

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2012-AKL-000248

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under clause 14(1) of the First
Schedule of the Act

BETWEEN

**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Appellant

AND

WAIKATO REGIONAL COUNCIL

Respondent

**STATEMENT OF EVIDENCE IN CHIEF OF GINA MARIE SWEETMAN ON BEHALF OF
THE ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED**

28 February 2014

INTRODUCTION

1. My full name is Gina Marie Sweetman.
2. I hold the degrees of Bachelor of Planning and Masters of Planning (First Class Honours), both obtained from the University of Auckland in 1993 and 2006 respectively. I am a sole provider, trading as Sweetman Planning Services, practicing as a planning consultant throughout New Zealand, and based in Wellington. I have been engaged in the field of planning and resource management for 21 years.
3. My experience includes working for local government, central government and as a planning consultant. Amongst other roles, I have previously been employed by the Ministry for the Environment, either as an employee or as a consultant, as a senior policy analyst and Manager, Resource Management Practice, Project Manager for the Sustainable Water Programme of Action, Project Manager for the Board of Inquiry for the Proposed National Policy Statement on Freshwater Management and Manager, Resource Management Policy. I have held the position of Acting Manager, Environmental Policy at the Ministry of Agriculture and Forestry as a consultant. I have also held the position of Senior Analyst and Principal Policy Analyst in the Te Puni Kokiri Environmental Issues team, as contractor and as a fixed term employee respectively.
4. I am a full member of the New Zealand Planning Institute. I sat as a Councillor on the Council of the New Zealand Planning Institute representing Wellington and Marlborough for three terms, over six years. I am an accredited Independent Commissioner and notably in the context of these proceedings, sat on the Hearings Panel for the Proposed Canterbury Regional Policy Statement.
5. My experience covers a wide variety of planning issues, both at a policy and implementation level. My roles at the Ministry for the Environment, the Ministry of Agriculture and Forestry and Te Puni Kokiri have all involved significant involvement in all aspects of environmental policy, most specifically with the Resource Management Act 1991 (“**the RMA**” or “**the Act**”). I also have significant experience in promulgating plan changes and in preparing and processing applications for resource consents. In addition, I have significant experience in developing and delivering training to a wide range of audiences on all aspects of the RMA.

6. I have read the Environment Court's Code of Conduct (2011) for expert witnesses and this evidence has been prepared in accordance with that code. I agree to comply with the terms of the Code. My qualifications as an expert are set out above.
7. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express. I have specified where my opinion is based on limited or partial information and identified any assumptions I have made in forming my opinions.

SCOPE OF EVIDENCE

8. I have been engaged by the Environmental Defence Society ("EDS") to provide resource management planning advice and to present planning evidence with respect to its appeal on the Proposed Waikato Regional Policy Statement ("the PWRPS").
9. My statement of evidence covers Chapters 1, 3 and 11 of the PWRPS and will deal with the following:
 - The regulatory framework
 - Why the management of effects on Maui's Dolphin is a significant RMA issue
 - A recommended approach to managing adverse environmental effects on Maui's Dolphin and its habitat.
10. In preparing my evidence, I have read the following material:
 - The evidence of Dr Rochelle Constantine;
 - The relevant sections of the Waikato Regional Coastal Plan 2004 (WRCP);
 - The relevant provisions of the New Zealand Coastal Policy Statement 2010 (NZCPS);
 - The relevant provisions of the National Policy Statement for Freshwater Management 2011 (NPSFM);
 - The relevant sections of the Waikato Regional Council's decisions on submissions of the PWRPS;

- The Review of the Maui's Dolphin Threat Management Plan Discussion Document;
- The letter from Hon. Nathan Guy to stakeholders titled "Decisions on the Maui's dolphin portion of the Hector's and Maui's dolphin Threat Management Plan" dated 5 December 2013 (Appendix 3)

THE STATUTORY FRAMEWORK

11. A regional policy statement (RPS) should be designed to accord with and assist the regional council to carry out its functions so as to achieve the purpose of the RMA (sections 30, 59 and 61).
12. When preparing a RPS, the regional council must give effect to any national policy statement (NPS) and the NZCPS.
13. The regional council must also:
 - a) Have regard to any relevant management plans and strategies prepared under other Acts (sections 61(2));
 - b) Take into account any relevant planning document recognised by an iwi authority (s61(2A));
 - c) Not have regard to trade competition (sections 61(3)).
14. The formal requirement for a RPS is to *inter alia* (sections 59 and 62):
 - a) provide an overview of the resource management issues of the region and state the significant issues for the region;
 - b) contain policies and methods to achieve integrated management of the natural and physical resources of the region (s 59);
 - c) state the objectives sought to be achieved by the statement, the policies for those issues and objectives and an explanation of those policies, and the methods (excluding rules) to be used to implement the policies (s 62(1)(c),(d) and (e));
 - d) state the processes to be used to deal with cross-boundary issues; and

- e) state the local authority responsible for specifying objectives, policies and methods for the control of the use of land relating to natural hazards, hazardous substances, and indigenous biological diversity.

15. The functions of the regional council are set out in section 30 of the Act. Subsections 30(1)(c), (d) and (ga) are particularly relevant. These subsections of the Act provide that a regional council has the following functions for the purpose of giving effect to the Act in its region:

“(c) The control of the use of land for the purpose of:

...

(ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:

...

(iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water.”

(d) in respect of the coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of –

(i) land and associated natural and physical resources:

(iv) discharges of contaminants into or onto land, air, or water and discharges or water into water:

(iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:

(v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances

(vii) activities in relation to the surface of water:

...

(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity.”

16. Section 5(2)(b) requires that the life-supporting capacity of *inter alia* water and ecosystems must be safeguarded. Water includes fresh and coastal water, and ecosystems include marine ecosystems.

17. Section 6(c) provides that it is a matter of national importance for decision-makers to “recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”.

18. Section 7 sets out other matters that “particular regard” must be given to. The subsections particularly relevant to these proceedings are:

(aa) *the ethic of stewardship:*

(d) *intrinsic values of ecosystems:*

The New Zealand Coastal Policy Statement

19. The NZCPS came into effect on 3 December 2010. Policy 11 is relevant to this matter.

Policy 11: *Indigenous biological diversity (biodiversity):*

“To protect indigenous biological diversity in the coastal environment:

(a) avoid *adverse effects of activities on:*

(i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

(ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;

(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;

(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

(v) *areas containing nationally significant examples of indigenous community types; and*

(vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:*

(i) *areas of predominantly indigenous vegetation in the coastal environment;*

(ii) *habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;*

(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;

(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

(v) habitats, including areas and routes, important to migratory species; and

(vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.” (Emphasis added)

20. While Policy 11 must be read along with the other objectives and policies of the NZCPS, I do not traverse those other objectives and policies in my evidence as I believe Policy 11 is the most relevant to the matters under appeal by EDS.

National Policy Statement for Freshwater Management

21. The NPSFM came into effect on 12 May 2011. Objective C1 and Policy C1 are relevant to this matter.

“Objective C1

To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

Policy C1

By every regional council managing fresh water and land use and development in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects.”

22. While Objective C1 and Policy C1 must be read along with the other objectives and policies of the NPSFM, I do not traverse those other objectives and policies in my evidence as I believe these are the most relevant to the matter under appeal by EDS.

Management Plans and Strategies under other Acts

23. The Ministry of Primary Industries and the Department of Conservation have recently reviewed the Maui's Dolphin Threat Management Plan 2008¹ ("the Threat Management Plan"), which included consultation on a discussion document "Review of the Maui's Dolphin Threat Management Plan 2012" (the "discussion document"). The Threat Management Plan is a non-statutory document and therefore does not have to be had regard to in terms of s61(2). However, s61 does not prevent decision-makers from choosing to have regard to non-statutory management plans and, as in the current case, the discussion documents informing those management plans.

24. The purpose of the Threat Management Plan is to identify human-induced threats to Maui's dolphin populations and outline strategies to mitigate those threats. A full copy of the discussion document is attached to my evidence as Appendix 1.

25. The discussion document sets out that the Government's Vision Statement for the management of Maui's (and Hector's) Dolphin is:

"Hector's and Maui's dolphins should be managed for their long-term viability and recovery throughout their natural range."

26. The goals of the Threat Management Plan, as referenced in the discussion document, are to:

- *"ensure that the long-term viability of Maui's dolphins is not threatened by human activities; and*
- *Further reduce impacts of human activities as far as possible, taking into account advances in technology and knowledge, and financial, social and cultural implications."*

27. The discussion document includes a key point that Maui's dolphin is facing a high risk of extinction and states that active management is required to mitigate human impacts².

28. As a result of the review of the Threat Management Plan, the Government³:

¹ www.mpi.govt.nz

² pg 31, Review of the Maui's Dolphin Threat Management Plan

³ Letter dated 5 Dec 2013 from Hon Nathan Guy to Stakeholders.

- implemented additional fishing related measures for the protection of Maui's Dolphin;
- indicated that it would establish a Maui's Dolphin Research Advisory Group; and
- produced a map outlining the areas in which specific protection measures for Maui's Dolphin apply.

29. As protection measures, the Ministry of Primary Industries has established Commercial and Recreational Trawling and Set Net Restrictions on the West Coast of the North Island under the Fisheries Act 1996, and the Department of Conservation has established a Marine Mammal Sanctuary under the Marine Mammals Protection Act 1978. The map showing these restrictions and sanctuaries is included in paragraph 14 of Dr Constantine's evidence.

30. The two protection measures outlined above are both relevant considerations for the purpose of the RPS.

31. The discussion document identifies the following threats to Maui's Dolphin which I consider are not covered by the protection measures that the Government has implemented, and that I consider are from activities that can and should be managed under the RMA:

- Marine farming
- Seismic surveying
- Seabed minerals exploitation, including petroleum – prospecting, exploration and mining
- Vessel traffic
- Pollution – organochlorines, metals, oil spills, harmful substance spills, operational discharges, pathogens
- Coastal development – land use, marine construction, dredging and dredge spoil disposal
- Wave and tidal energy generation.

Iwi Management Plans

32. I have reviewed the Iwi Management Plans that are publicly available on the Regional Council's website and they do not contain specific reference to Maui's Dolphin⁴. Several of the iwi management plans make reference to the effects of activities on coastal life, with a primary focus on fish and shellfish species that are important as a food source; however there is no specific direction for the management of Maui's Dolphin that might inform the RPS.

WHY THE MANAGEMENT OF EFFECTS ON MAUI'S DOLPHIN IS A SIGNIFICANT RMA ISSUE

33. From the evidence of Dr Rochelle Constantine a set of critical facts can be identified:

- Maui's Dolphin is listed by the International Union for Conservation of Nature (IUCN) as Critically Endangered (as there are fewer than 250 mature animals and a projected decline of over 80% in three generations).
- Maui's Dolphin is listed as Nationally Critical under the New Zealand Threat Classification System, the highest listing in the system, with survival of the subspecies considered conservation dependant.
- Testing in 2010-2011 estimated only 55 individuals aged one year old and above.
- An estimate, taking into account of all threats posed to Maui's Dolphin suggests a 95.7% likelihood of population decline over the next five years.
- With the maximum population growth rate of 1.8% per annum, the estimated 5.27 mortalities per annum from all threats far exceeds the long-term viability of Maui's Dolphin.
- Maui's Dolphin is primarily found between the Manukau Harbour entrance and north of Raglan, with occasional sightings towards the Kaipara Harbour to the north and near Taranaki to the south.
- Maui's Dolphin is the only coastal resident population of cetaceans along the northwest coast of the North Island and are likely to play a unique role in the ecosystem.

⁴ The Maniapoto Iwi Environmental Management Plan 2007 specifically refers to sightings of Hector's Dolphins (of which Maui's Dolphin is a sub-species) as an 'environmental feature' (pages 56 and 57).

- Threats to Maui's Dolphin include:
 - (a) Fisheries
 - (b) Predation
 - (c) Disease events
 - (d) Pollutants
 - (e) Habitat degradation
 - (f) Vessels
- It is possible that the Maui's Dolphin could recover from its critically endangered status, if human-caused mortality events are reduced to less than the calculated Potential Biological Removal (one dolphin mortality every 10-23 years).

34. As noted above, Dr Constantine's evidence demonstrates that there is a significantly high likelihood of population decline over the next five years. Protective measures should be taken with urgency and all future activities planned in the vicinity of Maui's Dolphin habitat should give priority to how these activities will affect the Dolphins.

35. I consider that the latter three threats ((d) to (f)), which arise from direct or indirect discharges into and/or the use of the coastal marine area are relevant RMA matters, and that they can and should be managed through RMA planning documents such as the PWRPS.

36. In respect to pollutants, Dr Constantine states that where possible, controlling leachate and halting the use of persistent organic pollutants throughout the Maui's dolphin range would minimise the risk from these threats. However, based on Dr Constantine's evidence, I do not consider that this is a significant risk. The environmental effects of discharges, both source and non-point source are managed under the RMA.

37. In respect to habitat degradation, Dr Constantine states that changes to the Maui's dolphin habitat could cause displacement, a decrease in foraging success, physical injury and physiological stress. Examples of activities that can cause habitat degradation include:

- Dredging, sediment removal, marine construction

- Coastal land development that can result in excessive runoff
- The construction, location and operation of structures such as aquaculture facilities, tide turbines and jetties; and

38. In addition, seismic surveys, oil and gas exploration, underwater blasting, aquaculture facility operations, along with other potential adverse effects described in Dr Constantine's evidence and the discussion document, all create acoustic disturbance to the Dolphin's themselves.

39. In terms of aquaculture, the impact of aquaculture and marine farming activities on recreational, customary, and commercial fishing is managed under the Fisheries Act. The environmental effects of aquaculture activities are managed under the RMA. Dr Constantine notes that marine farming areas are currently restricted in the harbours⁵. However, Maui's Dolphins are known to frequent these harbours, so future aquaculture development within the Maui's Dolphin habitat should consider the effects on the dolphins and their habitat. Aquaculture development outside of the harbours and within the Dolphin's habitat should also consider the effects on the dolphins and their habitat.

40. In terms of mineral exploration and mining, these are permitted activities (in the case of mineral exploration⁶) or require discretionary resource consent (in the case of mining and other larger bed disturbance activities⁷) within the WRCP. Dr Constantine notes that there is currently a low level of these sorts of activities; however, any planned expansion of these activities needs to be carefully considered with respect to effects on Maui's Dolphins and their habitat⁸. The environmental effects of mineral exploitation are managed primarily through the RMA within 12 nautical miles of mean high water springs.

41. The environmental effects of dredging, sediment removal, marine construction, the construction, location and operation of structures, oil and gas exploration, seismic surveys and underwater blasting are managed primarily through the RMA within 12 nautical miles of mean high water springs.

⁵ Para 27, Pg 11

⁶ Rule 16.6.10

⁷ Rules 16.6.12 and 16.6.13

⁸ Para 27, Pg 11

42. The environmental effects arising from the activities of vessels which are using the coastal marine area are subject to the RMA⁹. Environmental effects arising from vessels which are relevant to this matter can include:

- Noise
- Discharges to water, from waste and ballast
- Possible grounding of ships and resultant oil spills
- Disturbance of wildlife, including potential vessel strike
- Adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna
- The introduction of unwanted or pest organisms

43. I note that the Resource Management (Marine Pollution) Regulations control discharges from ships, aircraft and offshore installations into the coastal marine area, including oil, noxious liquid substances, treated and untreated sewage, garbage, clean or segregated ballast water and discharges as part of normal operations of a ship or offshore installation. The Regulations also control the dumping of waste and other matter into the coastal marine area from ships, offshore installations and aircraft, and the incineration of waste, in a marine incineration facility, in the coastal marine area.

44. In my opinion, the Marine Pollution Regulations by themselves do not provide adequate protection of Maui's Dolphin and it is therefore necessary that the implementation of those regulations is reinforced by specific direction in the PWRPS and in the WRCP.

45. Dr Constantine concludes that all activities, on land and at sea, that cause habitat degradation need to be managed to minimise the impacts on Maui's dolphin¹⁰. I agree with that conclusion.

46. The WRCP includes rules that require resource consent to be obtained for the majority of activities that involve significant disturbance of the sea bed, establishing of permanent structures and significant direct discharges of contaminants. However the guidance

⁹ Section 30(2) enables regional councils to control the effects of vessels using the CMA, however a regional council's functions do not "*apply to the control of the harvesting or enhancement of populations of aquatic organisms, where the purpose of that control is to conserve, use, enhance, or develop any fisheries resources controlled under the Fisheries Act 1996*".

¹⁰ Para 27, pgg 11

offered to applicants and decision-makers in relation to the actual and potential adverse effects on biodiversity and marine ecosystems is broad in nature. There is currently no specific policy guidance within the WRCP that specifically identifies the habitat of Maui's Dolphin or highlights the management response necessary to reflect the critically endangered state of the species.

47. When considering resource consent applications under the current WRCP provisions for activities that are likely to directly affect Maui's Dolphin and their habitat (such as iron sand mining), it would be reasonable to expect a decision-maker to identify the statutory Marine Mammal Sanctuary relating to Maui's Dolphin and to consider the effects of the activity in question on the dolphins and their habitat. However, the indirect and cumulative effects of other activities, such as multiple small structures within the coastal marine area and discharges of contaminants to freshwater from land that subsequently enter the coastal marine area, are less likely to be identified by decision-makers as potentially having a significant adverse effect on Maui's Dolphin. From my experience with implementing plan provisions, I consider that unless there are specific provisions alerting decision-makers to the range of activities that have the potential to cause significant adverse effects on Maui's Dolphin, it is probable that many of those activities will not be managed to avoid those effects (which is an obligation in giving effect to the NZCPS Policy 11).
48. Unless and until district plans and regional plans, including the WCRP, are amended to give effect to the PWRPS provisions, there will be nothing within the RMA planning framework that will draw decision-maker's particular attention to the effects of activities on Maui's Dolphin. In my view, that is sufficient reason to include specific provisions within the RPS to both identify the habitat and existence of Maui's Dolphin and to provide guidance to decision-makers on the types of activities and effects that should be considered to ensure the effective management of the dolphins and their habitat.
49. The Regional Council's position is that specific mention of Maui's Dolphin in the objectives and policies of the RPS is not warranted, and that this is more appropriately contained in the WCRP¹¹.
50. I have a particular concern about the time that it would take for specific inclusion of provisions in the WCRP and the high probability of population decline over a short period of time, as described in Dr Constantine's evidence. It is conceivable, depending on the

¹¹ Page 10 DoC#2274867 Decisions on submissions (needs proper reference)

Regional Council's plan review programme that any changes required to be made to the WRCP (and other district and regional plans) to give effect to the PWRPS changes would take at least two years. This would allow for a period of plan review, s32 evaluation and consultation prior to notification and then the Schedule 1 process. In that period of time, as identified by Dr Constantine, there is a high likelihood of population decline but also of additional activities being consented that may have longer-term cumulative adverse effects on the Maui's Dolphin habitat and population.

51. I have reviewed the Waikato Regional Councils' website and was unable to source information as to when it proposes to undertake a review of the WRCP. I did source an internal discussion document titled "Review of the Waikato Regional Coastal Plan¹²", the purpose of which was to "provide an overview of key legislative and policy changes that have occurred since the RCP was proposed, as well as reviewing the effectiveness and efficiency of the Plan". This document does not discuss the timing of any review and does not refer to Maui's Dolphin.
52. While I agree that the objectives and policies in the PWRPS relating to indigenous species would encapsulate Maui's Dolphin, and, if given effect to in a comprehensive manner in the course of time, would provide protection, I do not consider that the provisions are sufficient to reflect the critically endangered nature of Maui's Dolphin, regionally, nationally and internationally, do not initiate the necessary urgent management response, and do not specifically address a significant resource management issue for the region. I consider that specific provision is needed for that.
53. In my opinion, planning documents should, where there is a specific resource management issue, focus their provisions so that specific issue is addressed. Due to the defined, species-specific issue relating to Maui's Dolphin, it is necessary and appropriate that the issue is clearly stated in the PWRPS in words that are unambiguous and that ensure that the management response in lower order planning instruments, including resource consents, is implemented.
54. In the time that it could take to draft specific provisions and notify them in the WRCP, there is high potential that there could be a significant decline in population numbers and/or additional activities being consented that may have longer-term cumulative adverse effects on the Maui's Dolphin habitat and population. My opinion is therefore

¹² Draft for Internal Discussion. Review of the Waikato Regional Coastal Plan. Draft v5. October 2012. Source <http://www.waikatoregion.govt.nz/PageFiles/19543/2220538.pdf>

that is the PWRPS contains a specific direction to avoid adverse effects on Maui's Dolphin and its habitat that applies as an interim measure prior to regional plans and district plans giving effect to the PWRPS changes. Once effective measures were in place in the lower order instruments, the Regional Council if it so then wished, could remove the specific reference by way of a change to the RPS.

55. Under s67(3)(c) and s75(3)(c) a regional plan or district plan, including any change to a regional or district plan, must give effect to the RPS.

56. Under s104(1)(b)(v), the consent authority when considering an application for a resource consent, must, subject to Part 2, have regard to a RPS.

57. Having specific reference in the PWRPS will mean that any plan change initiated by the Regional Council and any territorial authority, any private plan change, and any resource consent application would need to be assessed with the specific requirement to avoid adverse effects on Maui's Dolphin and its habitat. At present, there is a risk that not directly referring to Maui's Dolphin and simply relying on the current general high level reference may mean that potential adverse effects on Maui's Dolphin are overlooked or given insufficient weight. Where an issue is as well defined as this, it would be inefficient not to set out the specifics of the issue and the necessary management response at the earliest opportunity, especially where the planning instrument has an instructional impact on lower order instruments.

58. In my view, including a specific provision would also give effect to the NZCPS, which directs that adverse effects of activities on species such as Maui's Dolphin are to be avoided. It also assists regional and district plans to give effect to the NZCPS efficiently.

59. This approach would also give effect to the NPSFM, which directs that the integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment is improved.

EVALUATION UNDER S32

60. When making decisions on the PWRPS approach to managing indigenous biodiversity, including management of impacts of use and development of natural resources on Maui's Dolphin and their habitat, the Regional Council was required to evaluate the appropriateness of the provisions they included in their decision.

61. As discussed in my evidence, it is my view that the PWRPS provisions as included in the Council's decision, and as amended in mediation, are not the most effective or efficient provisions for addressing the issues associated with Maui's Dolphin. Given the critical state of the species and the urgent need for management response to minimise further decline, an approach that does not focus the attention of decision-makers on the matter is likely to be less effective than one that does. I consider that the inclusion of methods that direct consideration of the effects on Maui's Dolphin when considering resource consents and reviewing and changing plans is more effective than relying on decision-makers to determine the relevance of Maui's Dolphin on a case by case basis.

62. With regard to including specific references to Maui's Dolphin habitat in the policies, I consider that this provides for more efficient implementation of the policies through regional and district plans. It also allows for effective implementation of management measures through the lower level planning documents by being specific as to outcomes.

CONSIDERATION AGAINST PART 2 OF THE ACT

63. In reaching its decision, the Court must consider the PWRPS approach and provisions against the purpose of the Act as set out in s5. Guiding that consideration is an evaluation against the applicable principles of the Act that are set out in subsections 6, 7 and 8. In my opinion, subsections 6(c), 7(a) and (aa) and 7(d) are of particular relevance.

64. In relation to s6(c), which requires that the Regional Council recognises and provides for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, it is my opinion that it is necessary for the PWRPS to specifically provide for the protection of Maui's Dolphin and its habitat. The critically threatened status of this indigenous species means that it is limited in its extent and the species is unlikely to migrate to other areas should the current habitat continue to degrade, based on the evidence of Dr Constantine. In my view, the vital role that the habitat plays in the survival or otherwise of the species makes it a significant habitat. It therefore follows that providing protection of that habitat requires it to be specified and defined in the PWRPS and in other planning documents that manage activities affecting that habitat.

65. In relation to s7(a) and (aa), which requires that the Regional Council shall have particular regard to kaitiakitanga and the ethic of stewardship, it is my opinion that specifically identifying Maui's Dolphin and their habitat and the measures to protect them supports the Council and community's obligation to act as guardians and stewards of this

critically endangered indigenous species. Providing clear guidance within the PWRPS as to the species, its habitat, and the outcomes that are required for those two things will assist in performing the role of kaitiaki and steward.

66. Section 7(d) requires that the Regional Council shall have particular regard to the intrinsic values of ecosystems. As Dr Constantine sets out in her evidence, Maui's Dolphin is likely to play a unique role in the local ecosystem¹³. It therefore follows that not providing the necessary protection mechanisms as part of managing resources affecting Maui's Dolphin risks further decline and extinction of the species with consequential impacts on the functioning and intrinsic value of the ecosystem they are part of. In my opinion, it is necessary to provide specific guidance within the PWRPS to ensure that the intrinsic values of the ecosystem that Maui's Dolphin is a part of are maintained.

67. Turning now to section 5, it is my opinion that in order to satisfy the obligation that life-supporting capacity of water and ecosystems is safe-guarded (s5(2)(b)), it is necessary to apply a better management approach to natural and physical resources in order to avoid further decline in a significant indigenous species. While some significant impacts on the ecosystem's capacity to support a healthy population of Maui's Dolphin is influenced by activities that are managed under other legalisation (such as the management of the fishery), there are also effects on the ecosystem that derive from activities that are managed under the RMA. It is therefore consistent with safe-guarding life-supporting capacity that direction is included in the PWRPS that specifically guides management of those activities in the future. It is also consistent with achieving the purpose of the Act that the PWRPS is amended to, in particular, avoid further adverse effects on Maui's Dolphin and their habitat, but also to remedy and mitigate current adverse effects (s5(2)(c)).

68. The approach that I recommend to be included in the PWRPS does not threaten the ability for people and communities to provide for their well-being. The proposed provisions do not prohibit activities from occurring and instead direct a careful consideration of the design of proposals to protect Maui's Dolphin and their habitat. This position is consistent with that of Dr Constantine insofar as she has not recommended that there be no further development within the coastal marine area and on land. Her evidence is that the effects of activities that may impact on Maui's Dolphin and their habitat that would result in them not being protected should be avoided.

¹³ Para 13

69. I note in respect to section 5, that New Zealand is a member of the IUCN, and therefore committed to its objectives in respect to the sustainable management of threatened species; in particular critically endangered species such as Maui's Dolphin.

70. Overall, it is my opinion that making specific provision in the PWRPS for the protection of Maui's Dolphin and their habitat will contribute to achieving the purpose of the Act.

RECOMMENDED APPROACH

71. I set out below a summary of the changes that I recommend should be made to the provisions of the PWRPS to address the matters identified in my evidence. A set of tracked changes provisions is included in Appendix 2 of my evidence.

Issue statement

72. I do not consider that issue 1.1 needs to be changed, given its high-level nature.

Objectives

73. I do not consider that objective 3.18 needs to be changed, given its high-level nature.

Policies

74. I consider that Policy 11.4 (aa) should be amended to add a new list item that identifies indigenous taxa listed as 'Nationally Critical' in the New Zealand Threat Classification Systems lists and as 'Critically Endangered' by the IUCN. Maui's Dolphin is included in both of these categories and therefore specific reference to the species should be included. This specific reference to nationally critical and critically endangered species and to Maui's Dolphin as an example, guides decision-makers as to the greater level of concern and risk associated with these species, rather than the lower level reference to threatened species.

75. I consider that Policy 11.4 (aa) (iv) should be amended by adding in reference to areas identified as marine mammal sanctuaries and marine protected areas. This adds specificity to the policy and reflects that those protected areas are present within the Region.

Methods

76. I consider that Method 11.4.1 (a) should be amended to include reference to the specific habitat areas that must be identified in plans and that are specific to Maui's Dolphin and

their habitat to reflect the specific reference that should be made to that species in the policy.

77. I consider that a new Method 11.4.1 (bb) should be included to ensure that the method is specific to ensuring that activities avoid adverse effects on the population of Maui's dolphin.

78. I consider that it is appropriate to include a new method 11.4.3 which requires that until such time as Method 11.1.4 is given effect to in regional and district plans, decision-makers making decisions on resource consent applications are required to specifically consider the effects of activities on Maui's Dolphin and its habitat. To assist in the ease of assessment and identification of the habitat, and in the absence of a specific map being included in the PWRPS, I consider it is relevant in this method to refer to the map of the Marine Mammal Sanctuary established under the Marine Mammals Protection Act 1978. If the Regional Council so wished, it could then remove this Method by way of plan change, once Method 11.4.1 had been given effect to.

Explanation

79. I consider that it is appropriate to amend the explanation to address and explain the amendments sought above.

CONCLUSIONS

80. Based on Dr Constantine's evidence, I conclude that Maui's Dolphin is not just threatened, it is critically endangered, and is facing extinction. In my opinion, this elevates its importance beyond the more general direction about indigenous species which the Regional Council proposes to include in the PWRPS. The protection of Maui's Dolphin is, in my view, a critical resource management issue for the Region. In my opinion, it is also a critical resource management issue for New Zealand, and internationally.

81. The Government's protection mechanisms, including the Commercial and Recreational Trawling and Set Net Restrictions and the Marine Mammal Sanctuary implemented under other acts do not provide comprehensive protection of Maui's Dolphin or their habitat. Additional management of effects of activities that fall within the scope of the RMA is necessary.

82. The WRCP currently requires resource consent for many of the activities that have potential adverse effects on Maui's Dolphin and their habitat; however the policies guiding decision-making are broad and do not specifically identify Maui's Dolphin habitat or the effects on Maui's Dolphin. That situation is not in contention.
83. There is no specific mention of the protection of Maui's Dolphin in the PWRPS. That does not reflect the critical nature of the species and the urgent need for a specific resource management response to achieve its protection.
84. The PWRPS should include specific reference to Maui's Dolphin in its policies and methods to ensure that it provides better protection for the species by requiring decision-makers to specifically turn their attention to potential effects on Maui's Dolphin.
85. Recognising that there will be a lag in the provisions of the PWRPS being given effect to in regional and district plans, it is necessary to include directive provisions in the PWRPS to guide decision-making on resource consent applications and future plan changes. This will support efficient and effective implementation of the PWRPS provisions.

Appendix 1

Appendix 2

Changes to policies and methods recommended to achieve protection of Maui's dolphin and their habitats at the RPS level. Chapter 11 from WRC with mediation agreements showing used as base document. Changes recommended to that shown in underline and yellow highlight.

Policy 11.4 Safeguard coastal/marine ecosystems

Protect indigenous biodiversity in the coastal environment by:

- aa) avoiding adverse effects on:
 - i) indigenous taxa listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists or taxa listed as threatened by the International Union of Nature and Natural Resources;
 - ii) indigenous taxa listed as 'Nationally Critical' in the New Zealand Threat Classification System lists or as 'Critically Endangered' by the International Union of Nature and Natural Resources (including Maui's dolphin) and their habitats;
 - ii) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare; and
 - iii) areas containing nationally significant examples of indigenous community types;
 - iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; and
 - iv) areas set aside for full or partial protection of indigenous biological diversity under legislation, including areas identified as marine mammal sanctuary or marine protected areas.
- a) maintaining or enhancing:
 - i) areas used by marine mammals and wading/coastal birds including breeding, feeding, roosting and haul-out sites (areas where marine mammals come ashore);
 - ii) whitebait spawning areas and shellfish beds;
 - iii) habitats, corridors and routes important for preserving the abundance and diversity of indigenous and migratory species;
 - iv) indigenous habitats and ecosystems that are unique to the coastal environment and vulnerable to modification and the impacts of climate change, including estuaries, lagoons, coastal wetlands, dunelands, rocky reef systems, seagrass and saltmarsh; and
 - v) habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes.
 - vi) areas of predominantly indigenous vegetation in the coastal environment.

Implementation methods

11.4.1 Regional and district plans

Regional and district plans shall:

- a) protect marine habitat in the **coastal marine area** that has been identified as an area of significant indigenous biodiversity in Method 11.2.1 or that is protected/identified as a marine mammal sanctuary/marine protected area (including Maui's dolphin) and their habitats ; and

- b) control the adverse effects, including cumulative effects, of activities within the coastal environment and on land to protect and enhance indigenous biodiversity,
- bb) ensure that activities avoid adverse effects on the population of Maui's dolphin.

11.4.3 Resource consents

Until Method 11.4.1 is given effect to in regional and district plans, the Regional Council and district councils shall, when making decisions on resource consent applications.:

- a) Recognise and provide for the habitat of Maui's Dolphin that is included in the West Coast North Island Marine Mammal Sanctuary which is shown in Appendix X
- b) Ensure that adverse effects on Maui's Dolphin and their habitat associated with the following activities are avoided in order to give effect to Policy 11.4:
 - a. benthic disturbance including disturbance associated with bottom trawling, dredging, sediment removal, and marine construction.
 - b. runoff from land development.
 - c. development of structures, including, but not limited to, aquaculture facilities, tide turbines and jetties; and
 - d. acoustic disturbance including seismic surveys, oil and gas exploration, underwater blasting, aquaculture facility operations and dredging

Explanation

Policy 11.4 specifically identifies values and characteristics of coastal and marine ecosystems because, in addition to the intrinsic values of the habitats and the biodiversity present, these ecosystems are receiving environments for sediment and contaminants arising from the use and management of land. Policy 11.4 recognises the critical importance of indigenous taxa that are identified as being nationally critical and / or critically endangered, along with their habitats. Particular reference is given to Maui's Dolphin which is facing potential extinction.

Policy 11.4 is a sub-set of the broader policy directions of Policy 11.1 and, as such, the methods to implement Policy 11.1 may also apply to Policy 11.4. It is intended that areas of significant indigenous biodiversity within the coastal environment are identified within those addressed by Policy 11.2, and Methods 11.4.1 and 11.4.2 identify that link as well as recognising the benefits of protecting representative marine habitats and ecosystems in a marine areas network. Method 11.4.1 also provides for a regulatory approach to maintain other indigenous biodiversity in the coastal environment. Method 11.4.3 provides specific direction to decision-makers on resource consents to recognise the habitat of Maui's Dolphin and to avoid adverse effects on the Dolphin and its habitat, as an interim response before regional and district plans are reviewed and amended to give effect to Method 11.4.1.

Appendix 3