

Hector's and Maui Dolphin Threat Management Plan

SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS

24 October 2007

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1. This submission is from option4 (the submitters), an organisation which promotes the interests of non-commercial marine fishers in New Zealand, to the Ministry of Fisheries (MFish) and Department of Conservation (DoC) in response to the *Hector's and Maui Dolphin Threat Management Plan. Draft for Public Consultation* (draft TMP), dated 29 August 2007.
2. option4 endorse the submission by the Akaroa Harbour Recreational Fishing Club dated 23 October 2007, written in the interests of the South Island East Coast fishers.
3. There are four main dolphin population areas, the North Island's west coast (Maui dolphin) and the east, west and southern coasts of the South Island (Hector dolphin). This submission is focussed mainly on the Maui population on the west coast of the North Island although some of the discussion is applicable to all areas.
4. The proposals within the draft TMP aim to address human-induced mortality of dolphins around New Zealand. The status quo is one management option. Other options relate to set netting, trawling and drift netting and range from partial bans to complete prohibition of these methods. Marine Mammal Sanctuaries have also been proposed. Submissions are due by October 24th with Ministerial decisions due by early December.

Submission

5. Attached to this submission is a report of a meeting held on 15 October 2007 with MFish to discuss the draft TMP. The meeting report forms part of this submission and is included as Appendix One.
6. option4 supports real management measures that would reduce the human-induced mortality of dolphins and are concerned for the ongoing survival of one of New Zealand's rarest creatures and taonga (treasures) of the sea. However, the claim that set netting is the "*greatest known cause of human-induced Hector's dolphin mortalities*" is not substantiated.
7. Around 100 Maui are estimated to have died since the previous abundance survey and the 2004 survey. There have been two reported deaths of Maui, due to net entanglement, on the west coast of the North Island since 1998, where the cause of death was confirmed. Therefore the cause of death for 98 percent of Maui needs to be urgently identified and mitigated.
8. While it is obvious that some Maui deaths would be due to natural causes it is of great concern that replacement of these losses through reproduction does not seem to be occurring.
9. Also of concern is that the proposed management options will do nothing to protect the Maui population from further decline. If we are to address the serious decline in Maui numbers we need to look at the root causes and address those.
10. Since 1921 two Maui have been found dead within the Manukau Harbour. Entanglement has identified in DoC's Incident Database as the likely cause of death of one of those dolphin. No known cause of death could be identified for the other Maui dolphin. The most common explanation for the death of the Maui with net markings was that it was caught in a drift net around the Waikato River mouth and floated up on the northern coastal current and into the Harbour entrance. MFish and DoC have proposed measures to address the drift net issue around the Waikato.

11. option4 recognises the Minister of Fisheries has a balancing exercise in weighing the evidence of threats to Maui dolphin and the statutory obligation to adhere to the environmental principles of the Fisheries Act 1996 (the Act) in order to mitigate those threats against the purpose of the Act - which is sustainable utilisation of fisheries to enable people to provide for their social, economic and cultural wellbeing.
12. The most serious threat to the ongoing viability of Maui would be to ignore the real issues and introduce measures that will do little or nothing to protect these taonga from further decline, merely in an effort give the impression of being politically green. We think that the **actual cause** of the decline in Maui numbers needs to be properly determined then those **actual causes** of declining numbers need to be addressed.
13. The pressure to implement management measures has come from within New Zealand and abroad. This programme has been accompanied by an ongoing campaign that has 'muddied the water' with mis-information and emotive, political lobbying which is not supported by the evidence.
14. Increased awareness of the status of Maui has drawn considerable attention from international conservation organisations. The limits they are prepared to go to to advance their viewpoint is clearly demonstrated by a half-page advertisement in the NZ Herald on Saturday 13th October entitled "Maui Dolphins. Cheap as Chips?", sponsored by Care for the Wild International based in Sussex, England. While this type of advertising is paid for by overseas "green dollars" it is the local community that is most affected by management decisions. Notwithstanding that it is the collective actions of the local community that will eventually be the key to the survival of Maui, particularly in the harbours.
15. Maori and non-Maori have used nets to fish for sustenance and commerce since time immemorial. A net poses minimal risk to anything aside from the target species, when used properly.
16. Poor use of nets, whether set net, bait or drift net, has been highlighted as an issue in many coastal areas. This is directly related to a lack of compliance with the regulations and low or no enforcement presence by Fisheries Officers (FOs) or Honorary Fisheries Officers (HFOs).
17. At several meetings held around the Manukau Harbour people confirmed they were very concerned for the health of the Maui population and were certainly not interested in killing these creatures. Any measures to improve their chances of survival has to be balanced against the actual risk of encountering a Maui. Many attendees had fished the Manukau Harbour for numerous years, in some cases between 40 and 60 years, and never seen a Maui within the Harbour. Several people reported sightings outside the Harbour entrance and further out to sea.

West Coast (NI)

18. There is a missing explanation as to why the Maui dolphins are dying off the North Island's west coast.
19. Any dolphin that died on the west coast would wash up somewhere along the coast within a couple of days due to the wild nature of the west coast. Land-based fishermen regularly travel Muriwai and Kariotahi beaches and yet there had been no reports of Maui being found on these long beaches. It is irrefutable that there must be

some other cause of death that has not been identified, given the estimated decline of Maui from the previous survey to the 2004 survey.

20. When the facts are examined there is no justification to adversely affect people's wellbeing by imposing net restrictions and reducing access to fisheries. There have been no deaths due to netting in the same period as four Maui had been killed by other means off the west coast.
21. The claim within the draft plan that set nets were the biggest threat to the survival of Maui dolphins cannot be scientifically or statistically proven given the evidence from the west coast and harbours. The biggest threat to Maui is unknown.
22. Any measures to implement speed restrictions (of five knots) within 300 metres of Maui dolphins are impractical and potentially dangerous. Dolphins are sometimes sighted around harbour mouths and river bars, if speed is limited then vessels navigating the bar or river mouths would be put in danger as faster speeds are often required to safely navigate these rougher waters.

Manukau Harbour

23. Option 4 supports the status quo as being a valid option for the ongoing management within the Manukau Harbour with more enforcement of the regulations and increasing the numbers of on-the-water FOs and HFOs.
24. Many harbour users are aware of the illegal use of nets by people who have no regard for the current regulations. Further regulations are unlikely to stop these people using nets illegally. Public education and higher profile enforcement are meaningful ways to address this problem.
25. There have been no verified sightings of Maui in the Manukau Harbour outside the current set net ban zone therefore we do not support any extension to the current set net ban zone as proposed in option 1 of the draft TMP.
26. Attendance of nets and banning overnight set netting has been proposed in option 2 of the draft TMP. This option is also rejected as an unjustifiable restriction on people's ability to provide for their social, economic and cultural wellbeing.
27. Again, no Maui have been caught in set nets within the Manukau Harbour nor have any been caught in nets set overnight. Given the amount of netting within the Harbour and the thousands of metres of commercial nets set overnight, there is no evidence to support the implementation of these measures.
28. If attendance was to be made compulsory then several factors need to be considered:
 - Research from Akaroa Harbour in the South Island suggests that dolphins leave the harbour overnight, hence overnight netting is permitted and no attendance is required in specified flounder fishing areas
 - MFish should remove the set net ban currently in place at the mouth of the Manukau Harbour to enable people to set their nets and attend to those nets.
 - If attendance is an effective mitigation method then there should be no good reason why people at the mouth of the Manukau Harbour cannot regain access to the flounder and mullet net fisheries
 - When asked to explain the implications of implementing option 2 and the requirement to attend nets, neither MFish nor DoC could explain what would be

expected. Their best suggestion was that it was a requirement in the South Island and submitters should investigate what measures are in place around Banks Peninsula. This is an unsatisfactory consultation process.

29. Any measures taken within the Manukau Harbour, including doing nothing, would be 100 percent effective because no Maui had ever been caught in the harbour.
30. The proposal in option 3 to prohibit set netting in all parts of the Manukau and other west coast harbours has no validity and has serious implications for the sustainability of the east coast fisheries if fishing effort is displaced to that coast. MFish should advise their Minister that this is not a valid management option.

White Pointer Sharks

31. There had been no research into the threat to Maui posed by white pointer sharks following their altered status as a protected species.
32. MFish or DoC have no new information to offer on this aspect however they have recently (18 October) announced a public consultation process on the draft National Plan of Action for the Conservation and Management of Sharks. The NPOA-Sharks details measures to manage and conserve sharks that are targeted or taken as by-catch around New Zealand.

Consultation Process

33. Once again option 4 object to the consultation process being undertaken by both MFish and DoC and deem it unlawful according to the Court of Appeal decision relating to the Wellington Airport case. The relevant sections of that ruling are in Appendix Two.
34. The truncated timeframe to respond to management proposals and the lack of opportunity for people who will be most affected by these measures to have a say prior to the early December decisions is unacceptable. This is particularly so as many netters are elderly, not familiar with the statutory process and not able to read the 298-page proposal document and articulate their views in the timeframe given.
35. MFish and DoC originally organised six 'open days' to consult with west coast fishers. These were afternoon meetings with one starting at 2pm and going till 6pm (Ceramco Park, West Auckland 27/9/07). The other five meetings were from 3.30-7pm. (Raglan, Helensville, Dargaville, Waiuku and Wellsford).
36. There was no advertising in the local paper of the Ceramco meeting despite adequate time being available for this to be initiated. Seven members of the public attended this meeting with four MFish staff and two DoC staff. MFish organised a further meeting on October 17th at the Manukau Cruising Club in recognition that insufficient numbers of people had not been given the opportunity to be consulted on the proposals.
37. Some west Auckland residents were so concerned that the proposals were not well publicised they organised a public meeting and invited MFish and local mayoral candidate John Tamihere along. The meeting held at Laingholm Village Hall on October 9th attracted around 50 people, mainly locals. A media statement released after the meeting is attached as Appendix Three.

38. There are many ethnic communities that have a major interest in maintaining access to the flounder, rig (dogfish) and mullet fisheries. These people are generally fishing for sustenance and are entitled to know that traditional fishing methods such as netting may be ruled as illegitimate in the future. There has been very little effort put into consulting with these communities.
39. The recent High Court decision regarding the judicial review of the Minister's 2004 and 2005 kahawai decisions (the Kahawai Legal Challenge) made particular mention of the purpose of the Fisheries Act 1996, in that the Minister of Fisheries has a statutory obligation to manage fisheries both sustainably and to enable people to provide for their social, economic and cultural wellbeing.
40. We understand Aranovus Research Ltd. was commissioned to undertake a survey to assess the impacts on fishers of the measures to reduce the threats to dolphin. option4 understand the results will be presented to the Minister of Fisheries to assist him when making management decisions. We have concerns that the results from this research will not be available for public comment prior to it being presented to the Minister.

Other management proposals

41. The submitters object to being asked to comment on proposals which clearly do not mitigate the real threats to Maui dolphin.
42. The unconstrained commercial trawling effort on the West Coast of the North Island poses a far greater risk to Maui survival than the setting of nets within the sheltered waters of the West Coast harbours.
43. option4 supports observer programmes and/or increased electronic surveillance of commercial fishing activity which would contribute to improved knowledge of the incidence of Maui as a by-catch or mortality.
44. If measures need to be taken to address the impacts of fishing effort then the issue of over-allocated TACC's for important West Coast fisheries such as flounder and mullet needs to be a priority.
45. Little regard has been given to the degradation of habitat important to the development of bait fish and species of significance in the foodchain. While MFish and DoC advocate the contraction of the Maui is due to dwindling numbers consideration also needs to be given to the maintenance of their food sources such as yellow eyed mullet.
46. option4 is concerned about the immunity of Maui to pathogens being washed off the land and into the sea and while the environmental impacts on the survival of Maui are difficult to measure it does not mean these should be discounted in favour of more politically expedient solutions.
47. The proposals regarding the Marine Mammal Sanctuary options are not well understood and option4 recommend further public consultation before any change of management status is considered. As with the fishing quotas, the Sanctuary option cannot be considered in isolation of other management proposals for the same coastal or harbour waters.
48. It is difficult to understand the consents being given to mining the seabed of the West Coast when there is so much concern for the continued survival of the Maui dolphin.

Evidence was presented at public meetings that Maui cleared out of an area where mining was taking place. If this activity is so objectionable to Maui then the impact of allowing these works to continue need to be monitored.

Summary and conclusion

49. The submitters share the concern about the dwindling numbers of Maui dolphin and are keen to support measures that will address the real cause of their deaths. Clearly set netting in West Coast harbours is not the major issue.
50. The Minister of Fisheries has a statutory obligation to both mitigate the adverse affects of fishing on the environment and manage fisheries to enable people to provide for their social, economic and cultural wellbeing. The lack of evidence to support any further restrictions to people's ability to fish for sustenance means option4 support the status quo for the West Coast harbours.
51. option4 supports increased public education on the use of nets, particularly for ethnic communities who have a high incidence of net use and increasing the enforcement of current regulations and a greater presence of MFish compliance staff in popular fishing areas.
52. option4 strongly objects to the consultation process conducted by both MFish and DoC regarding the proposals for future management of such important food fisheries. option4 recommends a more thorough process be conducted before any management changes are implemented.
53. option4 thank MFish and DoC for the opportunity to have input into the process for the future management of Maui dolphin.
54. option4 want to be kept informed of further consultation on this matter of importance to non-commercial sustenance fishers, both customary and amateur interests.

Trish Rea
On behalf of the option4 team
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Appendix One

Report of the meeting to discuss the Hector's and Maui Dolphin Threat Management Plan

Held in Auckland 15 October 2007

Prepared by Trish Rea

Non-commercial Representatives: Paul Barnes, Trish Rea

Ministry of Fisheries: Richard Fanselow (Senior Fisheries Analyst, North-West Inshore Team), Ian Ferguson (Fisheries Analyst, North-West Inshore Team), Sarah Omundsen (Inshore Fisheries Manager), Manihera Forbes, Pou Takawaenga¹, Nga Hapu o te Uru/Port Waikato to Mokau).

Duration: 45 minutes

Introduction

On 29th August 2007 the Ministry of Fisheries (MFish) and the Department of Conservation (DoC) released a document called the *Hector's and Maui Dolphin Threat Management Plan. Draft for Public Consultation*. The proposals aim to address human-induced mortality of dolphins around New Zealand. The status quo is one management option. Other options relate to set netting, trawling and drift netting and range from partial bans to complete prohibition of these methods. Marine Mammal Sanctuaries have also been proposed. Submissions are due by October 24th with Ministerial decisions due by early December.

There are four main dolphin population areas, the North Island's west coast (Maui dolphin) and the east, west and southern coasts of the South Island (Hector dolphin). This meeting was focussed mainly on the Maui population on the west coast of the North Island although some of the discussion is applicable to all areas. A recording was taken of this meeting to enable an accurate account to be taken of the discussion; this report is taken from the meeting record.

Discussion

Maui mortality

There are four main dolphin population areas, the North Island's west coast (Maui dolphin) and the east, west and southern coasts of the South Island (Hector dolphin). This meeting was focussed mainly on the Maui population on the west coast of the North Island although some of the discussion is applicable to all areas. A recording was taken of this meeting to enable an accurate account to be taken of the discussion; this report is taken from the meeting record.

¹ The role of Pou Takawaenga is to assist iwi to progress fisheries initiatives such as having Rohe Moana recognised and in making Mataitai applications.

There is some debate regarding the estimated numbers of Maui dolphin off the west coast of the North Island. Both MFish and DoC have suggested there are 111 individual Maui (95% confidence interval = 48 – 252). MFish was waiting for further confirmation from DoC on population estimates. Maui are classified as “nationally critical”, the highest ranking possible.

MFish and DoC consider that set netting is the “*greatest known cause of human-induced Hector’s dolphin mortalities*”². It is MFish’ understanding that the decline of the Maui dolphins, from over 200 to 111, coincided with the introduction of monofilament nets. MFish is waiting for a report from DoC to explain the interaction of Maui and set netting. MFish had received a number of requests during the public meetings for the evidence to support the population estimates and the account of set netting.

If multi-filament (string) nets were more detectable by sonar than monofilament nets then had MFish considered defining multi-filament mesh net areas and monofilament areas? MFish advised this concept had not been discussed.

Nets had been used by Maori long before colonisation and had been a common fishing method since then. This activity allowed people to provide for their wellbeing through catching fish. MFish agreed if effective management methods were sought then all reasons for the declining Maui population needed to be considered.

There had been two reported Maui deaths on the west coast due to nets since 1988, where the cause of death was confirmed. If there had been a decline of Maui by around 100 animals since the previous abundance survey then the cause of death of 98% of these Maui needed to be urgently identified and addressed. MFish and DoC cannot claim that netting is the major threat when 98% of the deaths are attributable to some other cause.

MFish disagreed with this assessment and advised the ‘expert panel’ including a commercial fishing representative had agreed that netting was the biggest human-induced threat to Maui’s. MFish disagreed that environmental changes were more threatening; however this was difficult to measure.

There were four Maui deaths on the west coast last summer, three died of natural causes, one due to an unknown cause; none were from human-related activity including set netting. MFish agreed that this was more proof that there were much bigger threats to Maui than set netting.

MFish agreed to provide the autopsy reports of Maui, including their fertility status if that particular information was available. There is the possibility that pathogens (bacteria or viruses) are being washed off the land into the waterways and out to sea and that Maui have no immunity against these organisms.

ACTION: MFish to supply autopsy reports of Maui including fertility data, if available.
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² Hector’s and Maui Dolphin Threat Management Plan. Draft for Public Consultation, MFish and DoC, page 23.

Contributing factors to Maui deaths

There had been no research into the threat to Maui posed by white pointer sharks following their altered status as a protected species. MFish agreed this point had been raised previously but there was no new information to offer.

MFish disagreed that this process was a pretence; a process designed to appear to be addressing the dolphin mortality issue instead of looking at the science and the real causes of death.

However it seemed there was a missing explanation as to why the Maui were dying. Any animal that died on the west coast would wash up somewhere along the coast within a couple of days due to the wild nature of the west coast. Land-based fishermen regularly travel Muriwai and Kariotahi beaches and yet there had been no reports of Maui being found on these long beaches. So there must be some other cause of death that has not been identified, given the estimated decline of Maui from the previous survey to the 2004 survey.

When the facts are examined there was no justification to adversely affect people's wellbeing by imposing net restrictions and reducing access to fisheries. There had been no deaths due to netting in the same period as four Maui had been killed by other means off the west coast. Any measures taken within the Manukau Harbour, including doing nothing, would be 100% effective because no Maui had ever been caught in the harbour.

The claim within the draft plan that set nets were the biggest threat could not be scientifically or statistically proven given the evidence from the west coast and harbours. The biggest threat to Maui is unknown.

MFish disagreed with this assessment and reiterated that they agreed with the task force that set nets were the major threat to Maui. Many of the dead Maui found around Taranaki in the 1970's had shown signs of set net entanglement.

MFish emphasised the proposals in the draft document, including the status quo, were options and MFish had no preference for any particular one. The Minister had the opportunity to pick and choose from each option for set netting, trawling and drift netting. It was unfortunate from MFish' perspective that most of the public discussion had focused on option 3, the proposal with the least supporting information although it would have the most impact. There seemed to be very little discussion surrounding the other options proposed.

Aranovus Research had been commissioned to conduct socio-economic surveys of the impacts of the proposals within the draft management plan. This information would be used to inform the Minister's decision.

Sustainability

The impact of displacing fishing effort into other west coast areas, if some area closures occurred, or shifting fishing effort entirely to the east coast also needed to be taken into account.

Both flounder and mullet fisheries were over-allocated with no constraint on commercial catch. The excessive quotas created through the introduction of these species into the quota management system (QMS) had created a financial incentive to over-fish these stocks rather than stop fishing because of scarcity. This was because quota owners were not likely to sit on their quota asset, they wanted to make money from it, unlimited fishing had been detrimental to both the flounder 1 (FLA1) and grey mullet 1 (GMU1) fisheries.

The Maui threat management proposals would affect mainly the flounder and mullet fisheries yet MFish are failing to address the larger issue of poor management of these species. If, for example, these fisheries were well managed and above the biomass (stock) level required to produce maximum sustainable yield (Bmsy), as prescribed by the Fisheries Act 1996, and there were realistic quotas then fishing effort would be drastically reduced. Due to the scarcity and the high quota levels for flounder and mullet more effort is being applied in an attempt to reach the quota target.

By poorly managing these fisheries and having quota that does not limit commercial catch, there is an unlimited amount of net being applied to fisheries that are below MSY – the minimum management level specified by the Fisheries Act.

If the biomass (weight of fish) was doubled then half the fishing effort would be required to catch those fish, therefore having a healthier flounder and mullet fishery would halve the risk to Maui dolphins. Under this scenario if a Maui strayed into a west coast harbour they would be confronted with half as much gillnet as what is currently being used.

MFish viewed the fisheries planning process as being a more effective at addressing the species management issues rather than the Maui threat management process.

There was also a need to establish if Maui are actually entering into the Manukau and other west coast harbours. If there was no significant Maui presence in the harbours then the need to immediately address the flounder and mullet fisheries would not arise. MFish does not have the capacity to deal with both the Maui threat management plan and fisheries catch levels.

It was surprising to non-commercial fishers that the threat management process had not included research into:

- Why people are employing particular fishing methods; and
- How much of that fishing practice was occurring; and
- Was there any way to reduce use of those methods which may interact with Maui without having adverse impacts on people?

Quota allocations

The answer goes back to the introduction of the QMS. In the mid 1980's deals were done to allocate flounder and mullet quota beyond agreed sustainable levels merely to compensate for the amount of Quota Appeals Authority claims for snapper and other valuable species.

MFish reiterated they would not be addressing quota levels for west coast fisheries during the Maui threat management process. Quotas would be a topic raised during the fisheries planning process.

MFish did not accept that all those involved in the west coast flounder and mullet fisheries believed these stocks were being managed below the level required by the Fisheries Act - at or above Bmsy. And while many amateur fishing representatives believed that these fisheries should be reviewed again MFish did not have the capacity to conduct a full-scale review at this time.

MFish has been surprised by the numbers of commercial and non-commercial fishers with an interest in the west coast harbours and didn't have the resources to undertake two major processes simultaneously.

Outcome of 2005 Minister's decisions

After the 2005 fisheries review process of FLA1, GMU1 and Rig (SPO1) the Minister announced that no changes would be made to catch levels, acknowledged there were specific concerns and advised that these concerns would be addressed separately. No measurable changes had been made since the September 2005 decision.

Fisheries Plans

MFish advised the Fisheries Plan process was an outcome of that review and would provide a way to address the many concerns raised in previous submissions.

A recent example of failed planning processes is the Kaipara Harbour Sustainable Fisheries Management Study Group's (KHSFMSG) experience. Well-meaning volunteers had committed hundreds of hours, many resources and deprived themselves of valuable family time to achieve a management plan for their harbour, only to have that ignored by MFish and the Minister.

The KHSFMSG had been working since 1999 to develop a strategy to address overfishing within the harbour, they released a draft plan mid-2003 and final copy in December that year. Nothing had been achieved since, even though the Minister was given a copy of the document at the time.

Unfortunately, many people had lost hope and abandoned the process due to the difficulties being faced by this community group made up of local community representatives, tangata whenua, amateur and commercial fishers.

MFish were adamant that Fisheries Plans are the way fisheries will be managed in the future. MFish recognise that if volunteers from the non-commercial sector are not fully engaged then the planning process would collapse.

Size of quota management areas (QMAs)

The QMA for many fisheries of social, economic and cultural importance are very large. The management area for FLA1, GMU1 and Rig 1 (SPO1) stretches from Tirua Point (northern Taranaki) to Cape Runaway at East Cape³. If significant areas of the west coast or particular harbours are closed to fishing then that effort will be transferred to other areas. There is already conflict in the Kaipara, which obviously could not sustain any more fishing effort. MFish agreed that fishing effort and quota would likely move to the east coast if the west coast was closed to fishing.

MFish had not assessed the impacts of displacement of fishing effort and was not likely to conduct research into whether there were separate fish stocks for the same species on each coast or whether there would be impacts on the sustainability of existing fisheries within harbours, for partial closures, or on other harbours. This research would only be done if the Minister indicated that a decision was going to be made that would have a major impact on

³ Gurnard 1 (GUR1), hapuku and bass (HPB1), school shark (SCH1) and tarakihi 1 (TAR1) have the same management area.

sustainability. MFish would be advising the Minister of the implication of displacing fishing effort before the Maui management decisions are made.

While the TAC/TACC review maybe too resource-intensive there are two good reasons why MFish should be gathering more information to:

Define the impacts of effort displacement; and

Assess whether the flounder and mullet fisheries are sustainable at current catch levels.

MFish agreed with the second point however, given the information that MFish has, the set netting option 3 is the least likely to happen so conducting detailed research into the impacts of displacement of effort did not seem to be a useful exercise.

The information that MFish has indicates there are not that many Maui within the harbours and this point will be clearly put to the Minister.

MFish agreed to supply a copy of the information on fisheries impact that was written but was not included in the draft document distributed to the public, if that information was still available.

ACTION: Richard to supply the fisheries impact statement.

Decision process

MFish will be providing the Minister with information, including public feedback, in the Final Advice Paper (FAP). Decisions will be made by early December; some of those decisions may not be implemented for some time. MFish confirmed the public would not have another opportunity, past the October 24th submission deadline, to comment on the FAP.

It was understood that the Minister would be able to select a variety of measures from the options being discussed by the public. A concern for non-commercial fishers is that the Minister will be given the FAP, will decide on the measures to be taken and will not be given best available information of the impacts of whatever mixture of decisions he makes.

MFish agreed that they would be supplying the Minister with a summary of all the meetings they had attended and would also attach the comments from this meeting.

ACTION: Trish to give a copy of the meeting report to MFish.

Public meetings

MFish advised they would be conducting a public meeting on Wednesday 17th October at the Manukau Cruising Club to provide another opportunity for disseminating information and gathering public input. MFish was encouraging as many people as possible to participate in this meeting. All the Manukau commercial netters had been informed by phone. MFish had missed the deadline to advertise in the Western Leader but there would be a meeting notice placed in the Central Leader.

The previous 'drop in' meetings were an experiment to try and make the meetings more user-friendly. It was a low-key approach to educate the public, to make information and staff available to chat rather than having a formalised presentation and asking for submissions.

The early start times of 2pm or 3.30pm seemed to have been more successful in the South Island than the North. MFish did not believe it was a way to avoid consultation, as had been suggested at previous meetings.

MFish felt it was important for non-commercial fishers on the northern side of the Manukau to be aware of the meetings, as there were management implications if the regime changed. Commercial fishers were easier to contact than non-commercial.

Advertising meeting times and venues was also an important contributing factor to the success of the meeting. Seven people at the MFish 'drop in' meeting at Ceramco Park on September 27th from 2pm to 6pm was a reflection of the lack of public awareness and no advertising.

Public awareness

MFish were encouraged to make a point of gathering people's contact details, whether that was at a meeting or someone who drops into their offices. That way MFish could keep people informed about what was happening. An email campaign to keep people updated would be a cost-effective way to keep people informed.

MFish advised they had tried to gather people addresses at the last round of Maui meetings. MFish had recently started using a contact management system which they would be making use of to publicise information.

If MFish provided an incentive, such as a prize, for the public to participate and provide information they would be in a better position to gather feedback on their ideas and measure initial impacts of their proposals. Past surveys in magazines such as the *NZ Fishing News* had been used successfully to measure public reaction to different finfish size limits, bag limits and other regulatory controls.

Public education

A commercial fisher who attended the Laingholm public meeting (Tuesday 9th October) advised that he also manages a net manufacturing business in Mangere Bridge. Late last year the business held a public education day to enhance public knowledge, particularly of Pacific Island and Asian clients, on how to use nets. MFish were invited but did not attend.

MFish agreed it was a lost opportunity for them to participate in a public education exercise. Richard had not managed to contact the compliance section and determine why they had not taken the chance to talk with a core group of netters. Compliance issues had been raised at a number of meetings and those matters would be put to the compliance team.

MFish can confirm that patrols are conducted in the closed area within the Manukau entrance to ensure nets were not in place.

Marine Mammal Sanctuary proposal

The Marine Mammal Sanctuary proposals are not widely understood, nor are the future management implications.

It is MFish' understanding that DoC were seeking views in favour or against the Marine Mammal Sanctuary proposals and reasons for those views. Depending on the feedback, and if the sanctuary concept is going to be progressed, there maybe another process to consult on the idea. The Fisheries Act would still regulate fisheries management, however it was an opportunity to have issues such as pollution addressed in more detail. It had no direct management implications, as opposed to a marine reserve, it merely recognised the significance of a particular area.

MFish understood the December decision deadline was related more to the fisheries management decisions rather than the Marine Mammal Sanctuary. Richard would investigate this further but did not believe DoC would be managing another consultation process before Christmas if a sanctuary were to proceed.

ACTION: Richard to advise of any further information on the Marine Mammal Sanctuary proposals and process.

Night Net Setting and Attendance

Research of the Hector's dolphin on the South Island's east coast indicates that the dolphins move out of Akaroa Harbour at night so night set netting is permitted within the harbour. Attendance is also required except in 'designated' flounder fishing areas.

The night setting ban proposed in the West Coast option 2 was illogical if:
Maui do not enter the harbours.
Maui do enter the harbours and leave at nightfall.

The attendance regime was to ensure that fishers stayed with their nets and were available to pull the nets out of the water if dolphins were seen to be approaching the net. It was MFish' opinion that poor visibility at night would not allow sufficient time to react to approaching dolphins, therefore both attendance and a ban on night net setting had been included in option 2.

MFish agreed option 2 was a 'blanket proposal' as there was no firm evidence to indicate that Maui do or do not enter the west coast harbours and if so, whether they leave or remain overnight.

It was a concern that people were being given the option of banning night setting of nets and would make that choice thinking they would be contributing to the ongoing survival of Maui, without understanding Maui movements and that it may not address mortality at all if they did not enter into the harbours. Akaroa would be a good example to use in any submission relating to night setting.

Conclusion

This meeting on the Maui dolphin proposals concluded and conversation was directed towards the North Island West Coast fisheries planning process. A record of that meeting is available in the document *Report NIWC Fisheries Plan meeting 15 10 07*.

Appendix Two

Court of Appeal Decision Wellington Airport

An often-referenced New Zealand definition on effective consultation was contained in the Court of Appeal decision arising from the case between International Airport Ltd and Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671). The relevant section of the decision is as follows:

“Consultation must allow sufficient time, and a genuine effort must be made. It is a reality not a charade. To consult is not merely to tell or present. Nor, at the other extreme is it to agree. Consultation does not necessarily involve negotiation towards an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate situation involving meaningful discussion. Despite its somewhat impromptu nature I cannot improve on the attempt at description, which I made in *West Coast United Council v Prebble* at p. 405:

“Consulting involves the statement of a proposal not yet fully decided upon, listening to what others have to say, considering their responses and then deciding what will be done.

“Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses. It is also implicit that the party obliged to consult, while quite entitled to have working plan in mind, must keep its mind open and be ready to change and even start afresh. Beyond that, there are no universal requirements as to form. Any matter of oral or written interchange which allows adequate expression and consideration of views will suffice. Nor is there any universal requirement as to duration. In some situations adequate consultation could take place in one telephone call. In other contexts it might require years of formal meetings. Generalities are not helpful.”

Appendix Three

MEDIA RELEASE

10 October 2007

Peter Jackson wants his son to be the fifth generation West Coaster to be able to catch a flounder for his dinner.

Pam Goddard, 61, wants to set-net for mullet outside her Cornwallis home, as she has for 20 years.

Jackson and Goddard were amongst 50-odd people hot under the gills about the Government's set-net ban proposals who met at the Laingholm Village Hall last night. (SUBS: October 9).

The group overwhelmingly rejected the proposals because they say the measures would do nothing to help save the endangered Maui dolphin, the reason for the proposed ban.

Since 1921, just two Maui have been found dead within the Manukau Harbour. The one found closest to the harbour entrance was likely to have died from net entanglement. Many believe this dolphin was caught in a drift net around the Waikato River, floated on the northern coastal current and into the harbour.

Stan Turner, 82, of Little Huia told the meeting in 70 years of fishing he had not once seen a dolphin.

Ministry of Fisheries' (MFish) Richard Fanselow admitted: "We have had no reliable public sightings further in the harbour than the immediate entrance area. We've had no strandings ever of dead dolphins in the harbour."

Trish Rea of Titirangi said it would be unfair to impose further netting restrictions within the Manukau given the incomplete information.

"Fishermen spend hours near the water, they appreciate the environment and are concerned for the survival of Maui dolphin. Commonsense measures need to be applied to mitigate the threats to dolphins."

Questions were asked why MFish was not cracking down on the continued use of bulk-fishing methods in known dolphin habitat off the West Coast.

Fanselow said: "We know the dolphins go at least four nautical miles offshore, if not more than that. We know there is considerable trawling within that area along this coast."

Without firm evidence that trawlers were catching dolphins the Government would have a fight on its hands if they banned commercial fishing in that area, he said.

Pam Goddard said the proposals were unjustified as sustenance fishers were limited to one 60-metre set-net.

"Most amateur fishers only want a couple of fish for dinner. Shallow water set-nets are the only practical way to catch flounder or mullet. There is no justification for removing people's right to feed their families when the facts do not support such draconian action."

Experienced fishers agree with the Department of Conservation and MFish that information supporting the proposals is incomplete and the extent of the threats is highly uncertain.

The meeting called for DoC and MFish to finalise their research and provide more detailed information about dolphins, MFish to increase enforcement of existing regulations, improve public education and monitoring of activity.

“Given the amount of netting in all West Coast harbours, the impact of new measures will need to be weighed against people’s social, economic and cultural wellbeing. The adverse effects of shifting fishing effort to sensitive East Coast regions such as the Firth of Thames will also need to be carefully considered,” said Ms Rea.

The Ministers of Conservation and Fisheries are due to decide on the issue before the end of the year. Submissions on the issue close on October 24.