recreational fishing activity is not monitored.

9 With these issues in mind, I sought to find an appropriate balance between utilisation (of fisheries resources) objectives and conservation values in making my decisions. I note that it would not have been appropriate to approach consideration of the sustainability and utilisation factors in the same way I may have approached these factors when considering harvested stocks such as snapper or blue cod. The point of the exercise was not to arrive at the number of dolphins that could be harvested sustainably. That would be inappropriate for a protected species. Instead, I was seeking to minimise mortality caused by fishing to the degree that I consider necessary, taking into account the purpose and principles of the Act.

10 I am aware that s 15 of the Act gives me considerable discretion in determining the need for, and type of, measures to avoid, remedy, or mitigate the effect of fishing-related mortality. For this reason, the Ministry consulted widely on options that ranged from the status quo through to measures that would prohibit fishing methods that pose a threat to dolphins. In addition, I am aware that I am not obliged to reduce fishing-related dolphin mortality to zero, and that, even in light of the information available to me, the Act does not necessarily oblige me to implement measures.

11 However, given the key issues I mentioned above that are specific to Maui's and Hector's dolphins, and given the protected status of the species, I believe it is reasonable to take a precautionary approach when considering whether measures are necessary to avoid, remedy, or mitigate the effects of fishing-related mortality, whilst having regard to the utilisation impacts of any measures.

### **Uncertainty in information**

12 Fishers generally argued that there was not enough information to indicate fishing is having a significant impact on the dolphins, and that additional fishing restrictions were not necessary and would come at a big cost to fishers without offering benefits to dolphins. Fishers argued that more research was necessary before taking any action.

13 Environmental groups and many in the general public argued that Hector's and Maui's dolphins are one of the most researched dolphins in the world. These submitters argued that there is sufficient information available now to take action to reduce the impact of human-induced mortality, and in particular the threat posed by fishing.

14 I recognise there is uncertainty in information about the size and distribution of the dolphin population, and about trends in the size of the population. I recognise there is also uncertainty about the impacts of fishing-related mortality (and human-induced mortality in general) and the effectiveness of current measures to protect the dolphins.

15 As with all areas of fisheries management, further information could always be sought to improve the basis of decision making. I considered this alongside the fact that gathering more information on trends in population size and distribution, and on the extent of fishing-related mortality, may take years and considerable resources. For example, detecting trends in dolphin populations would require a long timeframe. And, because the dolphin population is small, the cost associated with observer coverage necessary to determine the actual extent of fishing-related mortality would be prohibitive. In addition, we are effectively unable to monitor bycatch in the recreational sector.

16 I believe there is sufficient information available now to allow me to make a determination about whether new or additional measures are necessary, having regard to the costs and benefits associated with any delay to gather more information. I am also conscious of my obligation not to use uncertainty in information as a rationale for failing to take measures I consider necessary to achieve the purpose of the Act.

### **My decisions**

17 My decisions were difficult to make. The measures I consider necessary will probably have a substantial impact on fishers. The Ministry of Fisheries recognised the significance of these costs and made an extensive effort to provide me with a detailed analysis of the likely economic costs by contracting an independent analysis of the impact of the measures proposed in the draft TMP. The Ministry used the information from that independent analysis along with information in industry submissions to develop estimates of lost income resulting from different proposals. During my decision-making process, I asked the Ministry to develop job loss estimates from those estimates of lost income. These estimates allowed me to better understand how utilisation would be impacted under alternative options.

18 The Ministry of Fisheries, after integrating information from independent analysis and industry submissions, estimates the costs of the final measures could be up to \$79.1 million over a five to ten year period. This cost is comprised of up to \$32.7 million in lost quota value and up to \$46.4 million in lost income. The Ministry of Fisheries forecasts that up to 295 jobs could be lost in the first year as a result of the new fishing rules – up to 65 in fishing, another 65 in onshore fish processing, and up to 165 in supply industries and the wider economy.

19 Recreational fishers will also be impacted by the new fishing rules. For many people, recreational set netting is an often-used fishing method, and I recognise that some people will have to change the way they fish if they still want to keep fishing. However, although dolphin deaths are unintentional, there is always a risk of entanglement in the areas they share with fishing nets. In the areas where I am introducing new fishing rules, I consider this risk to be too high and, therefore, unacceptable.

20 I empathise with everyone who will be impacted by the new rules, but I consider my decisions strike the best achievable balance between the protection of these unique dolphins and the activities of commercial and recreational fishers. Some submitters offered suggestions outside the range of options in the draft TMP. I acknowledge the effort that went into some of these suggestions, but I consider the measures I have chosen are the necessary measures in light of the best available information.

21 My decisions sit alongside other outcomes of the TMP process recently announced by the Conservation Minister. The Department of Conservation signaled new and amended Marine Mammal Sanctuaries in the draft TMP, and a focus on managing non fishing-related threats like seismic activity and mining. The Conservation Minister's proposed sanctuaries and seismic and mining restrictions demonstrate that government is committed to managing the range of human-induced threats to the dolphins where necessary and possible.

### ***West Coast North Island – new fisheries measures***

22 For Maui's dolphins on the west coast of the North Island I made decisions for recreational and commercial set netting, trawling, and recreational and commercial drift netting.

#### ***Recreational and commercial set netting***

23 I decided to ban set netting in the entrance to Kaipara and Raglan Harbours, and in the lower part of Port Waikato. I also decided to ban set netting further into the Manukau Harbour than the existing set net ban, and to extend the existing set net ban from four nautical miles offshore to seven nautical miles offshore between Maunganui Bluff and Pariokariwa Point. Map 1 shows the new set net bans.

#### ***Trawling***

24 I decided to extend the existing trawl bans on the west coast of the North Island from one nautical mile to two nautical miles offshore between Maunganui Bluff and Pariokariwa Point, and to four nautical miles offshore between Manukau Harbour and Port Waikato. Map 2 shows the new trawl bans.

#### ***Recreational and commercial drift netting***

25 I decided to ban drift netting in Port Waikato. This ban applies to the whole Port and river system where drifting nets are currently used, and includes all nets that drift (i.e., free floating) without anchor. Map 3 shows the new drift net ban.

### ***West Coast North Island – rationale for my decisions***

26 In the case of Maui's dolphin on the west coast of the North Island, there is considerable information available to indicate that government should be concerned about the effect of any human-induced mortality. We know that the population size is small and that it has probably declined over time. We do not know for certain the cause of the decline. However, given the status of the population (Potential Biological Removal, or PBR, analysis shows that the rebuild of the population may be affected by an average of only 0.2 human-induced deaths every year), I consider only a very low level of risk of fishing-related mortality to be acceptable to avoid the effect that fishing-related mortality would have on this population. This means implementing measures where mortality may not have occurred to date, but where I consider there is an unacceptable risk – given the best available information – of mortality occurring in the future.

27 The existing set net ban established in 2003 has probably provided significant protection to Maui's dolphins from fishing. Indeed the final advice that the Ministry of Fisheries presented to me indicates that the dolphins are primarily distributed inside the existing set net ban. While this provided me some comfort, the critical issue that I had to consider was the level of residual risk that remains from some overlap of Maui's dolphins and fishing.

28 I am aware that fishers argue there are no dolphins outside the existing set net ban. However, the final advice included evidence that dolphins at least occasionally travel outside the existing set net ban into areas where they may be exposed to set net entanglement. Fishers also argued that there are no fishing-related mortalities outside the existing set net ban, and none at all since the ban was established in 2003, and that status quo management was sufficient. I reiterate that the critical issue for me to consider was whether the risk of future fishing-related mortality was acceptable (regardless of whether a mortality has been reported from an area or not) in light of the effect that human-induced mortality will have on this population. I considered the reliability of the distribution information in the final advice before making my decisions.

29 There is evidence that dolphins occasionally travel offshore more than four nautical miles, and into the Kaipara Harbour entrance. There is also evidence that dolphins occasionally travel just beyond the existing set net ban in the Manukau Harbour entrance. There is no evidence that dolphins are regularly in these areas, so I believe the likelihood that a dolphin will encounter a set net outside the existing set net ban is low. However, I consider that additional protection in these areas is necessary in light of the consequences of fishing-related mortality to the population.

30 Evidence that dolphins occasionally travel into the Raglan Harbour entrance is less certain than evidence of dolphins in the Manukau and Kaipara harbour entrances. Nevertheless, I consider that some protection at the Raglan Harbour entrance is necessary because I am concerned that set nets could break free (there is evidence that this does happen at other locations) and float into the ocean where there are dolphins. I note that there was support for this approach from some fishers at Raglan.

31 My decision to ban set netting in part of Port Waikato follows similar reasoning to my decision for Raglan Harbour. There are dolphins outside Port Waikato, and there is evidence that nets set in the Port occasionally break free. I consider it necessary to protect the dolphins against entanglement in nets that may float from Port Waikato. Some people will be concerned that I did not ban set nets further up the Port, but the Ministry advise that most set nets lost further upstream would probably roll into a ball that poses no threat to dolphins before (and if) exiting the Port. Some people will also be concerned that I did not ban set nets inside all west coast harbours. I mentioned earlier, I considered the reliability of the dolphin distribution information in the final advice before I made my decisions. I saw no reliable information to support claims I have seen from some people via the media, and in some submissions, that dolphins range deep inside west coast harbours, nor that dolphins use the harbours for extended periods of time. I do not consider best available information supports measures deep inside these harbours at this time. However, if new information becomes available that indicates dolphins are present deep inside these harbours, I will obviously need to consider this issue again.

32 I also banned drift netting at Port Waikato because I am concerned that fishers could occasionally lose drift nets and they may float into the area where dolphins are found most often. I acknowledge that some submitters noted they only fished on the incoming tide, but I still consider the risk from drift netting too high in light of the status of the dolphin population.

33 Evidence of dolphins south of the existing set net ban (i.e., south of Pariokariwa Point) is uncertain. Aerial and boat surveys have failed to detect any dolphins south of the set net ban, but there are some anecdotal sightings made by members of the public. In this instance, I decided there was too much uncertainty about if, and how often, dolphins may travel south of the set net ban, to impose fishing restrictions that would impact the local fishing industry and recreational fishers at this time.

34 My decision to ban trawling recognises that although there are no reported trawl-related mortalities on the west coast, inshore trawlers in other parts of New Zealand have captured Hector's dolphins, and there is therefore a risk that trawlers in this area could catch Maui's dolphins. I want to manage this risk appropriately in light of the consequences of fishing-related mortality to the dolphin population. I do not believe that observer coverage alone is an appropriate approach in this circumstance. The costs to observe the west coast trawl fleet would be prohibitive in light of the level of coverage that would be necessary for such an endangered dolphin. Although the existing trawl bans on the west coast provide a degree of protection, I consider it necessary to provide more protection close to shore where dolphins are most often distributed.

### ***South Coast South Island – new fisheries measures***

35 For Hector's dolphins on the south coast of the South Island, I made decisions for recreational and commercial set netting, and for trawling.

#### ***Recreational and commercial set netting***

36 I decided to ban set netting in the whole of Te Waewae Bay and to four nautical miles offshore between Slope Point in the Catlins and Sandhill Point east of Fiordland. The new set net ban does not generally apply to harbours, estuaries, river mouths, lagoons, and inlets. In the south coast area, this means that set nets will not be banned in the Bluff and Toetoes harbours, the New River and Jacobs estuaries, and the Waiau and Waituna lagoons (although I am not relaxing any existing set net bans).

37 Working through the detail of where the regulations will and will not apply (with respect to harbours, estuaries, river mouths, lagoons, and inlets) is a complex issue. The areas I described above are the largest, most obvious, areas that will be excluded from the set net ban on the basis that there are few, if any, dolphins present. The regulations will include finer detail and will be publicly notified at least 28 days before implementation. However, I recognise that people will want additional detail as soon as possible, and for this reason, I have asked the Ministry to develop the full list of excluded harbours, estuaries, river mouths, lagoons, and inlets as soon as possible and place this on the Ministry website. I anticipate that this information will be available within the next few weeks.

38 Map 4 shows the new set net bans.

#### ***Trawling***

39 I decided to ban trawling within two nautical miles of the shore between Slope Point in the Catlins and Sandhill Point east of Fiordland. I decided to exempt from this ban any vessel trawling with low headline nets. Trawl configurations that qualify for this exemption will be defined in the regulations that implement my decisions later this year. Map 5 shows the new trawl bans.

### ***South Coast South Island – rationale for my decisions***

40 In the case of Hector's dolphin on the south coast of the South Island I also believe there is sufficient information available now to indicate that government should be concerned about the effects of fishing-related mortality on the population. After Maui's dolphin, the south coast South Island Hector's dolphin population is probably the smallest of the four populations. Whether there

are 89 dolphins (the latest published abundance estimate for dolphins in Te Waewae Bay at the time of the survey) or 403 dolphins (the latest unpublished abundance estimate for dolphins that use the bay over an extended time period), the population is small. Most of the dolphins seem to be in Te Waewae Bay, although there are dolphins along other sections of coastline.

41 There are very few reported mortalities for this population, and no reported fishing-related mortalities, although there is one possible entanglement. However, there has been no formal monitoring of amateur set net fishing, no monitoring of trawl fishing, and only limited monitoring of commercial set net fishing, particularly in Te Waewae Bay. Because of the size of the population, and because I know that set nets and trawlers catch dolphins in other areas, I am concerned about the level of overlap between dolphins and fishing on the south coast.

42 Some regulated measures are currently in place for amateur set netting – amateur fishers are required to stay in attendance with their net when set netting in Te Waewae Bay – and some voluntary measures are currently in place for amateur set netting, commercial set netting, and trawling. However, in light of the status of this population and the overlap of set net and trawl effort and dolphins on the south coast, I consider that additional measures are necessary. My decision to provide more extensive set net protection in Te Waewae Bay reflects that there are more animals there, and a higher likelihood of entanglement. Although the distribution of the dolphins in some places outside Te Waewae Bay is uncertain, the final advice illustrates that there are occasionally dolphins on the coast between Te Waewae Bay and the Catlins. Given the impact of fishing-related mortality on this population, I consider that measures are also necessary outside Te Waewae Bay.

43 The trawl ban is not as extensive as the set net ban because the information available to me shows that, generally, trawling is a lesser threat than set nets. I did consider a trawl ban similar to my decision for the west coast of the North Island, but for the south coast population I consider that lesser measures are sufficient to manage entanglement risk. Accordingly, I do not consider it necessary to prevent vessels trawling with low headline nets operating close to shore on the south coast. My intention is to limit the height of nets that can be used within two nautical miles of the shore to the minimum necessary to allow flatfish to be harvested. This restriction will reduce risk significantly to the dolphins because the net-opening is not as high as other inshore trawl configurations. The configuration that qualifies for the exemption will be described in more detail in the regulations. Although I am confident my decisions on trawl measures lower entanglement risk to dolphins, I will still be monitoring trawling in Te Waewae Bay because I am concerned about the significant overlap between this method and the dolphins.

### ***East Coast South Island – new fisheries measures***

44 For Hector's dolphins on the east coast of the South Island I made decisions for recreational and commercial set netting, and for trawling.

#### ***Recreational and commercial set netting***

45 I decided to ban set netting on the east coast of the South Island to four nautical miles offshore between Cape Jackson in the Marlborough Sounds and Slope Point in the Catlins. The new set net ban does apply to the area in the existing Marine Mammal Sanctuary around Banks Peninsula. The new set net ban also applies to the Lyttelton, Akaroa, and Timaru harbours, and to the Avon-Heathcote estuary, as well as to the numerous bays around Banks Peninsula.



46 The new set net ban does not generally apply to harbours, estuaries, river mouths, lagoons, and inlets. This means the ban does not apply to the Otago and Waikawa harbours, to the Purakanui, Haldane, and Ashley River estuaries, to the Brooklands and Wainono lagoons, to lakes Forsyth and Ellesmere, and to the Waitati, Papanui, and Hoopers inlets. Working through the detail of where the regulations will and will not apply (with respect to harbours, estuaries, river mouths, lagoons, and inlets) is a complex issue. The areas I described above are the largest, most obvious, areas that will be excluded from the set net ban on the basis that there are few, if any, dolphins present. The regulations will include finer detail and will be publicly notified at least 28 days before implementation. However, I recognise that people will want additional detail as soon as possible, and for this reason, I have asked the Ministry to develop the full list of excluded harbours, estuaries, river mouths, lagoons, and inlets as soon as possible and place this on the Ministry website. I anticipate that this information will be available within the next few weeks.

47 I decided to provide two exemptions to the new set net ban. The exemptions are:

- a) For people who set net between 1 April and 30 September in designated areas around Banks Peninsula (including inner Lyttelton and Akaroa Harbours, Port Levy and Pigeon Bay) and inner Queen Charlotte Sound using special flatfish set nets. The regulations will define the boundaries of the areas that qualify for this exemption, and the net configuration that people must use in these areas, and;
- b) For commercial fishers who set net in the very deep (greater than 100m) Kaikoura Canyon area for deepwater species. The offshore boundary of the set net ban will be approximately one nautical mile, not four nautical miles, at the head of the canyon in this area. The regulations will define the boundary of this area.

48 Map 6 shows the new set net bans and the two exemptions. Please note that I am not relaxing existing set net restrictions on the east coast. However, some existing set net rules in the Banks Peninsula Marine Mammal Sanctuary were implemented under conservation, not fisheries, legislation. These rules will be revoked and replaced with the measures signaled in this letter.

### *Trawling*

49 I decided to ban trawling within two nautical miles of the shore between Cape Jackson in the Marlborough Sounds and Slope Point in the Catlins. I decided to exempt from this ban any vessel trawling with a low headline net. The regulations will define the trawl configuration that qualifies for this exemption. Map 7 shows the new trawl bans. Please note that I am not relaxing any existing trawl restrictions on the east coast.

### ***East Coast South Island – rationale for my decisions***

50 In the case of Hector's dolphin on the east coast of the South Island I also believe there is sufficient information available now to indicate that government should be concerned about the effects of fishing-related mortality on the population. The most recent abundance estimate for the population is 1791. However, genetic evidence suggests the population has declined, and that the population is fragmented. Scientific information such as the PBR estimate indicates that the population can sustain only low levels of human-induced mortality without impacting on the speed at which the population may increase in size.

51 While the cause of the decline in abundance is not clear, I believe there is sufficient information available about risk from fishing to indicate that fishing may be having an effect that is, at the very least, likely to be sufficient to slow the rate of increase of the population, and may cause further population fragmentation.

52 Fishing is without doubt the single biggest recorded threat to this population. There are 86 known fishing-related mortalities out of a total 255 reported mortalities recorded in the Department of Conservation's Hector's dolphin incident database. In addition, reported mortalities probably only provide an indication of the nature of threats to the dolphins – not the extent. For fishing threats, I believe that actual mortalities are probably higher than recorded or reported, as observer coverage has historically been very low. In addition, it is clear on the east coast that fishing activity, in particular set net and trawl, overlaps with the dolphin distribution.

53 I realise that I am not obliged to take measures to increase the population size or even necessarily maintain the current population size if it is above the level that will ensure the long term viability of the population. However, there is clear evidence that dolphin abundance has declined, perhaps substantially in some areas. Under these circumstances, I believe it is reasonable to seek to manage the impacts of fishing to allow the population to maintain its current level or, preferably, increase in size.

54 Some regulated and voluntary measures are currently in place for recreational and commercial netting:

- a) Commercial and recreational set nets are restricted in length and soak time;
- b) Banks Peninsula Marine Mammal Sanctuary contains seasonal prohibitions and restrictions for commercial and amateur set netting;
- c) Seasonal amateur set net prohibition in the Canterbury area (between the Waiau and Waitaki Rivers from 1 October to 31 March);
- d) Seasonal requirement for amateur fishers to stay with their net when set netting in the Kaikoura area (between the Waiau and Clarence Rivers from 1 October to 31 March), and;
- e) Voluntary Codes of Practice for commercial set netting, including avoiding fishing in areas where Hector's dolphins are known to frequent and using pingers to deter dolphins.

55 Fishing-related dolphin mortality is ongoing despite existing measures. Given the current known fishing-related mortality, the likely under-reporting of mortality, and in light of the consequence of ongoing mortality, I want a greater level of certainty that mortalities are being managed at low levels. I therefore consider that additional management measures are necessary.

56 I have banned set nets to four nautical miles because I am concerned about the extent of overlap between dolphins and set nets within this area. Because of the distribution of the dolphins, I believe there is a much lower likelihood of entanglement outside four nautical miles.

57 I decided on two exemptions to the set net ban. I have allowed set net fishing for deepwater species to continue closer to shore in the Kaikoura area because the Kaikoura Canyon, where the water is much deeper, comes close to shore here. Dolphins typically avoid deeper water and I believe the risk of entanglement will be very low. I will be looking to ensure that the boundaries of the excluded Kaikoura Canyon deepwater area represent the lowest possible risk to the dolphins.

58 I have also allowed flatfish set net fishing to continue in winter in some small designated areas inside inner harbours around Banks Peninsula, and in the inner Queen Charlotte Sound. I also believe the risk of entanglement will be low in these areas. Dolphins tend to move further offshore away from these areas in winter.

59 There are currently no trawl bans in place to protect the dolphins, yet trawl mortalities have been recorded on the east coast. I am not comfortable that this situation continue. The two nautical mile ban I decided on is not as extensive as the set net ban because the limited information available to me shows that, generally, trawling is a lesser threat than set nets. In addition, I do not consider it necessary to prevent vessels trawling with low headline nets close to shore. My intention is to limit the height of nets that can be used within two nautical miles of the shore to the minimum height necessary to allow flatfish to be harvested. This restriction will reduce risk significantly to the dolphins because the net-opening is not as high as other inshore trawl configurations. The configuration that qualifies for the exemption will be described in more detail in the regulations.

60 I carefully considered the need for additional restrictions for trawl and set net fisheries on the east coast, but I consider my decisions provide the best balance between reducing risk to dolphins and providing for the use of fisheries resources. However, I also recognise that entanglement risk remains. To this end, the Ministry will invest in increased monitoring and ongoing research to assess the effectiveness of my decisions. Some details of the monitoring and research programme are outlined later.

### ***West Coast South Island – new fisheries measures***

61 For Hector's dolphins on the west coast of the South Island I made decisions for recreational and commercial set netting.

#### ***Recreational and commercial set netting***

62 I decided to ban recreational set netting on the west coast of the South Island to two nautical miles offshore all year between Cape Farewell on Farewell Spit and Awarua Point north of Fiordland. I have also decided to ban commercial set netting in the same area between 1 December and 28 February.

63 The new set net ban does not generally apply to harbours, estuaries, river mouths, lagoons, and inlets. On the west coast, this means the ban does not apply to Whanganui Inlet, Orowaiti Lagoon, Okari Lagoon, Okarito Lagoon, and the Three Mile Lagoon. Working through the detail of where the regulations will and will not apply (with respect to harbours, estuaries, river mouths, lagoons, and inlets) is a complex issue. The areas I described above are the largest, most obvious, areas that will be excluded from the set net ban on the basis that there are few, if any, dolphins present. The regulations will include finer detail and will be publicly notified at least 28 days before implementation. However, I recognise that people will want additional detail as soon as possible, and for this reason, I have asked the Ministry to develop the full list of excluded harbours, estuaries, river mouths, lagoons, and inlets as soon as possible and place this on the Ministry website. I anticipate that this information will be available within the next few weeks.

64 Map 8 shows the new set net bans.

### ***West Coast South Island – rationale for my decisions***

65 The most recent abundance estimates indicate the west coast South Island population is the largest of all the populations (about 5400 individuals). Information about trends in abundance of the population is ambiguous. Modeling studies suggest abundance has declined. Genetic research detected no evidence of a decline in abundance. Anecdotal evidence from fishers suggests abundance is stable if not increasing.

66 I believe there is sufficient information available now to indicate that government should be concerned about the long-term effects of fishing-related mortality on the population. Fishing (particularly set netting) is the biggest single cause of death in this population, in cases where the cause is known. The exact number of fishing-related mortalities is uncertain because there is very little independent monitoring, but there is evidence to suggest that the actual number of fishing-related mortalities may be higher than reported. I do not want to see this population decline.

67 Set netting and trawling overlap significantly with the dolphins on the west coast, and there is good evidence that when fishing and dolphins overlap, there is a risk of entanglement. In addition, the west coast currently has no regulated measures in place, making the population vulnerable to potentially high levels of fishing-related mortality. Accordingly, I consider it is necessary to take measures now.

68 I am particularly concerned about the use of set nets by recreational fishers in this area. Most of the recent, and reported, fishing-related dolphin mortalities have come from recreational set nets. I have also had ongoing reports of inappropriate set net use by recreational fishers, including the staking of nets, which further increases the risk posed by this fishing method. I considered options that recreational fishers suggested would reduce entanglement risk but still allow coastal set net fishing. I was reluctant to take that approach in this circumstance because entanglement risk would remain in the inshore areas where dolphins are most common, and I would be unable to monitor the effectiveness of the fishers' proposals. Given that recreational set net fishing cannot be effectively monitored, and that it poses a clear threat to dolphins, I consider it necessary to ban recreational set net fishing to two nautical miles year round. I acknowledge that this will have a large impact on recreational fishers because fishing outside two nautical miles is difficult on the west coast. However, set net opportunities will still remain in estuaries, lagoons, river mouths, and inlets.

69 Commercial set net effort is considerably lower on the west coast than in other areas. In addition, fishing effort information available to me shows that much of the effort is outside two nautical miles. Nevertheless, there is commercial set net effort inside two nautical miles where dolphins are most common. I consider it necessary to limit the likelihood of dolphin entanglement by banning commercial set net fishing inside two nautical miles over summer when dolphins are closer to shore. The Ministry will also increase observer coverage in this area to gather more information about the nature and extent of the threat that commercial set nets pose to the west coast dolphin population.

70 I decided to impose fewer restrictions on fishers on the west coast (compared with other areas) in light of the size of the dolphin population. Arguably, the effect of fishing-related mortality is lower here compared with the other populations.

## Monitoring and research

71 I know that a large number of submitters argued I should ban fishing methods that pose a risk to dolphins throughout their range. I believe there is a case to be made for this type of measure, but on balance I am not convinced that such a generic measure is necessary in light of best available information. I have tried to strike the best achievable balance between the protection of these unique dolphins and the activities of commercial and recreational fishers, but I will consider the need for further measures if necessary. With this in mind, two more outcomes of the TMP process are as important as the new fishing rules.

72 First, the government has increased the Ministry of Fisheries monitoring budget by \$6 million over the next three years to increase observer coverage on commercial fishing vessels. This activity will not be limited to monitoring Hector's and Maui's dolphin interactions with fishing, although I have asked the Chief Executive of the Ministry to make this area a priority. Additional observer coverage signals that my decision to implement new fishing rules is not the end of the threat management process. Observer coverage will help determine the effectiveness of the new fishing rules and will help determine the level of residual risk that remains in areas where commercial fishing and dolphins still overlap. These costs will be recovered from the fishing industry through levies.

73 Second, and equally as critical as ongoing observer coverage, is a research programme to monitor the dolphin populations. I believe it is critical that the Ministry and the Department of Conservation continue working together to develop the research programmes outlined in the draft TMP to monitor population size and trends over time, and dolphin distribution. I have asked the Chief Executive of the Ministry to bear this in mind when considering research priorities.

74 Finally, I believe the draft TMP provides a useful framework for ongoing discussion. I do not consider it a static document. The fishing industry proposed the development of regional forums to discuss ongoing management issues. While this may have been intended in the context of status quo management, I believe the concept has considerable merit in light of ongoing monitoring and research. I will ask the Ministry to work with the Department of Conservation over the next year to develop regional forums of key stakeholders who can examine ongoing management issues for each dolphin population. These forums could possibly be integrated into fisheries plans over time. I am hopeful that stakeholders will be able to work together to help monitor risk to dolphins and improve mitigation techniques without the need for further government intervention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim Anderson', with a long horizontal stroke extending to the right.

Jim Anderson  
**Minister of Fisheries**