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Department of Conservation
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By email: marine@doc.govt.nz

Attention: Sean Cooper

INTERIM EXTENSION OF THE WEST COAST NORTH ISLAND MARINE MAMMAL SANCTUARY AND SEISMIC SURVEY REGULATIONS TO MANAGE THE RISK OF MAUI'S DOLPHIN MORTALITY

The Environmental Defence Society (EDS) welcomes the opportunity to comment on the Department of Conservation's consultation paper on an interim extension to the West Coast North Island marine mammal sanctuary to manage the risk of Maui's dolphin mortality.

Given the critical status of the Maui's dolphin population, EDS considers that action should be taken as a matter of urgency to minimise the risk to Maui's dolphins from human activity.

OVERVIEW OF EDS

EDS is a public interest environmental organisation, formed in 1971, with a membership consisting largely of resource management professionals. The focus of EDS's work is on achieving good environmental outcomes through improving the quality of New Zealand's legal and policy frameworks and statutory decision-making processes. EDS both litigates in favour of the environment and operates as an environmental think tank.

EDS has had a long interest in the management of New Zealand's coast and oceans and in marine conservation more generally.

- In 2005 EDS published a report on oceans governance titled *Looking out to sea: New Zealand as a model for ocean governance*.
- In 2007 EDS published a report investigating integrated coastal management titled *Beyond the tide: Integrating the management of New Zealand's coasts*. The report was reprinted in 2009 with support from the Hauraki Gulf Forum.
- In 2009, EDS released a policy paper on the establishment of an Environmental Protection Authority (EPA) titled *Improving environmental governance: the role of an Environmental Protection Authority*. This paper canvassed gaps in current marine management (amongst other things) and proposed a role for the EPA which would include oversight of coastal and marine management. It also proposed the establishment of a Coastal Commission.

- In 2009 EDS also launched a comprehensive book on coastal management titled *Castles in the Sand: What's happening to the New Zealand coast?*
- In April 2010 EDS launched a comprehensive guide to how the New Zealand's marine area is currently managed titled *Managing the Marine Environment*.
- In April 2011 EDS published a policy paper titled *Governing our Oceans: Environmental Reform for the Exclusive Economic Zone* which analysed the deficiencies in existing law and called for urgent environmental effects legislation for the EEZ, given the growing interest in new commercial activities in the marine area.
- EDS is involved in ongoing work on coastal and marine conservation and management issues. In particular, EDS is currently undertaking research into the adequacy of the current legal and policy framework for managing human impacts on marine mammals.

SUMMARY OF EDS'S SUBMISSIONS

A summary of EDS's submissions is outlined below:

1. EDS supports the proposal to adopt interim measures to extend the West Coast North Island Marine Mammal Sanctuary from Oakura to Hawera but considers that effective protection measures need to be extended into this area.
2. EDS considers that the interim extension of the seismic survey regulations within the sanctuary is appropriate but believes that all activities which have a negative impact on Maui's dolphins should be regulated within the sanctuary. As a minimum, the regulations relating to mining that are effective in the existing part of the marine mammal sanctuary should be extended into the new area.
3. EDS further considers that restrictions on mining in the marine mammal sanctuary should be extended over the entire sanctuary area.
4. EDS urges the Department of Conservation to develop permanent measures to protect the Maui's dolphin within an effective marine mammal sanctuary and to ensure that the Threat Management Plan is reviewed as a matter of urgency.

NEED FOR INTERIM MEASURES

Population at critical level

It is indisputable that the Maui's dolphin population is in a highly critical state. It is listed as 'Nationally Critical' by the Department of Conservation. The *IUCN Red List of Threatened Species* classifies it as "critically endangered." The only IUCN categories denoting more serious circumstances are "extinct in the wild" and "extinct".

Maui's dolphins are threatened by a range of human activities in their habitat. Entanglement in set nets and trawl nets is the most well documented threat, but pollution, acoustic disturbance, vessel strike, and damage to the benthic habitat caused by mining are also serious threats to the population.

Despite the extremely low recent population estimate, there are still some reasons to be hopeful that with good management including protection from existing threats, the population can recover. The 2012 Department of Conservation study by Hanmer et al found that there is still a relatively large number of females within the population, and a relatively high level of genetic diversity.¹

In addition, the identification of two female Hector's dolphins amongst the Maui's dolphins provides the possibility that Hector's and Maui's may successfully interbreed. Whilst there are a number of reasons that this may not be the solution, the severity of the situation means that the importance of such opportunities must be recognised.

For this reason, the fact that the dolphin that was caught in a commercial set net off Taranaki was not positively identified as either a Hector's dolphin or a Maui's dolphin is not critical in relation to whether protection measures in the region would benefit the Maui's dolphin: either the dolphin was a Maui's, in which case its loss represents a significant blow for the population, or it was a Hector's which could have been in a position to interbreed with Maui's.

Maui's dolphins sighted in area where extension of sanctuary proposed

There is strong evidence to suggest that the dolphins travel into the area in which the extension of the marine mammal sanctuary is proposed. Although the study by Hanmer et al did not record any sightings in the Taranaki region, there are a number of documented sightings in the region, including footage filmed on a cell phone by a fisherman in 2009.

The presence of two Hector's dolphins off the west coast of the North Island indicates that they are able to travel from the South Island into the habitat of the Maui's dolphins. Thus, as noted by Hanmer et al, the establishment of corridors within and between core distributions of Maui's and Hector's dolphins may be important for the survival of the Maui's population.² The extension of the sanctuary accordingly provides a means of protecting dolphins moving from the South Island to the North Island over a greater part of that journey.

We note, however, that the review of the threat management plan and development of permanent protection measures should pay careful consideration to the possibility of creating protected corridors in the entire area over which the dolphins travel.

CONCLUSION

The Department of Conservation has obligations under the Conservation Act 1953 and under the Marine Mammals Protection Act 1978 to protect marine mammals such as the Maui's dolphin. Furthermore, the Biodiversity Strategy 2000 sets out the government's objectives for marine biodiversity, including in particular the following:

1. No human-induced extinctions of marine species within New Zealand's marine environment have occurred. Rare or threatened marine species are adequately protected from harvesting and other human threats, enabling them to recover.

The Ministry for Primary Industries' preliminary assessment of potential biological removal indicates that the population can sustain one human-induced mortality every ten to twenty three years

¹ Hanmer, R M, M Oremus, M Stanley P Brown R Constantine and C Baker, 2012, Estimating the abundance and effective population size of Maui's dolphins using microsatellite genotypes: 2010-11 with retrospective matching to 2001-07, Department of Conservation

² Ibid page 22

without impacting on the ability of the population to rebuild to its optimum population size. However, since 2002, twelve Maui's dolphin mortalities have been recorded in the Department of Conservation's incident database.

This estimated potential biological removal indicates that measures should be taken as a matter of urgency to ensure that no further Maui's dolphin mortalities occur as a result of human activity. If we are unable to achieve this, it is possible that the species will become extinct. Accordingly, interim measures should be deeply precautionary.

EDS supports the proposal to extend the marine mammal sanctuary to cover the area from Oakura to Hawera, but we consider that effective measures to regulate activities that have an impact on Maui's dolphins in the area are a necessary part of this designation. Without regulation of the activities which pose a threat to the Maui's dolphin population, the extension of the sanctuary may be ineffective.

The Oxford English Dictionary definition of the term 'sanctuary' is a place providing *refuge or safety from pursuit, persecution, or other danger*.³ Similarly, the Hector's and Maui's dolphins threat management plan which set out the original proposal for the west coast North Island marine mammal sanctuary sets out the specific objectives of the sanctuary as follows:

- a) To protect key sites in New Zealand waters of significance to Hector's dolphins including the subspecies Maui's dolphin.
- b) To maintain or restore the distribution and abundance of Hector's dolphins, including the subspecies Maui's dolphin, in New Zealand waters.
- c) To achieve self sustaining populations of Hector's dolphins, including the subspecies Maui's dolphin, throughout their natural range.
- d) To significantly reduce or eliminate human related threats to Hector's and the subspecies Maui's Dolphin throughout their range.⁴

We therefore support the proposal to extend the seismic surveying regulations into the area from Oakura to Hawera but consider that as a minimum the prohibition on mining in force in the existing sanctuary should be extended into this area as well.

EDS further considers that the mining prohibition should be extended over the whole area of the marine mammal sanctuary. The impact that minerals mining might have on the dolphins is little known at present, but there is a high risk that it could be significant, including degradation of habitat as a result of acoustic and particulate pollution, benthic disturbance and an increase in vessel traffic in the area.⁵ Until it is clear that minerals mining will have no impact on the population, it should be prohibited within the entire sanctuary.

EDS does not favour extreme responses to conservation challenges as a matter of course. It is recognised that such measures may have a significant economic impact. However in this case we consider that the risk to the Maui's dolphin is so severe that far reaching action is required.

³ Oxford English Dictionary, 1989

⁴ Hector's and Maui's dolphins draft threat management plan 2007, Department of Conservation and Ministry of Fisheries para 8.1

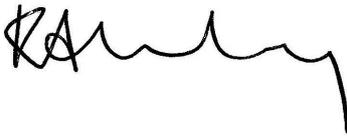
⁵ Thompson, K, 2012, *Maui's and mining: A review of marine mineral mining activity off the west coast of New Zealand and potential impacts*, Prepared for the Department of Conservation Auckland area office.

The recent discovery that dolphins travel further than previously thought highlights the fact that we do not have a full understanding of Maui's dolphin behaviour and distribution and therefore cannot be confident that limited measures focussed on the 'core' areas of Maui's dolphin habitat will be effective. The significance of losing even one more Maui's dolphin means that we need to ensure that protection measures are comprehensive, covering the entirety of the dolphins' range.

Having put interim measures in place, it is important that the Ministry for Primary Industries and the Department of Conservation proceed with permanent measures to safeguard the future of the Maui's dolphin as a matter of urgency, including reviewing the Threat Management Plan.

EDS would welcome the opportunity to discuss our submission further with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Mulcahy', with a stylized, cursive script.

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