



# Statement

Section 82 Criminal Procedure Act 2011

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## Background

I am the Operations Manager for the Department of Conservation (the Department), Mahaanui District Office.

Between Thursday 16 March and Sunday 19 March this year I was involved with the Department's function at the Sail Grand Prix (Sail GP) which was based in Christchurch, New Zealand.

Sail GP and Christchurch NZ (ChchNZ) developed a Marine Mammal Management Plan (the plan) for the event, to minimise any risks to marine mammals. It was possible dolphins could appear on the racecourse and there was potential for an incident such as a boat strike since it was not known how they would react to this type of event. DOC provided technical advice for this plan but was not responsible for it and did not have a role to sign it off/approve it.

Throughout the event, I was based at the race control room alongside s.9(2)(a) from Te Hapu o Ngāti Wheke. Abby LAWRENCE, a senior ranger based at Mahaanui office was also in the control room for most of the event. The control room was in the Scout Hall at Naval Point in Lyttleton. s.9(2)(a) and I were there to advocate and provide advice to race organisers around the protection of marine mammals. However, any decisions on pausing or cancelling racing was up to the race organisers.

There were numerous people and representatives from various agencies in the control room. The following are some of these, whom I will refer to later in my statement:

  
.....Witness initials



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- s.9(2)(a) Sail GP. Throughout the weekend s.9(2)(a) oversaw final decisions. s.9(2)(a) would convey instructions onto the F50 boats, but he was taking direction from s.9(2)(a)
- s.9(2)(a)
- s.9(2)(a) NZ. Based in a site office, in and out of control room.
- s.9(2)(a) – Environmental Consultant from Envisor / Hectors Dolphin Observer Manager
- s.9(2)(a) Sail GP.

The control room had six large display screens in the front. There were three layers of desks behind this. The screens included live GPS data for the location of the F50s, race official boats, race boundaries and exclusion zones, dolphin observer boat(s). It did not show the zone boundaries referred to in the in the Marine mammal management plan maps. These maps were physically available in the control room but not digitally.

#### Marine Mammal Management plan

Prior to the event, I read and familiarised myself with the Marine Mammal Management Plan. I will summarise a few relevant sections below.

7.1.2 of the plan states:

*“To allow adequate warning of marine mammals’ presence within Whakaraupō/Lyttelton Harbour and to trigger protection measures, the Harbour has been divided into four alert zones with each zone corresponding to an increased risk of collision between marine mammals and SailGP-generated marine traffic.” The zones will be monitored by land-based observers positioned at each end of the zone boundary. This is detailed in Section 7.1.4. Alert Zones:*

- ZONE 1 (observe, report and track)
- ZONE 2 (observe, report and track)
- ZONE 3, 3a and 3b (delay start of racing)
- ZONE 4 (race shut down zone)”

7.3 of the plan states:

*“The Marine Mammals Protection Regulations 1992 list the conditions governing behaviour around marine mammals. All seals, sea lions, dolphins and whales are protected under the Marine Mammals Protection Act 1978.*

*It is an offence to harass, disturb, injure, or kill marine mammals. Vessels in the vicinity of a marine mammal or marine mammals must (except for emergency situations) adhere to the following rules, adapted from the Department of Conservation (DOC) general guidelines...*



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- *Ensure that you travel no faster than idle or 'no wake' speed within 300 metres of any marine mammal.*
- *Idle slowly away. Speed may be gradually increased to out-distance dolphins and should not exceed 5 knots within 300 metres of any dolphin."*

Section 8.2 outlines the rehearsal and race day procedures for if a marine mammal is sighted. Under sightings in zone 4 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."

**Thursday 16/03/23**

Thursday 16 March 2023 was scheduled to be a practice day with two F50s having allotted practice time on the water, namely NZ and Spain.

The amount of time scheduled for NZ to be on the water was shortened due to the presence of dolphins in zone four. As a result, the NZ team could not utilise most of their training window.

As a result of this, I believe that the plan and potential impact of the plan on the actual event was highlighted to senior race management. My impression was that they were not aware of the extent that the plan could stop live racing.

When Abby and I walked past the New Zealand tent, the s.9(2)(a) engaged us in conversation. The rest of the New Zealand team also came out and joined in the discussion. They were all very polite and interested in discussing the dolphins.

At some point during this discussion s.9(2)(a) and s.9(2)(a) have walked past and joined in the discussion. s.9(2)(a) and s.9(2)(a) were questioning a variety of things. I can't recall exactly what was said but the following points were conveyed:

- They have raced all over the world for many years.
- Have never hit any marine mammals.
- Have never had any issues with dolphins.
- Think that the marine mammals would be smart enough to get out of the way.

s.9(2)(a) is a s.9(2)(a) the New Zealand company responsible for hosting the event in Lyttleton.

**Friday 17/03/23**

Friday 17 March 2023 was scheduled to be a rehearsal day with all nine F50s on the water. This was cancelled due to a high wind forecast.



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At about noon, I was in the race control room. s.9(2)(a) sat down with those of us working on the marine mammal plan. This included, s.9(2)(a) Abby, s.9(2)(a) and me. s.9(2)(a) was questioning the validity of the plan and whether the plan was necessary. This discussion was in the control room around our desk.

I felt that s.9(2)(a) had an aggressive approach. He was questioning everything about the plan and putting pressure on us about the necessity of sticking to this plan. I recall one statement along the lines of running a scheduled event and how it would be a major disaster for them if they couldn't race. They have been racing for many years and not hit anything, and have never had to go this extent to plan for marine mammals. I interpreted that the intention of this discussion was to check the validity of the plan generally and talk about whether it could be changed or not. My understanding was that we were there as advisors and that race management was seeking our endorsement to alter/discard aspects of it. s.9(2)(a) spoke on our behalf and explained this plan had been carefully prepared over the last 12 months based on the advice of technical experts. We were not the technical experts that had prepared it and would not endorse discarding/changing significant parts of it.

There was a second meeting straight after led by s.9(2)(a). This meeting involved Abby, s.9(2)(a) and me, and was held in s.9(2)(a) office. s.9(2)(a) made it clear that pressure had been applied by senior race management. He was respectful in his approach but raised similar questions as s.9(2)(a). I reiterated that the plan was the plan and that there was strong public pressure to ensure that the marine mammals were protected.

**Saturday 18/03/23**

On Saturday 18 March 2023 I arrived at the control room at about 1100 for a pre-race briefing and multi-agency run through on any issues. This was led by s.9(2)(a)

Throughout the morning I was aware that there were two groups of dolphins swimming around zone 4, right in the centre of the racecourse.

At 1253 I advised the DOC team that I was aware of two groups of dolphins on the course. This affected the pre-race practice that was scheduled to take place from 1pm today. I believe that practice was delayed by about 30 minutes.

At 1321 I noted that the dolphins kept going from the racecourse into the inner harbour. The inner harbour was not covered by any of the zones in the plan. As a result, s.9(2)(a) and I were consulted on what this meant for the plan, and we debated whether or not we could endorse racing if dolphins were in the inner harbour. We thought this might be possible in certain situations, but this scenario never eventuated since the dolphins left the inner harbour.



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At 1330pm I noted that the dolphins had left the course and practice had started with F50s sailing on their foils.

At 1426pm the dolphins were back on the course. [s.9(2)(a)] advised [s.9(2)(a)] and [s.9(2)(a)] that the dolphins were back in zone 4 and that F50s should come off their foils as per the plan. [s.9(2)(a)] made the decision for boats to come off their foils and [s.9(2)(a)] relayed this message. Training was halted and all nine F50s came off their foils. This took two minutes; I know this because I had set a timer on my phone. [s.9(2)(a)] checked in with [s.9(2)(a)] and I to ensure we were ok with how they had responded.

The first race was scheduled to take place around 1500 but this was delayed due to the continued presence of these dolphins.

Around 1530pm [s.9(2)(a)] and [s.9(2)(a)] asked if [s.9(2)(a)] and I were comfortable with them shortening the course on the eastern boundary, which would enable racing to start. The proposal was to move the racecourse 100m west, this would simultaneously shift the zone 4 boundary 100m west. [s.9(2)(a)] was standing by us waiting, a lot of eyes were on us, and I felt a pressure to respond instantly. I had to ask for space so [s.9(2)(a)] and I could talk this through. We discussed and agreed we could support this change in boundary, provided the F50s could come off their foils faster than previously demonstrated. They confirmed they could do this within 15 seconds.

Throughout this, I was acutely aware that [s.9(2)(a)] and I were only there as advisors, not decision makers. I had reasonable certainty that the systems being used to track the dolphins were working. As a result of this, we could provide advice that allowed for some flexibility. If that certainty was reduced, our decision making would consequently be more conservative.

Throughout these discussions the dolphins were continually travelling east, and at 1534 I heard that the dolphins had cleared the course. They cleared both the original and the revised course boundary and continued heading out of the harbour, so the decision to change the boundary was a bit redundant.

All three races then took place without incident. I believe the first race took place at approximately 1542pm, the second race took place at 1603pm, and the third race took place at 1623pm.

After the events on Saturday, I felt confident that the plan was working. The fact that F50s were instructed to come off their foils due to the presence of dolphins, and racing was delayed until dolphins had cleared the course, gave me confidence that Sail GP was following the plan and prioritising the interests of marine mammal safety.



Sunday 19/03/23

On Sunday 19 March 2023 I arrived in the control room around 1100.

That morning I had a conversation with s.9(2)(a) about dolphin echolocation frequency and possible effects of vessel depth sounders on dolphins. s.9(2)(a) was contracted by Sail GP as s.9(2)(a) to develop underwater acoustic detection devices which were operational throughout the training and racing. As a result of this discussion it was suggested that vessels on the eastern side of the course turn off their depth sounders so that dolphins could clear the harbour easier if they choose. Following consultation with other agencies, Sail GP released a message to vessels which included this voluntary request – with a safety first approach.

On Sunday, all three marine mammal spotting boats had GPS trackers on board. This meant that we could view live data of where these boats were located. When dolphins were spotted within the harbour, these spotter boats would carefully follow and track them. As a result, the location of spotter boats was a proxy for the location of dolphins on the course. This allowed race organisers to make decisions to follow their marine mammal management plan and mitigate risk to marine mammals. On Saturday, only the lead dolphin spotting boat had a GPS tracker on it. The second two boats had trackers put on them, as per my request.

The lead dolphin viewing boat is easily visible in race footage due to the green kayaks on its roof. s.9(2)(a) was the primary hectors dolphin observer based on this boat.

Three races were scheduled for Sunday. The third race would be a final, involving only three F50s. The exclusion zone was set to be active from 1330.

I noted that they were hoping to allow the F50's to start practicing from 1400, however this was delayed due to the presence of dolphins.

At 1340 I heard that there were still two pairs of dolphins right in the middle of the racecourse. At 1346 I was notified that all F50s would be placed on the racecourse to await the green light for practice. At 1459 I noted down that we had dolphins on the northeast inner edge of the racecourse. I also heard that the dolphin spotter boats were struggling to keep track of dolphins in the choppy conditions.

Around this time, I became aware that there were three marshal boats assisting the three marine mammal spotting boats with tracking dolphins. I had an internal conversation with Abby about how many boats were tracking the dolphins and that this might be a breach of the regulations. I was satisfied that in these circumstances it was in the interest of dolphin safety, given they were all going at slow speeds and assisting with spotting in the difficult



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conditions. The risk of not having these extra vessels could be losing track of the dolphins and therefore not being aware if they re-entered the course with racing about to start.

Around 1500 s.9(2)(a) and I were asked if we could endorse the racecourse and zone 4 boundary being shifted 100m west, the same change that was made on Saturday. We were asked if we were comfortable shortening this because the dolphins were right on the edge of zone 4 behind the container ship. Shifting this would allow practice and racing to begin.

s.9(2)(a) and I indicated that we would support this. While we were discussing this, the dolphins continued tracking east, past the container ship and past the groyne.

At 1505 I noted that the F50s were immediately given the go ahead to go up on foils without the 10-minute countdown that the plan prescribed. I raised this with s.9(2)(a) and recall him being a bit confused and saying words to the affect of yes but that we had changed the boundary. I was uncomfortable with this since we hadn't given the dolphins the chance to clear the zone properly, as per the plan.

At this stage everything started moving very fast and I hadn't received any confirmation that the boundary had been changed. At 1524 I asked, and it was confirmed that the race boundary and zone 4 boundary had shifted 100m west. The modified race zone boundary was eventually marked on screen; however the zone 4 boundary was not physically marked in the water, nor was it visible on the control room screens.

Races one and two went ahead without any issues. The dolphins were still being tracked outside the course boundary.

Race three was scheduled at 1600. At 1559 I heard a message that dolphins were heading back towards the racecourse. As soon as I heard this, I looked at s.9(2)(a) and asked him to let the race organiser know that the dolphins were heading back towards the course. I heard s.9(2)(a) give this message to s.9(2)(a) who was sitting right beside us. The dolphins were still a reasonable distance from zone 4 at this time but were steadily heading towards it. I thought the tension in the room noticeably escalated and there was an urgency to get the race underway before the dolphins came onto the course.

Race three began and I watched the dolphins progress steadily towards zone four. I could see this via the GPS track of the lead spotter boat, which was visible on the control room screen. I was also linked into this live data on my own laptop. Although the boundaries had moved, the top mark/gate was still in the same location. The dolphins were progressing almost directly towards this top mark, while the three F50s were on the 5<sup>th</sup> leg of the race also heading towards this same mark. The dolphins came inside the original zone four boundary. I then saw the dolphins cross where I believed the revised zone 4 boundary to be.



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Around this time, s.9(2)(a) called out that the dolphins had crossed into the zone 4 boundary and that the F50s needed to come off foils. He directed this at s.9(2)(a) who was seated beside him. He repeated it a second time much louder. I did not hear any response or acknowledgement from s.9(2)(a) and the race continued.

I then spoke up and said that the boats should be off their foils. I received no acknowledgement, and nothing happened. I called out much louder to the room and stated that Sail GP was breaching the marine mammal plan. I said this loud enough for the room to hear because I wanted this to be noted. I received no acknowledgement and the race continued. I did notice lots of faces turn towards me and I was confident everyone had heard me.

Thankfully the F50s were able to round the top mark and no dolphins were struck. I believe this was a matter of luck rather than planning. The boats appeared to come well within 300m of the dolphins travelling between 30-50km/h.

As soon as the final race ended, s.9(2)(a) came up to my desk and said he understood the situation and had made a risk assessment that the F50s come around the top gate very close to the actual marker boys. He believed that they could get around the mark before any collision occurred.

About five minutes later there was a debrief in the courtyard behind the control room. This involved Ngāti Wheke, DOC and Sail GP (s.9(2)(a)). At this debrief, s.9(2)(a) acknowledged they had breached the plan but that he stood by his risk assessment. He believed his non-response in allowing racing to continue was reasonable given they had eyes on the dolphins, and the F50s just needed to get around the mark before they would be moving away again.

s.9(2)(a) explained that distances on screen can sometimes be misleading. I requested the GPS data from sail GP so that we could see exactly what had happened and how close they had come.

There were several other debriefs and meetings involving various groups. One of these was with the wider comms group which included Sail GP, ChchNZ, Ngāi Tahu, Ngāti Wheke and us. I distinctly recall the comms manager from Sail GP making a statement that the dolphins were well behind all the spectator boats throughout the race. I was confident that this was not the case, so this was very frustrating to hear.

I left the naval base around 1900 and remained in contact with s.9(2)(a) via email and phone to follow up on my data request. This was then passed onto Marlous Heijs, a compliance officer for the Department.

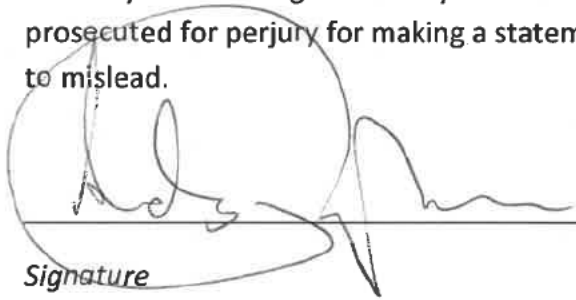




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The times I have recorded are accurate to the best of my ability, they are based on messages I sent to the DOC WhatsApp group, text message updates sent to Jo Macpherson and notes taken by Abby Lawrence. All times would have been accurately captured in the marine mammal logs that were being kept by **s.9(2)(a)**

Everything in this statement is true to the best of my knowledge and belief. It has been made by me knowing that it may be admitted as evidence in court and that I may be prosecuted for perjury for making a statement known to me to be false and intended by me to mislead.

  
Signature

6-4-23  
Date

Statement taken by Marlow HEIJS

Date 29/03/23 - 06/04/23

Statement witnessed by. \_\_\_\_\_

Date

Released under the Official Information Act 1982

  
.....Witness initials

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