

Sail GP – Compliance

Possible offences, powers, background, and investigation outline should a strike occur.

PURPOSE:

To investigate any offending relating to marine mammal strikes by F50 catamarans during the SailGP event taking place in Lyttleton Harbour from 16-19 March 2023.

Banks Peninsula Marine Mammal Sanctuary – History

01/01/1988 – Established. [Marine Mammals Protection \(Banks Peninsula Sanctuary\) Notice 1988](#). This includes amendments, [original notice here](#)

This notice creates a marine mammal sanctuary round Banks Peninsula, **for the purpose of protecting Hector's dolphins.**

01/01/2008 - Marine Mammals Protection Banks Peninsula Sanctuary Notice

23/06/2020 - Notice of Intention to Redefine and Vary Marine Mammal Sanctuaries to Protect Hector's and Maui Dolphins (<https://gazette.govt.nz/notice/id/2020-go2722>).

05/11/2020 - [Marine Mammals Protection \(Banks Peninsula Sanctuary\) Amendment Notice 2020](#) – Relates to implementation in law of gazette notice above.

- Resulted in prohibition on seismic surveying within the sanctuary, subject to exemptions
- Prohibition on seabed mining within the sanctuary, subject to exemptions

Marine Mammals Protection Act 1978 (MMPA) - Section 22 Marine mammal sanctuaries

(1) Subject to this section, the Minister may, by notice (see subsection (6))(a) define any place and declare it to be a marine mammal sanctuary; and (b) vary, redefine, or abolish a marine mammal sanctuary

(1a) Before making a notice under subsection (1)(b), the Minister must—(a) publish a notice in the Gazette indicating the Minister's intention to vary, redefine, or abolish the sanctuary; and (b) consider any written submissions received within 28 days after the notice under paragraph (a) is published.

(3) When defining and declaring a sanctuary under this section, **the Minister may specify the activities that may or may not be engaged in within the sanctuary**, and may impose restrictions in respect of the sanctuary.

Marine Mammals Protection Act 1978 – Relevant sections

Definitions:

- Take includes— 2(a) to take, catch, kill, injure, attract, poison, tranquillise, herd, harass, disturb, or possess, (d) to attempt to do any act specified in paragraph (a)
- officer means a Marine Mammals Officer declared or appointed as such under section 11

4(1)(b) – No person shall take any marine, whether alive or dead, in or from its natural habitat or in or from any other place—without first obtaining a permit to do so from the Minister or from any person or persons authorised in that behalf by the Minister.

4(5)(b) A permit shall not be required - by any person who finds any dead marine mammal or part of one and, if authorised to do so by an officer and acting pursuant to his directions, sends the mammal or part to the Department of Conservation or to any approved research establishment, laboratory, or public museum

9(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$250,000 who takes, has in possession, exports, imports, has on board any vessel, vehicle, aircraft, or hovercraft, or has control of any marine mammal, otherwise than under this Act or a permit.

18 -Treatment or disposal of sick or dead marine mammals. (1) Nothing in this Act shall affect (a) any person who gives any humane assistance, care, or medication to any stranded, sick, or injured marine mammal if (where known) details of the mammal's species, length, sex, and condition, or a general description of the mammal, and details of the treatment and any results of the treatment are forwarded to the Director-General or an officer as soon as practicable:

Section 16 – Reporting if accidental death or injury

(2) Any person (not being a person to whom subsection (1) applies) who, by any means whatsoever, accidentally or incidentally kills or injures any marine mammal shall report the event to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) as soon as practicable.

(3) Every report under subsection (1) or subsection (2) shall include—

- (a) the location of the area where the event took place; and
- (b) the species (if known) of the marine mammal killed or injured, or a general description of the mammal; and
- (c) a description of conditions and the circumstances of the event.

(3A) In addition to providing the particulars required by subsection (1) or subsection (2), a person required to report an event to which that subsection applies shall provide to the Director-General such other particulars relating to the event as the Director-General may require for the purposes of this Act.

(4) Every person commits an offence against this Act who contravenes subsection (1) or (2).

(5) Every person commits an offence against this Act who refuses or fails to furnish any information or particulars required by the Director-General under subsection (3A).

(6) Every person who commits an offence against this section is liable on conviction before a District Court Judge to a fine not exceeding \$10,000.

Section 23 – Offences and Penalties

(1) Every person commits an offence who—

(a) acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act; or

(b) makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Department of Conservation, or any duly authorised officer or employee of the Department of Conservation, or any officer (whether in writing or otherwise), for the purposes of this Act; or

(c) refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Department of Conservation, or any officer, for the purposes of this Act.

1A – same as above but applies to any regulations made under this Act.

(2) Every person commits an offence against this Act who—

(a) except under the authority of any enactment, places or leaves any structure or trap or chemical or other substance in any place where a marine mammal is or is likely to be and which injures or harms, or is likely to injure or harm, any marine mammal:

(b) uses any vehicle, vessel, aircraft, or hovercraft to herd or harass any marine mammal.

Various penalties apply

Statute of limitations: Within 12 months

Section 26 – Defences in respect of certain offences

(3) Where any person is proceeded against in respect of any offence under this Act, it shall be a defence to the proceedings if the defendant proves that the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life.

(4) Where any person is proceeded against in respect of killing or injuring any marine mammal contrary to the provisions of this Act or any regulations made under it and the provisions of subsection (1) or subsection (2) or subsection (3) do not apply in the circumstances of the case, it shall be a defence to the proceedings if the defendant proves that the death of or injury to the marine mammal was accidental, or incidental, and that the requirements of section 16 were complied with.

Section 13 – Powers of search

(1) Subject to this Act and notwithstanding anything to the contrary in the Conservation Act 1987, every officer who has reason to believe or suspect that a breach of this Act or of any regulation made under it has been or is being committed, may enter, inspect, and examine any vehicle, vessel, aircraft, or hovercraft.

(5) Every officer may, in the course of any search under this section or section 14, open (by force if necessary) any container, package, or receptacle, and seize and take away any marine mammal supposedly illegally taken together with any such container, package, or receptacle, or seize and take away any thing which he has reason to believe will be evidence of a breach of the provisions of this Act or of any regulation made under it.

Section 14 – Officer may obtain warrant

Marine Mammal Protection Regulations 1992 - Section 18

Every commercial operation, and every person coming into contact with any class of marine mammal, shall comply with the following conditions:

(a) persons shall use their best endeavours to operate vessels, vehicles, and aircraft so as not to disrupt the normal movement or behaviour of any marine mammal:

(b) contact with any marine mammal shall be abandoned at any stage if it becomes or shows signs of becoming disturbed or alarmed:

(c) no person shall cause any marine mammal to be separated from a group of marine mammals or cause any members of such a group to be scattered:

(d) no rubbish or food shall be thrown near or around any marine mammal:

(e) no sudden or repeated change in the speed or direction of any vessel or aircraft shall be made except in the case of an emergency:

(f) where a vessel stops to enable the passengers to watch any marine mammal, the engines shall be either placed in neutral or be switched off within a minute of the vessel stopping:

(g) no aircraft engaged in a commercial aircraft operation shall be flown below 150 metres (500 feet) above sea level, unless taking off or landing:

(h) when operating at an altitude of less than 600 metres (2 000 feet) above sea level, no aircraft shall be closer than 150 metres (500 feet) horizontally from a point directly above any marine mammal or such lesser or greater distance as may be approved by the Director-General, by notice in the Gazette, from time to time based on the best available scientific evidence:

(i) no person shall disturb or harass any marine mammal:

(j) vehicles must remain above the mean high water spring tide mark and shall not approach within 50 metres of a marine mammal unless in an official carpark or on a public or private slipway or on a public road:

(k) no person, vehicle, or vessel shall cut off the path of a marine mammal or prevent a marine mammal from leaving the vicinity of any person, vehicle, or vessel:

(l) subject to paragraph (m), the master of any vessel less than 300 metres from any marine mammal shall use his or her best endeavours to move the vessel at a constant slow speed no faster than the slowest marine mammal in the vicinity, or at idle or “no wake” speed:

(m) vessels departing from the vicinity of any marine mammal shall proceed slowly at idle or “no wake” speed until the vessel is at least 300 metres from the nearest marine mammal, except that, in the case of dolphins, vessels may exceed idle or “no wake” speed in order to outdistance the

dolphins but must increase speed gradually, and shall not exceed 10 knots within 300 metres of any dolphin:

(n) pilots of aircraft engaged in a commercial aircraft operation shall use their best endeavours to operate the aircraft in such a manner that, without compromising safety, the aircraft's shadow is not imposed directly on any marine mammal.

Section 20 - Special conditions applying to dolphins or seals

(a) no vessel shall proceed through a pod of dolphins:

(b) persons may swim with dolphins and seals but not with juvenile dolphins or a pod of dolphins that includes juvenile dolphins:

(c) commercial operators may use an airhorn to call swimmers back to the boat or to the shore:

(d) except as provided in paragraph (c), no person shall make any loud or disturbing noise near dolphins or seals:

(e) no vessel or aircraft shall approach within 300 metres (1 000 feet) of any pod of dolphins or herd of seals for the purpose of enabling passengers to watch the dolphins or seals, if the number of vessels or aircraft, or both, already positioned to enable passengers to watch that pod or herd is 3 or more:

(f) where 2 or more vessels or aircraft approach an unaccompanied dolphin or seal, the masters concerned shall co-ordinate their approach and manoeuvres, and the pilots concerned shall co-ordinate their approach and manoeuvres:

(g) a vessel shall approach a dolphin from a direction that is parallel to the dolphin and slightly to the rear of the dolphin.

Marine Mammal Management Plan (MMMP)

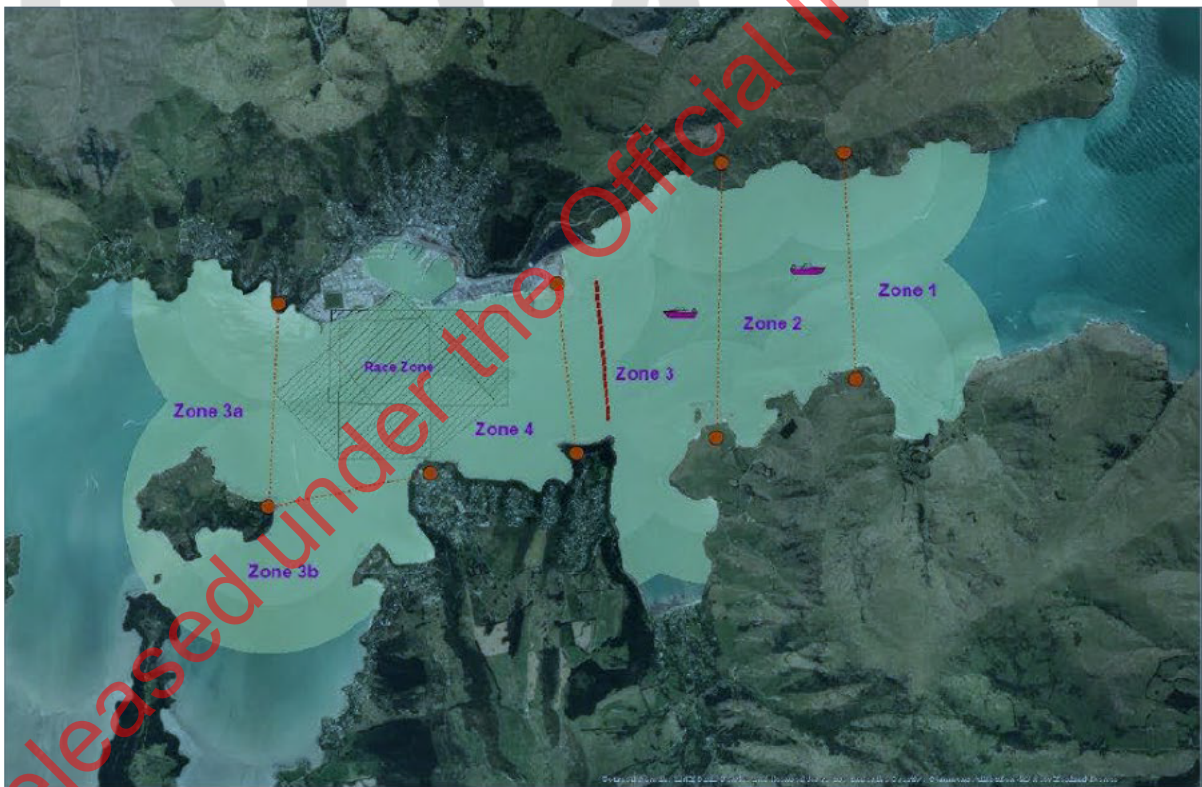
Page 5. Hectors Dolphin Observer (HDO) Manager role

- Instructing the Event Control Room Manager to stop or delay racing due if a marine mammal is detected in Alert Zone 4.
- **Work with the MMMP authors to update the plan if modifications are needed.**
- Liaising with the Event Control Room Manager prior to and throughout all on-water activity.
- Leading pre-event training and orientation sessions for trained and volunteer observers.
- Supporting pre-event briefings for SailGP sailing and support crews.
- Maintaining direct contact with all pre-event surveillance teams and land-based observation stations using a designated VHF/marine radio channel.
- Coordinating all land-based and on-water observations and any public/spectator sightings.

Page 14 –

- 7.1.1 – Pre event briefing
 - Pre-event newsletters to registered on-water spectators.
 - Are S18 regs included in this?
- 7.1.2
 - Page 15 - These zones will be further sub-divided into referenced grids to aid in quickly and efficiently locating any marine mammals

- Can we have this grid?
- 7.2.1 Drone surveillance.
 - Is this being done?
- 7.2.2 Real time Underwater Acoustic Surveillance under development
 - Is this being done? What is the status on this?
- 7.2.3 Passive acoustic monitoring data - passive acoustic monitoring is not considered useful for detecting the presence of marine mammals during race events. However, data gathered in the weeks leading up to and following the race events will provide baseline data to inform the running of similar, future events.
 - Is DOC being looped in on this data?
- 7.2.4 Marine mammal sighting apps - All spectators, support crew and other staff will be encouraged to report any sightings of marine mammal (especially Upokohue/Hector's dolphin) via the Hector's Dolphin Sightings App, developed by Whale and Dolphin Conservation and SaferMe in collaboration with DOC, can be used by support crew and spectators to report marine mammal sightings. The data collected by the app is shared directly with DOC. While sightings are not shared in real-time, the data provides useful information on the presence of marine mammals within the harbour
 - How do I access this? If there is a strike, will need this data



COMPLIANCE PLAN

Outline of actions should a marine mammal strike occur.

What we require:

- Unredacted final version of MMMP
- 2 compliance officers from NCT present on DOC vessel
- VHF radio or radio channel that observers and HDO manager will be using
- Access card for all race areas
- Parking for compliance vehicle (and other DOC vehicles) at event site.
- Name and contact details for HDO manager and event control room manager.
- 7.1.2 states the zones will be subdivided into referenced grids. Can we have this grid?
- Confirm who is DOC's contact/liaison person with SailGP and CNZ
- Marine Mammals sightings app referred to in 7.2.4. What is the app and how do we access this data?

Questions for Andy/Mahaanui

- Confirm Andy does not want us to investigate or take prevention measures in relation to any actions or offences by spectator boats (with regards to regulations) during the event.
- Note: procedures vary for practice day and other days. Racing does not stop if dolphins seen in zone 3.
- If a strike occurs, will racing stop and boats come off the water? Or is there a chance racing will be continued... There is a mention that a rāhui may be placed over the harbour. Have we heard any further/confirmed this?
- When are the pre event briefing. Is DOC planning to be present/say anything at these? Are the S18 regulations (boat behaviour around marine mammals) being covered off at briefings.

Procedure (compliance) if strike occurs:

1. Racing stops & all activities suspended (as per MMMP)
2. Dolphin recovered on DOC boat – Craig and assistance from others.
3. Exhibit tag and property record sheet – Marlous/Graeme
4. Photographs – Marlous/Graeme
5. Notebook entries/scene description etc – Marlous/Graeme
6. Marlous/Graeme to head to event control centre/village. Will not be accompanying dolphin
7. Dolphin transported ^{9(2)(g)(ii)} [REDACTED]
 - Ngati Wheke requirements followed.
 - Chain of custody maintained – Craig.
8. Dolphin packaged and sent for necropsy – Craig.
 - Arrange/have available suitable way of transport/packaging.

Graeme/Marlous actions – Event control room

1. Marlous and Graeme to go to event control centre/village.

CONFIDENTIAL - do not distribute.

- a. Meet with Andy in the first instance.
2. Incident report to be completed as per S16.
 - a. Identify name of vessel and skipper
3. Obtain name/details of any witnesses/parties of interest.
4. Further information to be requested:
 - a. All footage/media to be sent to us.
 - b. Recording of all radio traffic – is this being recorded? How can we get this?
 - c. Marine Mammal Observation Recording forms – to be provided to us.
 - d. Data from marine mammal sighting app.
 - e. Statement from HDO manager
 - f. Statement event control room manager
 - g. Statement Skipper of vessel
5. Photograph/examination of hull of vessel involved.
6. Jobsheets/notebooks from all DOC staff
7. Anything else that arises depending on situation.

Other considerations:

- We will need to ascertain whether all measures in MMMP were followed. Although there is no offence for breaching the MMMP, this will provide evidence to support whether or not the strike was an accident.
- Who is culpable? SailGP/Chch NZ/Skipper of vessel that strikes mammal
- Many skippers/witnesses will be leaving the country soon after the event
- SailGP is not a New Zealand enterprise/registered company

Equipment for compliance officers

- VHF radio with ability to access HDO channel
- Property record sheet
- Exhibit tag
- DSLR camera
- Dictaphone
- Warrant cards
- Full DOC uniform & lifejacket to be worn on boat
- Cellphone
- Vehicle – compliance vehicle
- Craig to have suitable packaging ready to transport mammal to Massey for necropsy

Communication/H&S:

- Follow Mahaanui coms and H&S plan
- Compliance South Island team lead Tony SMITH will be available via phone

Written by: Compliance officer Marlous HEIJS and Graeme SCOTT

Endorsed by: Tony SMITH