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5 MAR 2016 RECEIVED  
Canterbury Conservation Department 2016

# Marine Mammals Protection Regulations 1992 Permit To Carry On a Commercial Operation


Permit Number: 47876-MAR

**THIS PERMIT** is made this 4<sup>th</sup> day of February **2016**

## BACKGROUND

- A. Under Regulation 12 of the Marine Mammals Protection Regulations 1992 (the Regulations) the Director-General of Conservation (Director-General) may issue permits authorising a commercial operator to carry on any specified commercial operation (Permit).
- B. The Permit Holder described below applied for a Permit (the Application).
- C. The Director-General has considered the application and has determined it is acceptable to him and has accordingly issued the Permit.

In exercise of the Director-General's powers under the Regulations the Director-General **ISSUES** to the Permit Holder a **PERMIT TO CARRY ON A COMMERCIAL OPERATION** on the terms and conditions contained in this Permit and its Schedules.

  
SIGNED on behalf of the Director-General of Conservation Nicola Douglas, Director, Partnerships, Northern North Island acting under delegated authority.

in the presence of:

  
Witness Signature

Witness Name: Ben Lamb

Witness Occupation: Personal Assistant

Witness Address: 73 Roseneath St  
Hani Ho

A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.

Signed by **BRUCE McKAY, VANESSA McKAY & MARY ANN McKAY**

Signature: 

Signature: 

Signature: 

in the presence of:

Witness Signature: 

Witness Name: WAYNE LIVINGSTON

Witness Occupation: MARINE ELECTRONICS PAHIA.

Witness Address:

**SCHEDULE 1**

All details in this schedule are as per the application form.

1.	<b>The Permit Holder</b>	<b>Bruce, Vanessa &amp; Mary Ann McKay trading as Carino Sailing and Dolphin Adventures</b>
2.	<b>The Area of Operation</b> (clause 2)	From Flat Island (1730 51.07'E, 340 58.03'S) up to and including Waiwiri Rock (1740 20.103'E, 350 11.50'S)  Excluding: Waikere Inlet, Kerikeri Inlet, Te Puna Inlet, Deepwater Cove and the area northeast of Waewaetorea Island
3.	<b>Base of operation</b>	Opua Paihia
4.	<b>Species</b>	NZ fur seals
5.	<b>The Authorised Activity</b> (clause 2)	Commercial vessel based carriage of passengers to view and to swim with NZ fur seals
6.	<b>Maximum number of Trips per annum</b>	730
7.	<b>Maximum Number of Trips per day</b> (clause 2)	2
8.	<b>Maximum duration of trips</b>	4 hours
9.	<b>Maximum duration of contact with any marine mammal or group of marine mammals</b>	60 minutes per trip
10.	<b>Maximum Number of Vessels to be used at any one time</b> (clause 2)	One
11.	<b>Description of Vessels used to convey passengers</b> (clause 2)	See <b>Schedule 4</b> of this permit
12.	<b>Maximum number of passengers</b>	20
13.	<b>Maximum number of swimmers</b>	10
14.	<b>Maximum number of swim drops or swim attempts</b>	3 per trip
15.	<b>Names of skippers and guides</b> (clause 2)	See <b>Schedule 4</b> of this permit

16.	<b>Term</b> (clause 3 )	The period commencing from and including 08 February 2016 and ending on and including 07 February 2021
17.	<b>Addresses for Notices</b> (clause 7)	The Permit Holder's address in New Zealand is: 67 School Road Paihia 0247

Note: The clause references are to the clauses set out in Schedule 2.

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## SCHEDULE 2

### 1. Interpretation

- 1.1 The Permit Holder is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees. The Permit Holder is liable under this Permit for any breach of the terms of the Permit by its employees, contractors, agents, clients and invitees, as if the breach had been committed by the Permit Holder.
- 1.2 The following (each being species of "marine mammal" as defined in the Marine Mammals Protection Act 1978) are defined in the Marine Mammals Protection Regulations 1992, as follows;
- dolphin** means –
- (i) all species commonly known as dolphins; and includes dusky dolphins, common dolphins, bottlenose dolphins, and Hector's dolphins; but
  - (ii) does not include the species known as killer whales and pilot whales.
- seal** means all species commonly known as seals and sea lions; and includes New Zealand fur seals, leopard seals, southern elephant seals, and Hooker's sea lions.
- whale** means all species commonly known as whales; and includes baleen whales, sperm whales, beaked whales, killer whales, and pilot whales.

### 2. What is being permitted?

- 2.1 The Permit Holder is only allowed to carry out the Authorised Activity in the Area of Operation as specified in Items 2 and 3 in Schedule 1 and must comply with the Application as set out in Schedule 4 and comply with the relevant provisions applying to the Authorised Activity in Part 3 of the Regulations as set out in Schedule 5.
- 2.2 In carrying out the Authorised Activity the Permit Holder must not exceed the maximum number of trips per annum and per day nor the maximum number of vessels that can be use at any one time as specified in Items 6, 7 and 10 of Schedule 1
- 2.3 In carrying out the Authorised Activity the Permit Holder must only use the Vessels, Aircraft or Vehicles specified in Item 11 of Schedule 1 and only those persons specified in Item 15 of Schedule 1 may be the Master, Pilot of such vessel or aircraft or Shore Based Guide for the shore based operation.

### 3. What is the Duration of the Permit?

- 3.1 This Permit commences and ends on the dates specified in Item 16 of Schedule 1. The Director-General may renew the permit from time to time.

### 4. What are the fees and when are they to be paid?

- 4.1 During the Term the Permit Holder must pay to the Director-General an annual cost recovery charge, which the Director-General is to set, based on the costs associated with administration, research and impact monitoring of the Authorised Activity.
- 4.2 The Director-General is to set the fee at the end of each year of the Permit and the Permit Holder must pay the fee within one month of being given notice in writing of the fee.

### 5. When may the Permit be transferred?

5.1 The Permit Holder must not transfer the permit to any person without first obtaining the consent in writing of the Director-General.

5.2 The Director-General may-

- (a) Refuse to consent to the transfer of a permit; or
- (b) Consent to the transfer of a permit either with or without conditions.

5.3 Where the Permit Holder is a body corporate, the transfer of control of the management of the Permit Holder in whole or in part to another person is to be deemed to be a transfer of the Permit.

5.4 In considering whether or not to consent to a transfer of the Permit the Director-General must have regard to the applicable matters contained in regulations 6 to 9 of the Regulations.

## 6. When can the Permit be suspended, revoked, restricted or amended?

6.1 The Director-General may at any time suspend, revoke, restrict or amend the Permit pursuant to regulation 13 of the Regulations.

## 7. How are notices sent and when are they received?

7.1 Any notice to be given under this Permit is to be in writing and made by personal delivery, fax, by pre paid post or email to the Permit Holder at the address, fax number or email address specified in Item 17 of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of fax, on the date of dispatch;
- (c) in the case of post, on the 3<sup>rd</sup> working day after posting;
- (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

7.2 If the details set out in Item 16 of Schedule 1 change then the Permit Holder must within 5 working days of such change provide the Director-General with the changed details.

## 8. Some General Matters

8.1 The Permit Holder must ensure that any Vessel authorised under this Permit prominently displays the permit label issued under the regulation 12(5) of the Regulations.

8.2 The Permit Holder must ensure that any Vessel and Master named in this Permit meet the statutory requirements relating to the licensing and safety of the vessels, the qualifications and licensing of the masters, and the health and safety of the passengers.

## 9. Are there any Special Conditions?

9.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions are to prevail.

## SCHEDULE 3

### SPECIAL CONDITIONS

1. The Department may undertake up to 2 covert permit compliance monitoring trips per year. Pursuant to Section 60B of the Conservation Act 1987, the Department may recover the reasonable costs associated in carrying out such monitoring from the Permit Holder.
2. The Permit Holder must provide carriage free of charge to a departmental officer or representative, on normal trips, for the purpose of monitoring or research, provided that reasonable notice is given by the Department.
3. The Permit Holder must provide, if and when requested by the Director-General, reports on the distribution, abundance and behaviour of marine mammals in the area of operation under the authority of this permit. Any such report must be of a standard considered reasonable by the Director-General. The Director-General must not make requests under this condition with unreasonable frequency and the nature of the requests is to be reasonable in scope.
4. The Permit Holder must maintain a register to the satisfaction of the Director-General, detailing inter alia the time, data, duration and location of all trips carried out under the authority of this permit. The register must also contain sightings information relating to any marine mammal/s encountered on any such trip that is carried out under the authority of this Permit. The register must be provided to the Director-General at least annually on the anniversary of the issue of the Permit whether marine mammal tourism trips have been undertaken or not
5. The Permit Holder must supply the Director-General with a copy of educational material and marine mammal conservation advocacy material which must be provided to clients who are carried pursuant to this permit. The educational and conservation material must be of a standard considered reasonable by the Director-General.

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**SCHEDULE 4****THE APPLICATION****Applicant Details**

<b>Applicant Name</b> (full name of registered company or individual)		BA, MA, VA McKay		
<b>Legal Status of applicant (tick)</b>	Individual	<input checked="" type="checkbox"/>	<b>Registered Company</b>	Trust
<b>Trading Name</b>		Carino Sailing & Dolphin Adventures		
<b>Postal Address</b>		PO Box 286, Paihia		
<b>Street Address (if different from Postal Address)</b>		67 School Road, Paihia		
<b>Phone</b>	09 4028040	<b>Website</b>	www.sailingdolphins.co.nz	
<b>Contact Person and role</b>		Vanessa McKay		
<b>Phone</b>	09 4028040			
<b>Email</b>	vanessa@sailingdolphins.co.nz			

**B. Activities applied for**

Please fill in all the forms that are applicable. Please tick below the forms that have been completed, and attach. Please note that even if you are applying for a renewal of an existing permit these forms are a necessary requirement of the application process and must be filled out in full.

ACTIVITY	FORM	
Vessel Based Viewing or Swimming	8a	<input checked="" type="checkbox"/>

**C. Activity is in the interest of Conservation, Management, and the Protection of Marine Mammals (not necessary for filming only)**

Please briefly describe how your activity is in the interest of Conservation, Management and the Protection of Marine Mammals. This is a requirement of Regulation 6(d) of the Marine Mammals Protection Regulations 1992. Attach details and label Attachment 8:C.

**Our activity will help to educate and bring awareness to the public on matters relating to NZ Fur Seal, and other marine mammals, as well as conservation as a whole in the area and NZ.**

**We also have been conducting NZ Fur Seal research on our tours and on private trips that will help establish what the NZ Fur Seal population in the area is (none has been done before). We hope this will help manage and protect the NZ Fur Seal in the Bay of Islands area.**

**D. Background Experience of Applicant**

Please provide relevant information relating to the applicant's knowledge and experience operating with Marine Mammals. Attach details and label Attachment 8:Di. *N/B - Please note*

that this section is for the applicant as the operator; there are sections for the staff/guides and skippers within the additional activity information forms.

**18 years owned and operated a marine mammal operation in the Bay of Islands "Carino NZ" encountering Dolphins, Whales, Seals.**

Please provide relevant information relating to the applicant's knowledge and experience operating within the region and local area, and of the sea and weather conditions. Attach details and label Attachment 8:Dii

**28 years living in the area and last 18 years working as a commercial skipper in the area. I have a very good practical knowledge of the sea and weather conditions in the area/region.**

Has the Applicant or any of the company directors, trustees, partners, or anyone involved with the Application been convicted of any offence? Does the Applicant or any of the company directors, trustees, partners, or anyone involved with the Application have any current criminal charges pending before the court? If yes, please supply details.

**No**

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**A. Proposed Term**

Proposed Term  
**5 years**

Proposed months of operation  
**12 months**

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**B. Activity Information**

Please tick which activity you propose to undertake

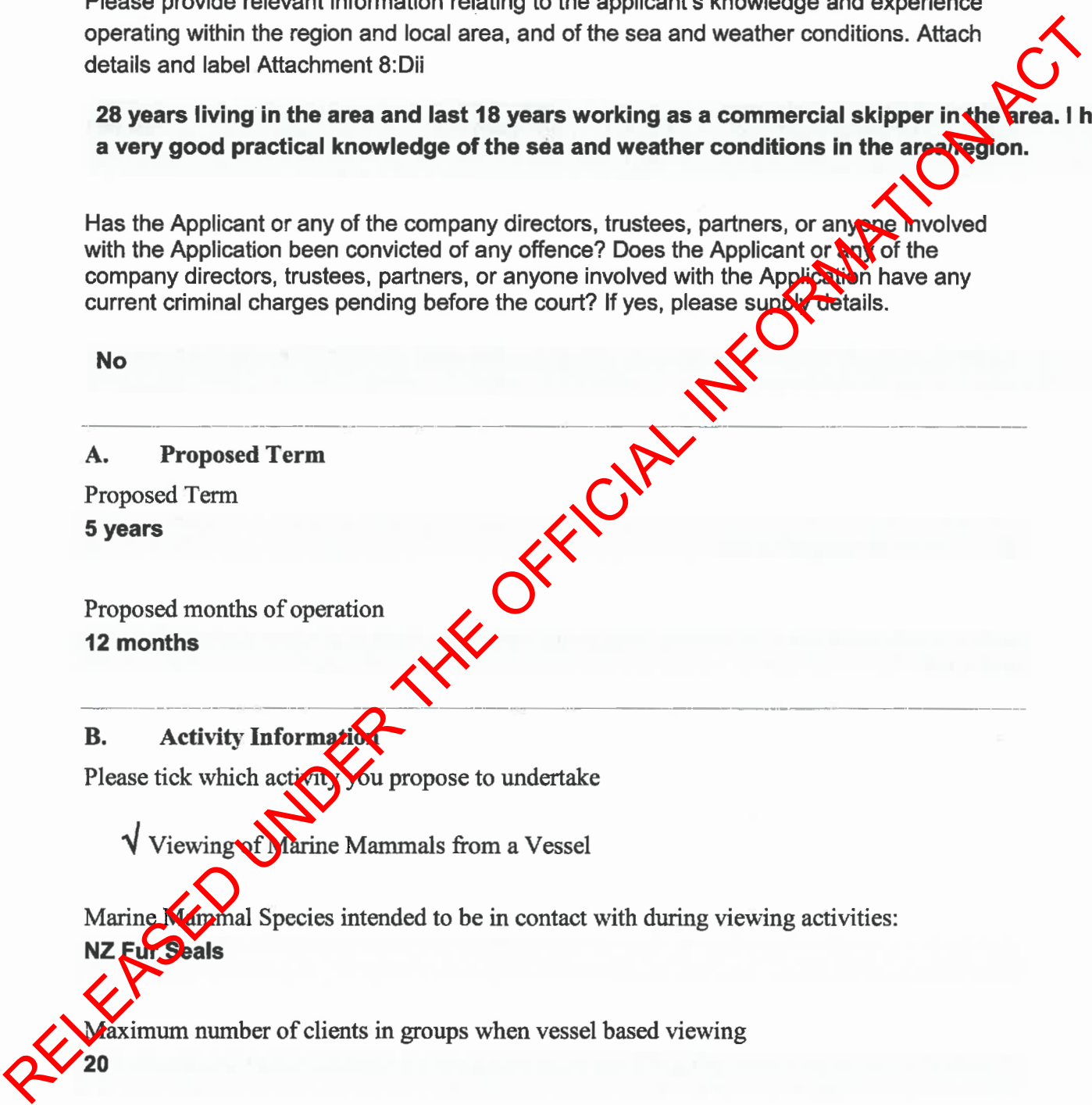
Viewing of Marine Mammals from a Vessel

Marine Mammal Species intended to be in contact with during viewing activities:  
**NZ Fur Seals**

Maximum number of clients in groups when vessel based viewing  
**20**

Swimming with dolphins or seals from a Vessel

Marine Mammal Species intended to be in contact with during swimming activities:





## NZ Fur Seals

Maximum Swimmers which will be in the water at any one time

**10**

Maximum number of swimming attempts made per group

**3**

### Trip details

Maximum number of trips per annum:

**730**

Number of trips per day (please define the number of trips you wish to run in a 24 hr period, times of scheduled trips would be specified where possible):

**2 trips per day**

- 1. 8am - 12pm**
- 2. 1pm - 5pm**

Duration of Trips (please detail total trip duration, and time expected to be spent with the marine mammals):

**4 hrs per trip**

**Time spent with NZ Fur Seals not exceed 60 mins.**

Description of your intended operational plan this must include information on all aspects of the activity including the following: nature of contact with marine mammals, how contact will be initiated and what the process will be, time spent with each group of marine mammals and detailed procedure and chronology of the trips. Please be as detailed as you can.

**Tour is to be snorkelling and island stopover adventure, with the opportunity to view and swim with NZ fur seals, should the conditions allow.**

**(It will not be a guaranteed seal swim trip)**

**The tour will depart Paihia and Russell, make its way through the Bay of Islands to a snorkelling location (to be decided on the day, taking into account weather conditions and guest experience).**

**A guide snorkelling tour will occur, duration approx. 30mins. Back to boat for hot shower and tea/coffee.**

**On to view NZ fur seals (in the attached chart area). Interaction with NZ fur seals will always begin from the boat, to access seal behaviour, a commentary on NZ fur seals with education material available on board and conservation issues will be told to guests.**

**Vessel will stay 20m from any seals on land**

Then if conditions allow and there are no whales or dolphins present, guests will enter the water to allow seals to decide if they want to interact. Interaction is the seals choice, there will be no attempts to touch or feed the seals. Swimmers will stay 10m from the shoreline where seals are present and at no time will the guest climb or walk on shore where the seals are resting. Swimmers will not stand up in shallow areas and keep a low-profile in the water.

The same haul-out site is not visited more than once each trip.

Total time spent with seals will not exceed 60 mins.

Upon returning to the inner bay, an island stop may be provided.

Tour times 8am-12pm 1pm-5pm

**C. Location information**

Please supply a map of the proposed area of operation, with potential intended routes. If you have additional information to support your application please attach it as Attachment 8a:C.

Areas of operation:

From Flat Island (173° 51.07'E, 34° 58.03'S) up to and including Waiwiri Rock (174° 20.103'E, 35° 11.50'S)

Excluding: Waikere Inlet, Kerikeri Inlet, Te Puna Inlet, Deepwater cove and the area northeast of Waewaetorea Island

Map attached

**D. Vessel Information**

Please insure all the information is filled out and if you have additional relevant information which may support your application please attach it and label as Attachment 8a:D

Base of operations (where Vessels will be based)

**Opuia / Paihia**

Total Number of Vessels which will be used in order to undertake the activity:

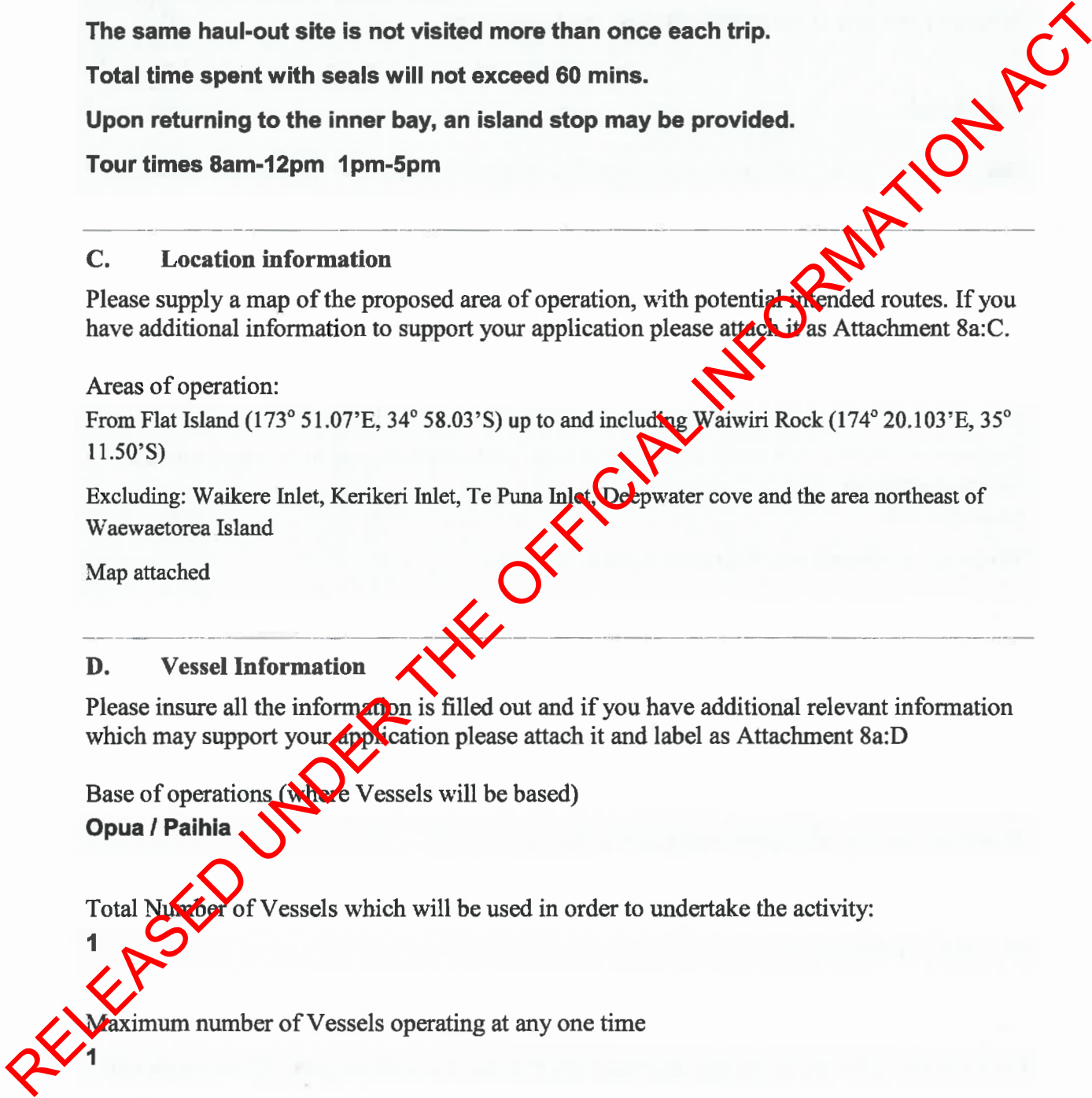
1

Maximum number of Vessels operating at any one time

1

**Vessel 1. description:**

Vessel name:	Seal 1	Make:	Salthouse Corsair
Model:		Size:	12 m



Carrying Capacity: 20 pax	Colour: White
Motive Power: 230 HP diesel	Construction: GRP
Noise Levels: Above sea	Noise Levels: Below sea
Water cooled exhaust reducing noise level	

**E. Masters, Skippers, Guides and other relevant Staff**

This section of the application is to be up to date and if a permit is approved should be submitted annually to ensure all information is accurate. It should include all staff that may come into contact with Marine Mammals throughout the course of the proposed operation.

Name: **Vanessa McKay** Job Title: **Skipper / Guide**

Has this person had any convictions or prosecutions for offences against the Act or any other Act involving the mistreatment of animals? **No**

Relevant Experience with Marine Mammals:

**18 years owned and operated a dolphin swimming / viewing vessel "Carino NZ"**

Relevant knowledge of the local area and sea conditions:

**Have spent 28 years living in Bay of Islands, and last 18 years working as a commercial skipper in the area.**

Name: **Bruce McKay** Job Title: **Skipper / Guide**

Has this person had any convictions or prosecutions for offences against the Act or any other Act involving the mistreatment of animals? **No**

Relevant Experience with Marine Mammals:

**18 years as part owner of a DOC approved marine mammal vessel "Carino NZ"**

Relevant knowledge of the local area and sea conditions:

**40 years commercial skippering in NZ and last 32 years in the Bay of Islands**

**F. Effect Impact Assessment**

This section is one of the most important factors that will determine the Department's decision on the application. Please answer in detail.

Please firstly identify any potential effects on the Marine Mammals, other users of the proposed area and environment which may occur from your proposed activities and then detail how you propose to mitigate these effects

Refer to Steps 1 and 2 in your Guide to Environmental Impact Assessment to help you fill in this section.

<b>Effect</b>	<b>Mitigation method</b>
Disturbing NZ Fur Seals	- No feeding or harassment of any NZ Fur Seal - Use DOC permit approach distances to educate staff and guests on correct behaviour on and in

- water. Warn guest of danger to approach seals on land, educate guests and staff, no standing in shallows or on rocks
  - Report any unusual behaviour to DOC
  - Low speed / revs in close proximity, slow down / reduce speed a large distance away
  - Do not startle seals with loud noise - educate staff and guests
  - Monitor effects by watching and recording seal behaviour i.e. if the seal wakes up/looks up when boat approaches
  - Adhere to MSA pollution policy
  - Correct NRL procedures for waste discharge
  - Well serviced machinery
  - Contingency plan in place
- Noise impacts - boat noise - people noise
- Impact on NZ Fur Seals
- Fuel spillage / water pollution

**G. Educational Material**

Please briefly describe the educational aspects of the proposed operation and supply any proposed educational material, copies of brochures of information booklets attached as Attachment 8a:G.

**Information we have aboard: the seal deal - DOC**

**Fact sheet: Project Jonah, Royal Forest & Bird**

**Books: Collins NZ Sea Shore**

**Project Island Song Brochures**

**Help look after dolphins and other marine mammals in the Bay of Islands**

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## **SCHEDULE 5**

### **PART 3 OF THE REGULATIONS**

#### **Part 3**

#### **Behaviour around marine mammals**

##### **Section 17: Application of this Part**

Nothing in regulation 18 or regulation 19 or regulation 20 of these regulations shall apply to persons, vessels, aircraft, or vehicles rendering assistance to stranded or injured marine mammals.

##### **Section 18: Conditions governing commercial operations and behaviour of all persons around any marine mammal**

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 operation at an altitude of less than 600 metres (2000 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) of this regulation, 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 19: Special conditions applying to whales**

In addition to complying with the provisions set out in regulation 18 of these regulations, every commercial operation and every person coming into contact with whales shall also comply with the following conditions:

(a) No person in the water shall be less than 100 metres from a whale, unless authorised by the Director-General:

(b) No vessel shall approach within 50 metres of a whale, unless authorised by the Director-General:

(c) If a whale approaches a vessel, the master of the vessel shall, wherever practicable,—

- (i) Manoeuvre the vessel so as to keep out of the path of the whale; and
- (ii) Maintain a minimum distance of 50 metres from the whale:

(d) No vessel or aircraft shall approach within 300 metres (1000 feet) of any whale for the purpose of enabling passengers to watch the whale, if the number of vessels or aircraft, or both, already positioned to enable passengers to watch that whale is 3 or more:

(e) Where 2 or more vessels or aircraft approach an unaccompanied whale, the masters concerned shall co-ordinate their approach and manoeuvres, and the pilots concerned shall co-ordinate their approach and manoeuvres:

(f) No person or vessel shall approach within 200 metres of any female baleen or sperm whale that is accompanied by a calf or calves:

(g) A vessel shall approach a whale from a direction that is parallel to the whale and slightly to the rear of the whale:

(h) No person shall make any loud or disturbing noise near whales:

(i) Where a sperm whale abruptly changes its orientation or starts to make short dives of between 1 and 5 minutes duration without showing its tail flukes, all persons, vessels, and aircraft shall forthwith abandon contact with the whale.

### **Section 20: Special conditions applying to dolphins or seals**

In addition to complying with the conditions set out in regulation 18 of these regulations, any commercial operation and any person coming into contact with dolphins or seals shall also comply with the following conditions:

(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) of this regulation, no person shall make any loud or disturbing noise near dolphins or seals:

(e) No vessel or aircraft shall approach within 300 metres (1000 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.

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# Marine Mammals Protection Regulations 1992 Permit To Carry On a Commercial Operation

Permit Number: 36415-MAR

THIS PERMIT is made this 18<sup>th</sup> day of October 2016

## BACKGROUND

- A. Under Regulation 12 of the Marine Mammals Protection Regulations 1992 (the Regulations) the Director-General of Conservation (Director-General) may issue permits authorising a commercial operator to carry on any specified commercial operation (Permit).
- B. The Permit Holder described below applied for a Permit (the Application).
- C. The Director-General has considered the application and has determined it is acceptable to him and has accordingly issued the Permit.

In exercise of the Director-General's powers under the Regulations the Director-General **ISSUES** to the Permit Holder a **PERMIT TO CARRY ON A COMMERCIAL OPERATION** on the terms and conditions contained in this Permit and its Schedules.

Signed on behalf of **NORTHLAND DIVE LIMITED** by the Director Shane Housham:

SIGNED on behalf of the Director-General of Conservation by Sue Reed-Thomas, Director, Operations, Northern North Island acting under delegated authority.

in the presence of:

in the presence of:

Witness Signature

Witness Signature

Witness Name: JEANNIE HOGARTH

Witness Name: ALEX WAKEFIELD

Witness Occupation: PERSONAL ASSISTANT

Witness Occupation: MASTER

Witness Address: 219 Springfield Road  
Dunedin, 901, Whangarei 0178

Witness Address:

A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.



**SCHEDULE 1**

All details in this schedule are as per the application form.

1.	<b>The Permit Holder</b>	Northland Dive Limited
2.	<b>The Area of Operation</b> (clause 2)	Bay of Islands, south of Waiwiri Rock (174o 20.103'E, 35o 11.50'S) down to and including Otawhanga Island Mimiwhangata and including Whangaruru Harbour (174°26'43.91"E, 35°26'14.22"S)
3.	<b>Base of operation</b>	Te Uenga Bay & Bland Bay
4.	<b>Species</b>	New Zealand Fur Seal
5.	<b>The Authorised Activity</b> (clause 2)	The commercial vessel based carriage of passengers to view and swim with New Zealand fur seals
6.	<b>Maximum number of Trips per week</b>	Six
7.	<b>Maximum Number of Trips per day</b> (clause 2)	One
8.	<b>Maximum duration of trips</b>	6 hours
9.	<b>Maximum duration of contact with any marine mammal or group of marine mammals</b>	Viewing from Vessel Individual Encounter: 15 mins Cumulative Encounter: 30 mins per day Swimming Individual Encounter: 20 mins per snorkel/dive Cumulative Encounter: 40 mins per day
10.	<b>Maximum Number of Vessels to be used at any one time</b> (clause 2)	One
11.	<b>Description of Vessels used to convey passengers</b> (clause 2)	See <u>Appendix 4</u>
12.	<b>Maximum number of passengers</b>	12
13.	<b>Maximum number of swimmers</b>	8 plus guide
14.	<b>Maximum number of swim drops or swim attempts</b>	2 per day
15.	<b>Names of Masters or guides</b> (clause 2)	See <u>Appendix 4</u>
16.	<b>Term</b> (clause 3)	The period commencing from and including 1 <sup>st</sup> November 2016 and ending on and including 31 <sup>st</sup> October 2021

17.	<b>Addresses for Notices</b> (clause 7)	The Permit Holder's address in New Zealand is: 3851 Russell Road Hikurangi RD 4 Whangarei 0184
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Note: The clause references are to the clauses set out in Schedule 2.

RELEASED UNDER THE OFFICIAL INFORMATION ACT



## SCHEDULE 2

### 1. Interpretation

1.1 The Permit Holder is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees. The Permit Holder is liable under this Permit for any breach of the terms of the Permit by its employees, contractors, agents, clients and invitees, as if the breach had been committed by the Permit Holder.

1.2 The following (each being species of "marine mammal" as defined in the Marine Mammals Protection Act 1978) are defined in the Marine Mammals Protection Regulations 1992, as follows;

**dolphin** means –

- (i) all species commonly known as dolphins; and includes dusky dolphins, common dolphins, bottlenose dolphins, and Hector's dolphins, but
- (ii) does not include the species known as killer whales and pilot whales.

**seal** means all species commonly known as seals and sea lions; and includes New Zealand fur seals, leopard seals, southern elephant seals, and Hooker's sea lions.

**whale** means all species commonly known as whales; and includes baleen whales, sperm whales, beaked whales, killer whales, and pilot whales.

### 2. What is being permitted?

2.1 The Permit Holder is only allowed to carry out the Authorised Activity in the Area of Operation as specified in Items 2 and 5 in Schedule 1 and must comply with the Application as set out in Schedule 4 and comply with the relevant provisions applying to the Authorised Activity in Part 3 of the Regulations as set out in Schedule 5.

2.2 In carrying out the Authorised Activity the Permit Holder must not exceed the maximum number of trips per annum and per day nor the maximum number of vessels that can be use at any one time as specified in Items 6, 7 and 10 of Schedule 1

2.3 In carrying out the Authorised Activity the Permit Holder must only use the Vessels, Aircraft or Vehicles specified in Item 11 of Schedule 1 and only those persons specified in Item 15 of Schedule 1 may be the Master, Pilot of such vessel or aircraft or Shore Based Guide for the shore based operation

### 3. What is the Duration of the Permit?

3.1 This Permit commences and ends on the dates specified in Item 16 of Schedule 1. The Director-General may renew the permit from time to time.

### 4. What are the fees and when are they to be paid?

4.1 During the Term the Permit Holder must pay to the Director-General an annual cost recovery charge, which the Director-General is to set, based on the costs associated with administration, research and impact monitoring of the Authorised Activity.

4.2 The Director-General is to set the fee at the end of each year of the Permit and the Permit Holder must pay the fee within one month of being given notice in writing of the fee.

**5. When may the Permit be transferred?**

5.1 The Permit Holder must not transfer the permit to any person without first obtaining the consent in writing of the Director-General.

5.2 The Director-General may-

- (a) Refuse to consent to the transfer of a permit; or
- (b) Consent to the transfer of a permit either with or without conditions.

5.3 Where the Permit Holder is a body corporate, the transfer of control of the management of the Permit Holder in whole or in part to another person is to be deemed to be a transfer of the Permit.

5.4 In considering whether or not to consent to a transfer of the Permit the Director-General must have regard to the applicable matters contained in regulations 6 to 9 of the Regulations.

**6. When can the Permit be suspended, revoked, restricted or amended?**

6.1 The Director-General may at any time suspend, revoke, restrict or amend the Permit pursuant to regulation 13 of the Regulations.

**7. How are notices sent and when are they received?**

7.1 Any notice to be given under this Permit is to be in writing and made by personal delivery, fax, by pre paid post or email to the Permit Holder at the address, fax number or email address specified in Item 17 of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of fax, on the date of dispatch;
- (c) in the case of post, on the 3<sup>rd</sup> working day after posting;
- (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

7.2 If the details set out in Item 16 of Schedule 1 change then the Permit Holder must within 5 working days of such change provide the Director-General with the changed details.

**8. Some General Matters**

8.1 The Permit Holder must ensure that any Vessel authorised under this Permit prominently displays the permit label issued under the regulation 12(5) of the Regulations.

8.2 The Permit Holder must ensure that any Vessel and Master named in this Permit meet the statutory requirements relating to the licensing and safety of the vessels, the qualifications and licensing of the masters, and the health and safety of the passengers.

**9. Are there any Special Conditions?**

9.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions are to prevail.

## SCHEDULE 3

### SPECIAL CONDITIONS

1. The Department may undertake up to 2 covert permit compliance monitoring trips per year. Pursuant to Section 60B of the Conservation Act 1987, the Department may recover the reasonable costs associated in carrying out such monitoring from the Permit Holder.
2. The Permit Holder must provide carriage free of charge to a departmental officer or representative, on normal trips, for the purpose of monitoring or research, provided that reasonable notice is given by the Department.
3. The Permit Holder must provide, if and when requested by the Director-General, reports on the distribution, abundance and behaviour of marine mammals in the area of operation under the authority of this permit. Any such report must be of a standard considered reasonable by the Director-General. The Director-General must not make requests under this condition with unreasonable frequency and the nature of the requests is to be reasonable in scope.
4. The Permit Holder must maintain a register to the satisfaction of the Director-General, detailing inter alia the time, date, duration and location of all trips carried out under the authority of this permit. The register must also contain sightings information relating to any marine mammal/s encountered on any such trip that is carried out under the authority of this Permit. The register must be provided to the Director-General at least annually on the anniversary of the issue of the Permit whether marine mammal tourism trips have been undertaken or not.
5. The Permit Holder must supply the Director-General with a copy of educational material and marine mammal conservation advocacy material which must be provided to clients who are carried pursuant to this permit. The educational and conservation material must be of a standard considered reasonable by the Director-General.

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## SCHEDULE 4

### THE APPLICATION

#### A. Applicant name

Northland Dive Limited

#### B. Proposed operation

##### Species

the following specified species

NZ fur seal

##### Location information

Base of operation:

- Te Uenga Bay
- Bland Bay

Proposed area of operation:

Bay of Islands, south of Waiwiri Rock (174° 20' 10.3" E, 35° 11.50' S) down to and including Otawhanga Island Mimiwhangata and including Whangaruru Harbour (174° 26' 43.91" E, 35° 26' 14.22" S)

Specific locations where contact with marine mammals is proposed:

Please see the attached map

Sites visited will be varied and the same site not visited twice in any one day

**Please Note:** I have indicated our most popular Scuba Diving sites outside our Boundaries on this application. I felt it important to indicate these as we have been diving these areas for 15+ years and they are a crucial part of our business. These sites will not be advertised or Targeted as sea watching/swimming site, just solely Scuba Diving.

Tour route

Please see the attached Map

**Please Note:** I have indicated our most popular Scuba Diving sites outside our Boundaries on this application. I felt it important to indicate these as we have been diving these areas for 15+ years and they are a crucial part of our business. These sites will not be advertised or Targeted as Seal watch/swim sites, just solely Scuba Diving.

#### Trip details

Frequency - proposed months of operation:

All year

Frequency - number of trips per annum:

312

Frequency - number of trips per day:

1 trip per day, 6 days per week

Duration of trips:

6 hours – 2 x swim or dive per trip

[Swims (snorkel): 45 minutes per group

Scuba Dive: 90min max]

Maximum number of vessels operating at any one time:

One per day trip

## Type and number of vessels to be used

### Vessel 1 description:

Vessel name: Double 07

Make: Gemini

Model:

Size: 8.6m

Carrying capacity: 16 + 2 crew

Colour: Grey

Motive power: 350hp Outboard Motor, 4 stroke

Construction and hull design: Rigid Hull Inflatable

Planing hull:

Displacement hull: No

Noise levels above sea: : 65 dPA at 5 knts

Noise levels below sea: Not Known

Maximum speed: 45knt

Normal cruising speed: 20-25knts

### Vessel 2 description:

Vessel name: Specie

Make: Gemini

Model:

Size: 8.6m

Carrying capacity: 16 + 2 (crew)

Colour: Grey

Motive power: 300hp Outboard Motor, 4 stroke

Construction and hull design: Rigid Hull Inflatable

Planing hull:

Displacement hull: No

Noise levels above sea: 65 dPA at 5 knts

Noise levels below sea: Not Known

Maximum speed: 45knts

Normal cruising speed: 20-25knt

## Masters, skippers, guides and other relevant staff

Please fill in for every staff member who may come into contact with marine mammals throughout the course of the proposed operation.

Name: Shane Housham Job Title: Skipper / Dive Instructor / Guide

Has this person had any convictions or prosecutions for offences against the Act No or any other Act involving the mistreatment of animals?

Relevant Experience with Marine Mammals:

8 years whale watching trips in Tonga

Relevant knowledge of the local area and sea conditions:

Diving in the Bay of Islands for about 24years, Commercial Skipper in the proposed area for 14yrs

Name: Julia Riddle Job Title: Skipper / Guide

Has this person had any convictions or prosecutions for offences against the Act No or any other Act involving the mistreatment of animals?

Relevant Experience with Marine Mammals:

8 years whale watching trips in Tonga

Relevant knowledge of the local area and sea conditions:

Diving in the Bay of Islands for about 30 years, Commercial Skipper in the proposed area for 14yrs

Full Name: Jelica Orevich Job Title: Dive Instructor/ Guide

Has this person had any convictions or prosecutions for offences against the Act No or any other Act involving the mistreatment of animals?

Relevant experience with marine mammals: Nil

Relevant knowledge of the local area and sea conditions: Has been working for Northland Dive for 2 seasons as a Dive Instructor and has been under our guidance, as an instructor she has been fully trained to guide customers in the water.

**Proposed term**

You can apply for up to 10 years. However, in some situations a permit may be restricted to a shorter term for the purposes of the conservation, protection or management of marine mammals.

5 years

**C. Additional information**

Maximum time to be spent viewing marine mammals per individual encounter:

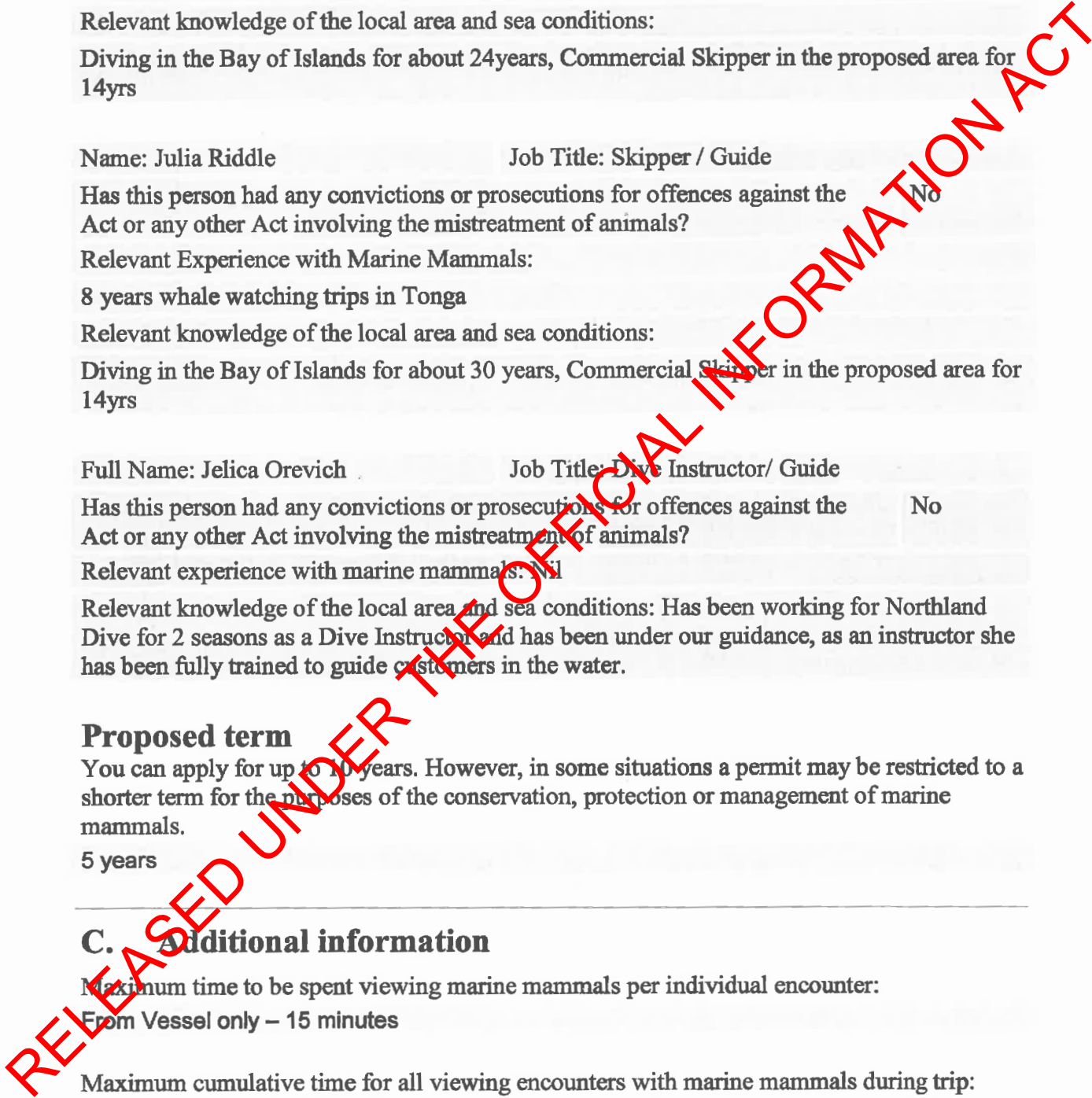
From Vessel only – 15 minutes

Maximum cumulative time for all viewing encounters with marine mammals during trip:

From Vessel only – 30 minutes

Nature of the contact with marine mammals:

Targeted ✓ Primary purpose - May – December





✓ Secondary purpose - January – April

Speeds when approaching and viewing marine mammals:

No more than 5knts 200m from shoreline

Behaviour of vessel and orientation of approach relative to marine mammals:

Approach with caution and gauge the seals reaction to our presence, if relaxed and undisturbed lay anchor

Position of vessels relative to marine mammals while viewing:

Anchored minimum 20m from shore

Distance to the water's edge (for seals or sea lions hauled out on shore):

20m

Behaviour around calves or pups:

What other actions you will take to minimise disturbance of the marine mammals:

Do not make loud noises when approaching or near the seals

Do not disturb or harass any marine mammals

Swimmers to remain behind their guide and with the group

Do not attempt to touch any marine mammal

Do not swim directly at a seal or try to cut off or alter its path or encircle them in any way

Do not feed the seals

Do not throw anything in to the water

Do not climb on the rocks unless in case of an emergency

Do not approach closer than 20m of the shore or rocks unless in case of an emergency.

If conducting scuba safety stop on the rock face, immediately swim away from the rocks not making any noise

Guides will be in the water at all times with the group

Loud speakers not be used within 100 m of water's edge, except in cases of emergency

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#### **D. Swimming with Marine Mammals**

Maximum number of swimmers in the water at any one time:

8 swimmers plus guide

Maximum time spent swimming per individual encounter with a marine mammal or group of marine mammals:

20 minutes per swim or dive

Maximum cumulative time spent swimming with marine mammals during a trip:

40 minutes per day

Maximum number of swim drops or attempts with the same individual marine mammal or group of marine mammals:

1

Maximum total number of swim drops or attempts per trip:

2

Minimum approach distance for swimmers to the water's edge where seals or sea lions are present on shore:

20m

Swimmer behaviour in the water:

Do not make loud noises when approaching or near the seals

Do not disturb or harass any marine mammals

Swimmers to remain behind their guide and with the group

Do not attempt to touch any marine mammal

Do not swim directly at a seal or try to cut off or alter its path or encircle them in any way

Do not feed the seals

Do not throw anything in to the water

Do not climb on the rocks unless in case of an emergency

Do not approach closer than 20m of the shore or rocks unless in case of an emergency.

If conducting scuba safety stop on the rock surface, immediately swim away from the rocks not making any noise

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## E. Educational material

Promoting the Rahui in Deep Water Cove along with seal swim experience for school groups.  
Seal Fact Sheet

## **SCHEDULE 5**

### **PART 3 OF THE REGULATIONS**

#### **Part 3**

#### **Behaviour around marine mammals**

##### **Section 17: Application of this Part**

Nothing in regulation 18 or regulation 19 or regulation 20 of these regulations shall apply to persons, vessels, aircraft, or vehicles rendering assistance to stranded or injured marine mammals.

##### **Section 18: Conditions governing commercial operations and behaviour of all persons around any marine mammal**

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 operation at an altitude of less than 600 metres (2000 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) of this regulation, 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 19: Special conditions applying to whales**

In addition to complying with the provisions set out in regulation 18 of these regulations, every commercial operation and every person coming into contact with whales shall also comply with the following conditions:

(a) No person in the water shall be less than 100 metres from a whale, unless authorised by the Director-General:

(b) No vessel shall approach within 50 metres of a whale, unless authorised by the Director-General:

(c) If a whale approaches a vessel, the master of the vessel shall, wherever practicable,—

- (i) Manoeuvre the vessel so as to keep out of the path of the whale; and
- (ii) Maintain a minimum distance of 50 metres from the whale:

(d) No vessel or aircraft shall approach within 300 metres (1000 feet) of any whale for the purpose of enabling passengers to watch the whale, if the number of vessels or aircraft, or both, already positioned to enable passengers to watch that whale is 3 or more:

(e) Where 2 or more vessels or aircraft approach an unaccompanied whale, the masters concerned shall co-ordinate their approach and manoeuvres, and the pilots concerned shall co-ordinate their approach and manoeuvres:

(f) No person or vessel shall approach within 200 metres of any female baleen or sperm whale that is accompanied by a calf or calves:

(g) A vessel shall approach a whale from a direction that is parallel to the whale and slightly to the rear of the whale:

(h) No person shall make any loud or disturbing noise near whales:

(i) Where a sperm whale abruptly changes its orientation or starts to make short dives of between 1 and 5 minutes duration without showing its tail flukes, all persons, vessels, and aircraft shall forthwith abandon contact with the whale.

#### **Section 20: Special conditions applying to dolphins or seals**

In addition to complying with the conditions set out in regulation 18 of these regulations, any commercial operation and any person coming into contact with dolphins or seals shall also comply with the following conditions:

(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) of this regulation, no person shall make any loud or disturbing noise near dolphins or seals:

(e) No vessel or aircraft shall approach within 300 metres (1000 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.

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**Permission Holder:**  
 Northland Dive Limited  
**Permission Number:** 36415-MAR  
**Location ID:** 62563

 Permitted Operational Area



This map is to inform and may be unsuitable for other purposes e.g. engineering, surveying, navigation.


**Department of Conservation**  
 Te Papa Atawhai

**New Zealand Government**  
 Te Kāwanatanga o Aotearoa