



Set netting in a defined area on the East Coast of the South Island

Regulatory Impact Statement

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REGULATORY IMPACT STATEMENT

SET NETTING IN A DEFINED AREA ON THE EAST COAST OF THE SOUTH ISLAND

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry for Primary Industries (MPI).
2. It provides an analysis of proposed regulatory amendments, to provide for commercial and amateur set netting and further use of fishery resources while managing the impacts of fishing on Hector's dolphins.
3. The analysis is based on information held by MPI, the Department of Conservation and/or supplied by tangata whenua and stakeholders.
4. The proposal would not impair private property rights, market competition or the incentives on businesses to innovate and invest.

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Status quo and problem definition

5. Commercial and amateur use of set nets on the East Coast of the South Island (ECSI) is prohibited offshore to four nautical miles between Cape Jackson in the Marlborough Sounds and Slope Point in the Catlins. This prohibition was introduced in 2008 as part of the Hector's and Maui's Dolphin Threat Management Plan (TMP).
6. This prohibition was put in place to manage the effects of set net fishing on Hector's dolphins. Hector's dolphins are protected species under the Marine Mammals Protection Act 1978 and classified as "nationally endangered" by the Department of Conservation. Together with a small population size, the life history and characteristics of Hector's dolphins makes them susceptible to the effects of human-induced mortality. Set nets are considered to be the greatest known human-induced threat to Hector's dolphins.
7. The set net closure was implemented to ensure the greatest protection to Hector's dolphins from fishing-related threats within their known range. This has, however, had an impact on the use of fisheries on the ECSI. A socio economic impact assessment undertaken in 2007 estimated the value of the commercial fishery impacted by the ECSI set net closure (i.e. from Cape Jackson to Slope Point) at \$1.91 million.¹ The closure represented a 70% reduction in the value of the fishery and affected 62 ECSI set net operations.
8. While the value of the amateur ECSI set net fishery is unable to be quantified, Aranovus Research estimated that the ECSI set net closure affects 90% of the amateur use of set nets in the area. Amateur set netting is a culturally important activity for a number of New Zealanders that rely on it for food and leisure.
9. In September 2008, the fishing industry legally challenged in the High Court six decisions linked to the TMP. One of these challenges was against the ECSI set net closure and the effect that this decision had on the commercial set netters targeting butterfish in a defined area, identified by the fishing industry, at the north of the ECSI (see appendix one for map). The High Court referred the matter back to the then Minister of Fisheries and Aquaculture for reconsideration and allowed commercial fishers to continue to set net for butterfish in the defined area until a final decision was made.²
10. The Minister for Primary Industries (the Minister) has now reconsidered this matter, and has decided to provide an exemption to the general ECSI set net ban to allow commercial fishers to target butterfish using set nets in the area defined by the fishing industry and the High Court. Set nets are a non-selective fishing method so other bycatch species may also be caught (e.g. moki, wrasse, spotties).
11. The Minister also considered whether a similar exemption should apply (not limited to butterfish) to amateur fishers in the defined area and decided to also provide an exemption but subject to a requirement for fishers to stay with their nets while set and a limited season between 1 January and 30 April.

¹ Aranovus Research, A socio-economic impact assessment of fishers: Proposed options to mitigate fishing threats to Hector's and Maui's dolphins, 2007. <http://www.fish.govt.nz/NR/rdonlyres/90A3DA2B-6D6C-4273-9597-7A5AA4736CB4/0/AranovusExecutiveSummary.pdf>

² Link to High Court decision: <http://www.nzlii.org/nz/cases/NZHC/2008/1515.html>

Objectives

12. These proposals address wider government goals linked to the efficient use of resources and increasing economic and social benefit while protecting the environment. The goal of Fisheries 2030 is to maximise the benefits from the use of fisheries within environmental limits. The benefits in this case are the value of the set net fishery to commercial and amateur fishers in the defined area, while the environmental limits are the risks that set netting poses to Hector's dolphins.
13. The specific objective of this proposal is to manage the impact of fishing on Hector's dolphins at a level consistent with legislative and international obligations, while still providing for amateur and commercial use of the set net fishery (including usable bycatch) within the defined area.

Proposal

14. The proposal is to:
 - i. provide an exemption to the general ECSI set net prohibition to allow commercial fishers to target butterfish using set nets in a defined area at the top of the ECSI (see map); and
 - ii. provide an exemption to the general ECSI set net prohibition to allow amateur fishers to use set nets (targeting any species) in a defined area at the top of the ECSI (see map) but to require amateur fishers to stay with their net at all times while it is set and restricting amateur set netting in the defined area to the period 1 January to 30 April each year.

Consultation

15. MPI consulted separately on a variety of options relating to the commercial and amateur set net measures in the defined area. The defined area was determined by the fishing industry through the High Court challenge and was not initially consulted on. On both occasions MPI consulted in writing with those persons and organisations interested in fishing in the defined area or the effects of such fishing. This included consultation with tangata whenua, commercial and amateur fishers and environmental groups identified through the MPI stakeholder database. Information was also made publicly available on the internet during consultation, providing any interested individuals or groups with an opportunity to submit on the proposals.
16. For the commercial proposal, MPI consulted with tangata whenua and stakeholders in September and October 2010. Three options were proposed:
 - i. remove the set net ban in the defined area for butterfish set netting (option one),
 - ii. allow an exemption in the defined area with monitoring of fishing activity (option two) and
 - iii. status quo – do not provide for exemption (option three).
17. MPI received 30 individual submissions and a petition from change.org (an on-line advocacy platform) signed by 1,593 individuals worldwide:
 - five submissions in support of option one from commercial and recreational representative groups (Marlborough Recreational Fishing Association, Te Ohu

Kaimoana, Seafood Industry Council [SeaFIC] and Challenger Finfish Group) and an individual fisher;

- two submissions in support of option two from the Environment and Conservation Organisations of NZ Inc. (ECO) and an individual member of the public; and
- eighteen individual submissions in support of option three who were primarily from environmental groups, local members of the public and marine mammal scientists - a 1,593-signature petition was also received from change.org (an online advocacy platform) supporting option three; and
- five submissions in support of protection in general, however no specific option was supported.

18. For the amateur proposal, MPI consulted with tangata whenua and stakeholders in June and July 2011. Three options were proposed:

- i. status quo – do not provide for exemption (option one),
- ii. remove the set net ban in the defined area (option two), and
- iii. remove the set net ban with additional measures to mitigate the effects on Hector's dolphins – i.e. impose a requirement that fishers stay with their nets while they are set (option three).

19. MPI received 53 submissions:

- nine submissions in support of option one from environmental groups (including the Environmental Defence Society, WWF and ECO), marine mammal scientists and SeaFIC;
- twenty submissions in support of option two from recreational fishing bodies (including the New Zealand Recreational Fishing Council, the Marlborough Recreational Fishing Association and the Marlborough Angling & Surfcasting Club) and local recreational fishers;
- eleven submissions in support of option three from local representative and conservation groups (including the Port Underwood Association and Ocean Bay Protection Society), local recreational fishers and fishing groups; and
- thirteen submissions from recreational fishers in support of lifting the amateur ban in general, but with no specific option supported; six of these submissions supported or suggested a variety of additional measures being adopted to manage the risk to Hector's dolphins.

20. In general commercial and amateur fishers supported options that would allow them to use set nets in the defined area. Their primary argument was that they did not perceive there to be a risk to Hector's dolphins from these fishing activities because there is no known Hector's dolphin population in the defined area, there have been few or no Hector's sightings in the area and there have been no known fishing-related mortalities in the defined area. On the other hand, environmental groups and the general public supported options that would provide the greatest possible level of protection from fishing-related threats to Hector's dolphins, given their endangered status and therefore supported the ban being retained.

21. The Minister also consulted with the Minister of Conservation prior to making his decision as required under section 15(2) of the Fisheries Act 1996.

Regulatory Impact Analysis

IMPACT OF PROPOSED CHANGE FOR COMMERCIAL FISHING

22. Providing an exemption to the general ECSI set net prohibition for commercial fishers would allow them to target butterfish using set nets in the defined area and allow better use of fisheries resources. Fishers would target butterfish in the defined area, although other bycatch species may also be caught.
23. There are between 14 and 19 commercial fishers targeting butterfish in the wider region (i.e. statistical areas 017 and 018), which includes the defined area (see map attached). MAF does not have sufficient information to be able to accurately determine these fishers' reliance on the defined area. However, industry estimates indicate that up to 87% of butterfish taken within the wider region comes from the defined area. So, if the defined area remains closed, this would have a significant impact on the commercial value of the local butterfish fishery. Although fishers can relocate some of their effort to other areas and other species, it is uncertain to what extent.
24. The key benefit of this proposal is that it would allow for greater commercial use of fisheries resources (butterfish and associated bycatch) in the defined area by set netting. MPI estimates the commercial value of the butterfish fishery in the defined area to be between \$0.15 and \$1.55 million.³
25. The key cost is the risk to Hector's dolphins from commercial set net activity in the defined area. The risk posed to Hector's dolphins from commercial set net fishing targeting butterfish is considered to be low. This is because of the type of gear and set net practices used for commercial butterfish set netting (i.e. nets of less than 60 m in length set relatively close to shore). There are also no known Hector's dolphin populations in the defined area and information is uncertain about the extent these dolphins use or transit through the defined area. There have been no recorded fishing-related mortalities of Hector's dolphins from commercial or amateur set nets in the defined area.
26. The alternative options consulted on are not considered to be adequate management responses. Option three (status quo – do not provide exemption) results in unnecessary constraints on use given that the risk to Hector's dolphins from this fishing activity is considered to be low (see above). The observer monitoring costs associated with option two, which are estimated to be \$224,000 - \$268,000 per year, could make fishing in the area uneconomic and the presence of an observer on a small vessel may not be practical.

IMPACT OF PROPOSAL FOR AMATEUR FISHERS

27. The key benefit of this proposal is that it provides for amateur use of set nets in the defined area while also mitigating any ongoing risk to Hector's dolphins by requiring fishers to stay with their nets and restricting set netting to the period between 1 January and 30 April. The benefit of the "stay with the net" measure is that fishers are present at all times while the net is set and are therefore able to retrieve their net if dolphins are sighted in the area or are able to immediately respond if a dolphin is caught in the net.

³ The annual value of direct harvesting income, processing income, indirect income, induced income and quota value is \$0.15 million. The annual value plus capitalised future value of the same components is \$1.5 million. See Appendix 6 of the Final Advice Paper on Hector's & Maui's Dolphins Threat Management Plan for further information: http://www.fish.govt.nz/NR/rdonlyres/B4622876-9AB5-4D4E-9154-EE01D75259AE/0/Appendices_Hectors_Mauis_Dolphin_FAP.pdf

There is no quantitative information on the number of amateur fishers that would benefit from this proposal but the defined area was popular for set netting for residents and seasonal visitors prior to the closure.

28. As with the commercial decision, the defined area is small relative to the dolphins known range and there are no known Hector's dolphin populations in the defined area. Amateur set nets do however, pose a different risk to Hector's dolphins when compared to commercial set nets. This is because fishing effort, type of gear and set practices are highly variable depending on the experience of the fisher, the weather and the season. It is also not possible to monitor the amateur sector as easily or cost-effectively as the commercial sector. To address these factors, additional restrictions are proposed: requiring fishers to stay with their net while it is set, allowing them to promptly remove nets if dolphins are sighted in the area, and restricting the season in which amateur set netting can occur.

29. The following costs are associated with this proposal:

- i. It would require targeted compliance effort from MPI to ensure fishers are complying with the stay "with the net" measure and the season restriction. However, this is able to be managed as part of existing compliance and enforcement activities in the area, within current resourcing and budget.
- ii. Mortality of Hector's dolphins could still occur. The extent of this risk is uncertain and relies on fishers watching their net and the surrounding area and removing their nets if dolphins are sighted in the area.
- iii. Requiring fishers to stay with their net may result in added safety risks to the fisher because of increased time on the water. Nonetheless, MPI expects fishers to comply with the requirement while not putting themselves at risk (i.e. if conditions change for the worse, fishers should retrieve their net and head back to shore).
- iv. The "stay with the net" measure imposes a small added restriction on amateur fishers and the use of set nets.

30. The alternative options consulted on are not considered to be adequate management responses. Option one (status quo – do not provide exemption) results in unnecessary constraints on use given the limited likelihood of Hector's dolphins being in the defined area. Option three (remove the set net ban in the defined area) is also considered to be inadequate to manage the risk of fishing-related mortality because amateur fishing effort and gear is highly variable which affects the level of risk to Hector's dolphins which may occasionally use or transit through the defined area.

Conclusions and recommendations

31. The preferred option is to provide exemptions to the general set net prohibition to allow commercial and amateur fishers to use set nets in the defined area at the north of the ECSI (as defined by the fishing industry and the High Court). This is considered to provide a balance between competing interests, by allowing further use of the fishery in the defined area while managing the risk to dolphins.
32. MPI considers that the residual risk to Hector's dolphins resulting from the proposed changes is consistent with relevant legal requirements (e.g. Fisheries Act 1996) and international obligations to manage the effects of fishing on protected species. This risk is considered to be low given that:
- the defined area is small in relation to Hector's dolphins' known range,
 - there are no known Hector's dolphin populations in the defined area, and
 - information about the extent of Hector's dolphins use or transit through the defined area is uncertain.

Implementation

33. If the proposals are approved, amendments to the following regulations would be required:
- i. Fisheries (Challenger Area Amateur Fishing) Regulations 1986
 - ii. Fisheries (Challenger Area Commercial Fishing) Regulations 1986
 - iii. Fisheries (Infringement Offences) Regulations 2001
34. The amateur amendment would be supported by the creation of an infringement offence for failing to remain with a set net in the defined area or set netting during the closed season in the defined area (i.e. other than between 1 January and 30 April). Such offences would carry an infringement fee of \$500, consistent with those applicable for breaches to other equivalent requirements. Amateur offences in the defined area may also be subject to a fine, on summary conviction, not exceeding \$10,000. No additional offences and penalties will be created under the commercial amendment as no additional requirements are proposed.
35. It is proposed that the necessary amendments would come into force on 3 January 2013. The Minister has informed tangata whenua and stakeholders of his decision and agreed to recommend the proposed regulatory changes to Cabinet. If Cabinet agrees, the Governor-General would then be recommended to make the necessary changes by Order in Council.
36. A communications plan would be developed for the notification of measures. It is intended that the new measures would be publicised through local newspapers, fishing magazines, posters and leaflets, as well as directly to stakeholders via the MPI stakeholder database and through Fishery Officers' interactions with fishers in the area. Further and detailed information would be provided to affected stakeholders closer to the implementation date.

Monitoring, evaluation and review

37. Monitoring of commercial set net fishers is conducted by MPI observers, onboard fishing vessels. These observers monitor and record interactions with protected species. Observers will be monitoring set netting activities in the defined area during 2013/14. Furthermore, commercial fishers are required to report all incidental dolphin and other protected species captures. This information would be used to monitor, evaluate and, if necessary, review the proposed measures.
38. Amateur fishers' compliance with the "stay with your net" rule and the season restrictions would be monitored by Fishery Officers as part of routine monitoring and enforcement activities in the area. This monitoring is not expected to require any additional resourcing to undertake.
39. The Minister can choose to review these measures at any time he/she considers it necessary. However MPI and the Department of Conservation intend to conduct a wider review of measures linked to the Hector's and Maui's Dolphins Threat Management Plan in 2014 if warranted by available information.

Appendix 1: Map of Defined Area

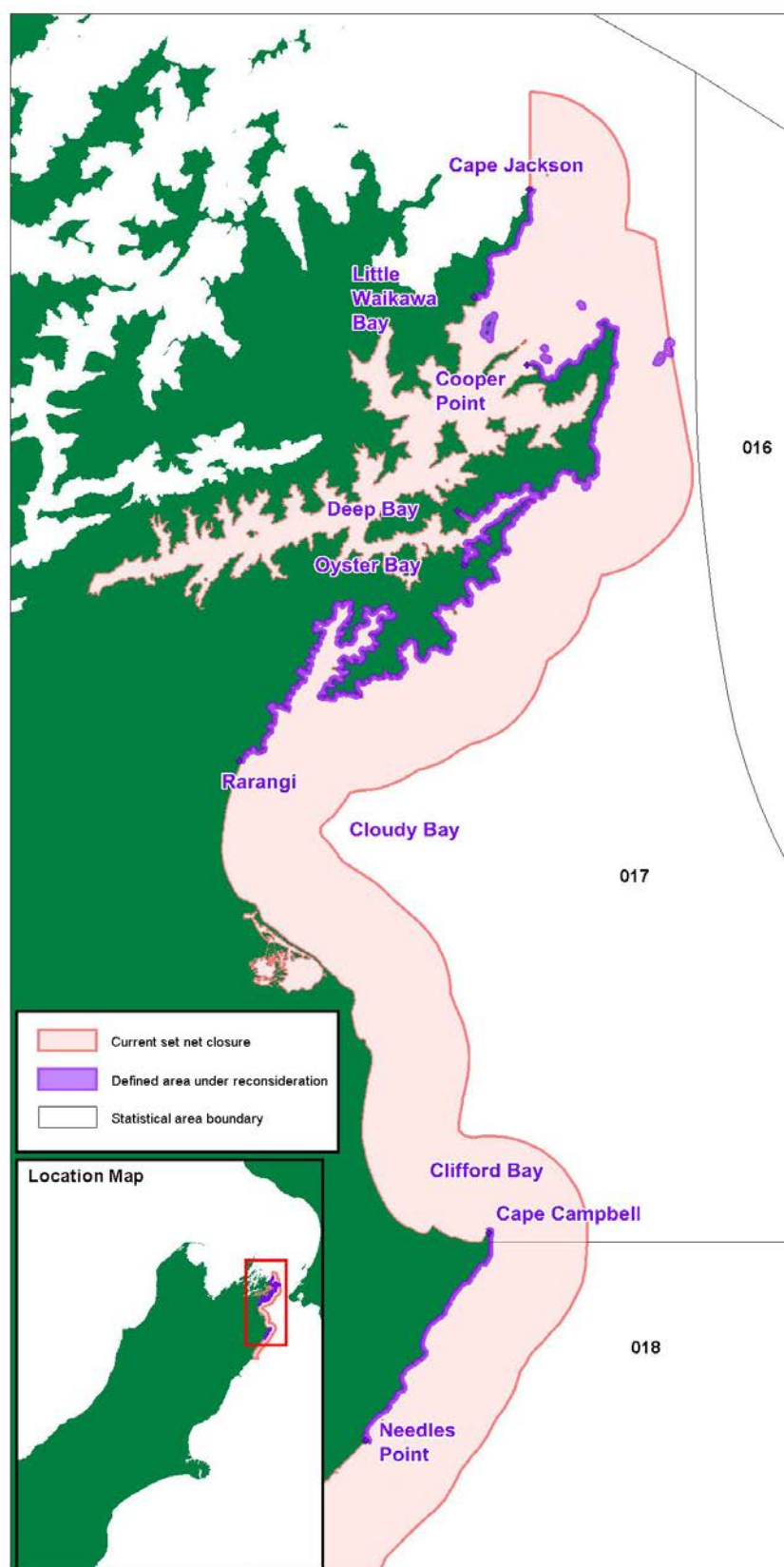


Figure 1: Map showing defined area under reconsideration - the defined area extends out 200m from areas of coastline highlighted in purple.