

REVIEW OF THE UPDATED THREAT MANAGEMENT PLAN FOR PROTECTING HECTOR'S AND MĀUI DOLPHINS

SUBMITTER DETAILS

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DATE: 19 August 2019

1. Introduction

- 1.1. This is a submission on the Discussion Paper on proposals for an updated Threat Management Plan for protecting Hector's and Māui dolphins (**Consultation Document**).
- 1.2. EDS is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning in order to promote better environmental outcomes in resource management. EDS recently undertook an in-depth study into the operation of the fisheries management system, with a focus on inshore stocks. The study included 60 interviews with people directly involved with fisheries management in New Zealand and was published in 2018 under the title: "Voices from the Sea: Managing New Zealand's Fisheries". Prior to this, EDS has also published "Dolphins of Aotearoa" a book about the interactions we have with dolphins in New Zealand.

2. Summary of submission

- 2.1. EDS submits that protection of these two species is critical. We should be working towards achieving a zero by-catch of all dolphins, especially for Māui and Hector's dolphins, which are New Zealand's only endemic dolphin species.
- 2.2. The most appropriate legal tool to protect the dolphins is the creation and/or expansion of marine mammal sanctuaries under the Marine Mammals Protection Act 1978 and the inclusion of robust regulations attached to the sanctuaries restricting fishing activities.
- 2.3. EDS submits that the updated Threat Management Plan should include:
 - a) The exclusion of the use of set net and trawling in all areas that Māui dolphins have been sighted, or may be present, in New Zealand. Given their nationally critical threat status, a highly precautionary approach must be taken to protect the species
 - b) The exclusion of the use of set net and trawling in all areas where Hector's dolphins have been sighted or are known to be present
 - c) The urgent preparation and implementation of a Toxoplasmosis Action Plan

3. Overall management goal

- 3.1. As described in “Dolphins of Aotearoa” dolphins are highly intelligent and socially bonded mammals. Killing these animals in fishing gear is causing significant pain and suffering, not only for the individual animals concerned but also for their tight, socially-bonded family groups. It is therefore unacceptable, on animal welfare grounds, to be injuring and killing these animals in fishing gear. In addition, mana whenua and New Zealanders more generally have a special and close bond with dolphins which makes killing them in fishing gear a culturally and socially unacceptable practice.
- 3.2. In EDS’s view, the goal for fisheries dolphin bycatch in New Zealand should be zero. Avoiding dolphin bycatch should be an integral part of the fishing industry’s social licence to operate in New Zealand waters.

4. Use of appropriate legal tools

- 4.1. There are several legal provisions which can be used to protect Māui and Hector’s dolphins from fisheries bycatch. These include:
 - a) The creation of a Population Management Plan under section 3E of the Marine Mammals Protection Act 1978
 - b) Putting in place measures to avoid, remedy or mitigate the effects of fishing-related mortality on dolphins under section 15(1)(b) of the Fisheries Act 1996, which includes setting a fishing related mortality rate
 - c) The establishment of marine mammal sanctuaries under section 15(2) of the Marine Mammals Protection Act 1978 with associated regulations
- 4.2. A population management plan has never been completed for either Māui or Hector’s dolphins (or for any other wild animal population for that matter). In practice, the legal requirements for such plans (as set out in the Act) have been found unworkable. EDS therefore does not suggest that a population management plan be used in this case.
- 4.3. The Consultation Document relies heavily on the deployment of tools under the Fisheries Act. In EDS’s experience, the use of Fisheries Act provisions for this purpose can be problematic, with several previous attempts to protect the dolphins under them being subject to lengthy legal challenges by the fishing industry. Although protection was achieved eventually, the legal challenges delayed the protection measures by some years, resulting in ongoing impacts to the dolphin populations during the interim period.
- 4.4. EDS submits that the preferred tool to achieve protection of Māui and Hector’s dolphins is marine mammal sanctuaries created under the Marine Mammals Protection Act. Under section 22, the Minister may declare any place to be a marine mammal sanctuary and specify the activities that may or may not be engaged in within the sanctuary and other restrictions. Under the Act, it is an offence to act in contravention to any restriction imposed under the Act.¹ Unlike the Fisheries Act, which has a purpose of enabling the

¹ Section 23

“utilisation” of fisheries while ensuring sustainability; the Marine Mammals Protection Act is designed to do what the title indicates, to protect marine mammals including dolphins. It is therefore a better targeted piece of legislation for the challenge at hand.

5. Proposals for sustainability measures under the Fisheries Act

- 5.1. The Consultation Document sets forward a number of proposals designed to ensure the sustainability of Māui and Hector’s dolphins, both endemic to New Zealand and vulnerable to human-induced threats. The Māui dolphin is critically threatened with extinction. Populations of Hector’s dolphins are much reduced from natural levels and populations may be declining.
- 5.2. Given the small estimated population size of the Māui dolphin, just 63 adult individuals, the Consultation Document proposes that human impacts are managed to allow the population to increase to a level 95% of what the environment could sustain (although it fails to specify the exact number of animals this would be). Given that Hector’s dolphins are slightly less at risk, human impacts are proposed to be managed to support recovery of 90% of what the environment could sustain. In order to achieve these objectives it is proposed that dolphin deaths from fishing threats do not exceed these population thresholds, with 95% certainty.
- 5.3. EDS submits the human impacts on the populations should be reduced to enable the dolphin populations to recover to their previous size (prior to significant fisheries bycatch occurring) and across their natural range.
- 5.4. EDS therefore supports the proposals in the Consultation Document to extend the West Coast North Island Marine Mammal Sanctuary out to 12 nautical miles, and to extend the Banks Peninsula Marine Mammal Sanctuary offshore to 20 nautical miles. It also considers that the other areas that comprise important habitat for both Māui and Hector’s dolphins (such as Golden Bay and Tasman Bay and the west coast of the South Island) should be designated as new marine mammal sanctuaries.

Maui dolphins

- 5.5. Māui dolphins are critically at risk, and further decline will likely result in extinction. It is therefore essential that all measures possible are undertaken to enable this population to rebuild and recover and that a very precautionary approach be adopted.
- 5.6. In order to meet the sustainable threshold proposed in the Consultation Document, fishing activities must result in less than one dolphin death every 7 years. This means the current level of fisheries risk must be reduced by at least 50%. As indicated above, EDS considers that the goal should be zero bycatch of Māui dolphins, and that even one death every seven years is too many.
- 5.7. EDS considers that out of the four options proposed in the Consultation Document, Option 4 is the most appropriate. Option 4 prohibits the use of set nets, which contribute 84% of the commercial risk to dolphins, in all areas where there have been dolphin sightings, including a prohibition on all use of set netting in harbours and out to a range of 100m depth.

- 5.8. Given that a very precautionary approach is required for Māui dolphins, due to their nationally critical status, EDS considers that a restriction on set netting out to 100 metres depth is appropriate. EDS also recommends that additional research be undertaken on the winter migratory patterns of Māui dolphin to determine the depths that they travel to in winter months.
- 5.9. While there is no current information about risk in the area between Cape Egmont and Wellington, EDS supports the proposal for the prohibition of set net and trawling in this area due to the sighting of Māui and/or Hector's dolphins there.
- 5.10. EDS also considers that a prohibition on set-netting in the entrances to harbour mouths as illustrated in Option 3 is essential to protect against fishing related Māui deaths in harbours. There have been a small number of sightings around harbours (despite a large number of sightings being regularly called in along the coast) and these have always been in the entrance. The adoption of a highly precautionary approach may merit full closures of the harbours to set netting.

Hector's dolphins

- 5.11. In order to meet the sustainable threshold of 90% proposed there must be less than 79 fisheries related deaths each year. For the reasons outlined above, EDS considers that 79 Hector's dolphin deaths a year from fisheries is unacceptable and that the goal should also be zero bycatch of this species. In particular, the current high level of Hector's dolphin deaths along the East Coast of the South Island is very concerning (and the fact that this has been allowed to continue for many years). Updated measures are needed to ensure these numbers are reduced to zero over time. In saying this, the level of precaution required to address the risks to Hector's dolphins, due to their larger population size, does not need to be as great as for Māui dolphins.
- 5.12 Key areas for Hector dolphin populations include Golden Bay and Tasman Bay, Banks Peninsula down to Timaru, Pegasus Bay and Te Waewae Bay.² In these areas no set-netting or trawling should occur. Option 2 allows for trawling in the Golden Bay and Tasman Bay area and for this reason Option 3 (which protects this area) is the preferred option.
- 5.13 The Consultation Document does not propose greater protection for the Hector's dolphin population on the west coast of the South Island. There are an estimated six deaths annually in this area, and this number needs to be reduced to zero over time. The current protections are only seasonal and only extend out to 2 nautical miles despite Hector's dolphins being sighted out to 12 nautical miles. Protection should be extended to all areas that the dolphins have been sighted, and all year round, as there is no robust scientific evidence indicating that the dolphins only range out to sea over specific months.
- 5.14 If any set netting or trawling is to be permitted in Hector dolphin habitat it needs to have 100% observer coverage either in person or through camera surveillance.

² Te Waewae Bay is particularly important due to its spatial (and genetic) isolation.

6. Proposal for a Toxoplasmosis Action Plan

- 6.1. It is not only fishing activities that are posing a significant risk to Māui and Hector's dolphins. Toxoplasmosis is now resulting in a number of dolphin deaths – and these are particularly concerning in Māui populations, which have the highest estimated exposure levels.
- 6.2. Toxoplasmosis is a parasitic disease caused by infection with *Toxoplasmosis gondii* oocysts. There have been a number of reported deaths with toxoplasmosis as the cause of death, and a number of deaths where the animal had been carrying the disease.³ While there is uncertainty around the figures, this disease is clearly having a significant effect on dolphin populations in New Zealand.
- 6.3. This is also not a problem unique to New Zealand. Toxoplasmosis has been the cause of deaths in dolphins and other marine mammals internationally. The Consultation Document proposes developing a Toxoplasmosis Action Plan to bring together national and international experts to research the effects of the disease, how to prevent it getting into the waterways and whether there is a way to vaccinate cats (who are the only vector in New Zealand) against the parasite. Actions that can be done now are feral cat control, wetland restoration and domestic cat owner behaviour change.
- 6.4. EDS supports this proposal and considers that this group needs to be assembled with urgency. The group should be well resourced so that it can produce a report and take action as soon as possible. This will mean ensuring that it has adequate funding and capacity. The government should also commit to the implementation of the findings of the group as a matter of urgency once they are finalised.

7. Additional comments

- 7.1. EDS supports the proposal to prohibit drift-nets as included in the Consultation Document. Two options were proposed: whether drift nets should be prohibited throughout New Zealand, or just in areas that have set-net prohibitions. EDS considers that due to the inability to effectively control or mitigate effects on dolphins and other protected species, and the indiscriminate nature of this harvest method, drift nets need to be prohibited throughout New Zealand.
- 7.2. EDS also considers that the use of set nets for recreational use should be prohibited on the same basis as commercial set-netting as the nets create a similar risk to the dolphins. The number of deaths from recreational set net use is unquantified but there is clear evidence of dolphin bycatch in recreational set nets. Relatively high levels of recreational set-net fishing occurs in Tasman Bay and Golden Bay and around the Wellington coastline, the by-catch of dolphins through recreational set-net use could be substantial.

³ Hector's and Māui Dolphin Threat Management Plan, supporting information.

8. Conclusion

- 8.1. Given the threat to these species, particularly Māui populations, EDS considers that a precautionary approach must be taken to ensure their survival. It is submitted that the use of set nets and trawling in all areas where there have been sightings of either Māui or Hector's dolphins is warranted. A goal of zero by-catch should be the ultimate objective.
- 8.2. It is also important to undertake further research on how to prevent non-fishing related deaths, particularly from toxoplasmosis. EDS supports the proposal to develop a Toxoplasmosis Action Plan, focused on targeted research and monitoring, and considers that given the risks it is required that this be assembled with urgency.