

Departmental Memo

To	Minister of Conservation	Date submitted	12 December 2023
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Security Level	In Confidence		
From	Henry Weston, Deputy Director-General Regional Operations: 9(2)(a) Jo Macpherson, Director Operations, Eastern South Island: 9(2)(a)		
Subject	SailGP 2024 – Lyttelton/Whakaraupō Harbour		
Attachments	Attachment A – Talking Points for 2024 SailGP event		

Purpose – Te aronga

- To brief you on the SailGP event proposed for March 2024 in Lyttelton/Whakaraupō Harbour and inform you of matters that arose in the 2023 event.

Background and context – Te horopaki

Auckland event cancellation

- SailGP is an international yacht racing series between 'F50' catamarans representing 10 countries. The boats can reach speeds of up to 100km/h in the right conditions. There are 13 events scheduled for the 2023/24 season. The series reportedly attracts more than 50 million viewers worldwide. It previously held an event in Lyttelton/Whakaraupō Harbour in March 2023 as part of the 2022/23 season.
- SailGP had intended to hold an event in Auckland in 2024. On 21 November 2023, the Auckland event was cancelled. This decision was made because Wynyard Point (land administered by Auckland Council) was not able to be used as a spectator venue. This process was administered by Tātaki Auckland, an Auckland council-controlled organisation.
- As Wynyard Point is Council administered land, there was no need for a DOC concession. Our Auckland Operations team had discussed the event in broad terms with SailGP in relation to a marine mammal management plan. This is not a statutory process, and the last action was with SailGP – to let DOC know when they wanted to progress developing the plan.
- SailGP did not apply for any concessions relating to an Auckland event, and we have no records of pre-application engagement relating to a potential concession application (or any need for a concession related to the event).

Proposed 2024 event in Lyttelton/Whakaraupō Harbour and DOC's role

6. Due to Auckland being unsuitable for the SailGP event, there is a proposal to bring this event back to Lyttelton/Whakaraupō Harbour in March 2024.
7. We were not expecting this proposal for 2024 but had begun looking towards a scheduled event in Lyttelton/Whakaraupō Harbour in 2025.
8. Lyttelton/Whakaraupō Harbour, including the racecourse and surrounding areas, is within the Banks Peninsula Marine Mammal Sanctuary. The area is home to a wide range of native wildlife including seabirds, fish, and marine mammals. Upokohue/Hector's dolphins are resident in the harbour, including in the race zone.
9. Upokohue/Hector's dolphins are one of the world's smallest dolphins. They are mostly found around the coast of New Zealand's South Island. Their threat classification is nationally vulnerable.
10. Te Hapū o Ngāti Wheke hold mana whenua over Lyttelton/Whakaraupō Harbour and as such have an active interest in the health of the harbour ecosystem and the marine life within it. DOC works actively with Te Hapū o Ngāti Wheke over many matters.
11. Although the event will be in the Banks Peninsula Marine Mammal Sanctuary, SailGP does not require any statutory authorisations from DOC for the Lyttelton event. This is because the Regulations that established the Sanctuary do not control yacht racing. SailGP is working with Te Hapū o Ngāti Wheke, our Eastern South Island Operations team and ChristchurchNZ to review its 2023 marine mammal management plan (MMMP) to ensure it incorporates the lessons from last year's event and is current for the 2024 event. The MMMP does not have legal effect but is (in essence) intended to provide best practice guidance to avoid harm to the marine mammals.
12. Our primary concern is to ensure the event is managed in a way that does not cause harm to marine mammals and is run in a way that is consistent with the Marine Mammals Protection Act 1978 and Marine Mammals Protection Regulations 1992, which say it is illegal to harm, harass, injure or kill marine mammals. The main risk we are trying to avoid is the possibility of Hector's dolphins appearing on the racecourse and the potential for a collision between a dolphin and one of the sharp foils on the very fast, but quiet, race boats.
13. Given the televised event has more than 50 million world-wide viewers, a collision leading to dead or injured dolphins is not ideal for New Zealand's tourism image.

Engagement with SailGP

14. The parties are reviewing the 2023 MMMP to make improvements for the 2024 event. The revised plan will focus on measures that worked well in March 2023 (such as the observer vessels) and will reduce less valuable measures (for example the use of drones and underwater real time acoustic devices). The revised plan will also propose changes to how event activities take place to minimise the dolphins' exposure to the activities – for example, pre-race practice sailing will take place in the race zone rather than the wider harbour, and the number of vessel observer boats will be increased from three to four.
15. It is a legal requirement in the Marine Mammal Protection Regulations 1992 for vessels to travel no faster than 5 knots within 300 metres of a marine mammal. The new plan includes a 300m buffer around the racecourse which requires racing to cease, or race starts to be put on hold should a dolphin enter this zone.
16. The racecourse plus the 300m buffer is smaller than the 'stop racing' zone last year. This and several other requirements which have been scaled back, are a considerable

benefit to SailGP since it reduces the margin for delays in practice and racing, which can affect their live broadcast coverage.

17. We considered these changes because last year we could monitor the location of the mammals more effectively than first thought, and the race boats could reduce their speed off the foils more quickly than we originally anticipated.
18. On Thursday 7 December, an important meeting was held with Te Hapū o Ngāti Wheke, DOC, ChristchurchNZ and SailGP to agree on proposed changes in the plan. All 35 changes were broadly agreed to in principle. The plan will now be drafted and checked by Te Hapū o Ngāti Wheke and DOC marine mammal experts and legal staff to ensure that it will be effective and not unlawful.
19. We are expecting that there will be a series of public announcements from Wednesday 13 December around the intention (subject to regulatory approvals from Environment Canterbury and Christchurch City Council) to hold the race in Lyttelton/Whakaraupō Harbour in March 2024. Tickets will go on sale following the announcements.

2023 event and dolphin incident

20. SailGP held an event in the Lyttelton/Whakaraupō Harbour on 18-19 March 2023. There were two days of practice racing prior to the event itself. There were a significant number of support and spectator boats in the harbour during the event.
21. All vessels involved in the event, including support boats and spectators, were expected to abide by the Marine Mammals Protection Act 1978 and Marine Mammals Protection Regulations 1992.
22. Ahead of the 2023 event, DOC invested significant time and resources to work with the SailGP event organisers and ChristchurchNZ to help ensure any potential risks to marine mammals, including Hector's dolphins, were minimised. The MMMP was developed by an advisory group, led by Te Hapū o Ngāti Wheke, with independent marine mammal scientists and a DOC technical expert providing input.
23. DOC's involvement was to advocate for the protection of marine life and ensure the plan was consistent with the Marine Mammals Protection Act 1978 and Marine Mammals Protection Regulations 1992. Ownership and implementation of the plan sat with SailGP.
24. During the event, DOC's involvement included having its vessel Kahukura on the water in case of dolphin strike, having compliance and communications staff present, and staff alongside Te Hapū o Ngāti Wheke representatives in the control room.
25. On 19 March 2023, during the final race, an incident occurred where, as the racing vessels approached the final marker, two dolphins crossed the boundary into the race zone.
26. The MMMP outlines the race day procedures if a marine mammal is sighted within this zone. It states the "event director shall cease racing and instruct all boats to drop off the foils if racing is underway, support boats shall be instructed to keep speed below 5 knots".
27. The dolphins' presence was repeatedly communicated to the SailGP race director by both the Marine Mammal Observer Coordinator and the DOC Operations Manager in the control room.
28. The SailGP race director did not make the call to cease racing or instruct the boats to drop off their foils, which was a breach of their MMMP. The consequences for SailGP breaching the MMMP were not clear cut given the plan was not legally binding.

29. We have investigated the incident and was unable to establish that an offence took place. The investigation looked at whether there was a breach of the Marine Mammals Protection Regulations 1992, specifically the rules that the masters of vessels must follow when within 300 metres of marine mammals, dictating vessel speed and movements.
30. After investigating, we could not be certain the yachts were within 300m of the dolphins, and there is no evidence to indicate the individual skippers were aware of the dolphins.
31. The Sail GP MMMP worked well throughout the event up until the SailGP race director decided to continue with the race, despite advice to stop.
32. No Hector's dolphins were injured or killed during the event.
33. After the event, we received many Official Information Act requests and there was media interest about the incident.
34. Following the 2023 event, we began exploring the feasibility of changing the marine mammal sanctuary rules to better manage the potential effects of activities like SailGP on Hector's dolphins. This remains work in progress.
35. Any changes to the rules would be a long-term solution, and unable to be completed ahead of March 2024, given the necessary consultations and processes to be followed under Section 22 of the Marine Mammals Protection Act 1978. The final decision would be yours.

Risk assessment – Aronga tūraru

36. We expect there will be continued interest, including Official Information Act requests and media queries, following on from the matters relating to the 2023 event and what steps DOC is taking in response to the 2024 event.
37. Because of the public and media interest in this event, it is extremely likely the plan (and DOC) will be criticised for being too weak. However, from last year we learned the plan was effective when it was followed.

Next steps – Ngā tāwhaitanga

38. We will continue to work with Te Hapū o Ngāti Wheke, SailGP and ChristchurchNZ on their proposal for 2024.
39. We will keep your office informed of any significant updates via the Status Report.

ENDS

Attachment A: Talking Points for 2024 SailGP event

2024 SailGP event

- DOC and Te Hapu o Ngāti Wheke have been meeting with SailGP organisers and ChristchurchNZ to discuss the Marine Mammal Management Plan as SailGP decides whether the event will return to Whakaraupo/Lyttelton Harbour in 2024.
- We have been providing feedback on the plan, based on what we learned from the 2023 event, to improve its effectiveness and ensure any risks to Upokohue/Hector's dolphin are minimised.
- While the existing plan provides a solid foundation and largely worked well during the event, we believe there are some tweaks that would make it more effective.
- The marine mammal management plan was developed by and belongs to the race organisers.
- If asked what our feedback is: We will hold off from sharing our feedback while discussions are ongoing.
- If asked whether it's definite the event is coming back to Lyttelton in 2024: This is the race organiser's decision, and you will need to talk to them.
- If asked whether we support the race OR if asked whether DOC is preventing the event from being held in Lyttelton: Race organisers do not require a permit or permission from DOC to hold the event.
- If asked whether we will be changing/using the Banks Peninsula Marine Mammal Sanctuary Rules in relation to events like this: We have begun work looking at whether it is practical and if there would be value in changing the Banks Peninsula Marine Mammal Sanctuary Rules to increase protection for marine mammals during large events like SailGP. This will take some time. If it is found to be worth pursuing, the process to change the rules also requires public consultation, so there is not enough time to make changes to the rules before March 2024.
- Up until advised of the Auckland situation, the DOC team in Christchurch were not anticipating the event would return until 2025.

General messages and DOC's role

- Lyttelton Harbour/Te Whakaraupō is home to a wide range of native wildlife including seabirds, fish, and marine mammals like the distinctive and nationally vulnerable Upokohue/Hector's dolphin.
- Race organisers do not require a permit or permission from DOC to hold the event.
- Under the Marine Mammals Protection Act and Marine Mammals Protection Regulations it is illegal to harass, injure or kill marine mammals and there is guidance on how vessels must behave around marine mammals. All vessels and people involved in a SailGP event in

Lyttelton, including any support boats or spectators, are expected to abide by the Marine Mammals Protection Act and Regulations.

- We have made it clear to the race organisers that DOC's role is to advocate for the protection of marine mammals, and to carry out compliance functions if any incidents involving protected wildlife were to occur.
- People controlling vessels should know what to do if they encounter a dolphin or other marine mammal: travel no faster than idle/no wake speed if within 300m of a dolphin, and do not circle or obstruct marine mammals or cut through groups. More info is available on the DOC website: <https://www.doc.govt.nz/nature/native-animals/marine-mammals/sharing-our-coasts-with-marine-mammals/>

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