Authorised Version No. 001

Wildlife (Marine Mammals) Regulations 2019

S.R. No. 109/2019

Authorised Version as at
23 November 2019

TABLE OF PROVISIONS

Regulation		*Page*
Part 1—Preliminary		**1**
Division 1—General		**1**
1	Objectives	1
2	Authorising provisions	1
3	Commencement	1
4	Revocation	2
5	Definitions	2
Division 2—Application of Regulations		**6**
6	Exemptions	6
Part 2—Minimum distances from marine mammals		**7**
Division 1—Minimum distances for whales		**7**
7	Prescribed minimum distance from whales for regulated aircraft	7
8	Prescribed minimum distance from whales for prohibited vessels	7
9	Prescribed minimum distances from non-dolphin whales and dolphins for allowable vessels	8
10	Prescribed minimum distances from non-dolphin whales and dolphins for swimming	8
11	Prescribed minimum distance for a stranded or entangled whale	9
Division 2—Minimum distances for seals		**10**
12	Minimum distances from seals for prohibited vessels	10
13	Minimum distances from seals for allowable vessels	10
14	Minimum distances from seals for persons	11
15	Exceptions to offences	12

Part 3—Protected areas **14**

16 Whale sanctuary zones 14
17 Seal breeding colonies 14
18 Offence to enter or approach a seal breeding colony 15
19 Offence to enter Logan's Beach Exclusion Zone 17

Part 4—General restrictions on activities relating to marine mammals **18**

20 Restrictions on operation of regulated aircraft in the vicinity of marine mammals 18
21 Restrictions on operation of vessels in the vicinity of marine mammals 19
22 Entering the water in the vicinity of whales 22
23 Feeding marine mammals 23
24 Touching marine mammals 23
25 Noise in the vicinity of marine mammals 24
26 Dogs in the vicinity of marine mammals 25

Part 5—Conditions of permits **26**

27 Prescribed conditions of whale watching tour permits (aircraft) 26
28 Prescribed conditions of whale watching tour permits (tour vessel) and whale swim tour permits 27
29 Additional prescribed conditions of whale swim tour permits 30
30 Offence to conduct seal tour—prescribed person 33
31 Prescribed conditions of seal tour permits 33

Part 6—Fees and record keeping **36**

32 Prescribed fees for tour permits 36
33 Monthly returns 37
34 Electronic recording of information 39

Schedule 1—Logan's Beach Exclusion Zone **41**

Endnotes **42**

1 General information 42
2 Table of Amendments 44
3 Amendments Not in Operation 45
4 Explanatory details 46

Authorised Version No. 001

Wildlife (Marine Mammals) Regulations 2019

S.R. No. 109/2019

Authorised Version as at
23 November 2019

Part 1—Preliminary

Division 1—General

1 Objectives

The objectives of these Regulations are—

(a) to provide for the long-term protection of marine mammals by—

(i) prescribing minimum approach distances for whales and seals; and

(ii) prohibiting or regulating activities in the vicinity of whales and seals; and

(iii) prescribing conditions for whale watching tour permits, whale swim tour permits and seal tour permits; and

(b) to prescribe the fees payable for the issue of whale watching tour permits, whale swim tour permits and seal tour permits.

2 Authorising provisions

These Regulations are made under sections 85A and 87 of the **Wildlife Act 1975**.

3 Commencement

These Regulations come into operation on 23 November 2019.

4 Revocation

The Wildlife (Marine Mammals) Regulations 2009[1] are **revoked**.

5 Definitions

In these Regulations—

allowable vessel means a vessel that is not a prohibited vessel;

calf means—

(a) a whale that is not more than half the average length of an adult female whale of the same species; or

(b) a whale with visible foetal folds; or

(c) a whale with a floppy dorsal fin;

caution zone, for a marine mammal, means an area around the mammal with a radius of the following—

(a) for a dolphin, 150 metres;

(b) for a non-dolphin whale, 300 metres;

(c) for a seal, 50 metres;

dolphin means any wildlife that is a member of the family Delphinidae of the sub-order Odontoceti of the Order Cetacea, excluding Orcinus orca and members of the sub-family Globicephalinae (small toothed whales);

Note

The meaning of whale under the Act includes a dolphin so any reference to whale in these Regulations includes a dolphin.

haul out means any site or structure on which 5 or more seals are consistently present to rest or socialise that is not—

(a) a seal breeding colony; or

(b) water infrastructure;

Logan's Beach Exclusion Zone means the area shown hatched on the plan in Schedule 1;

marine mammal means a whale or a seal;

mermaid line means a line with floats attached that is connected to a tour vessel;

narrow waterway means any part of a waterway that is less than 300 metres in width;

Examples

Narrow waterways include—

(a) rivers and river mouths; and

(b) confined bays and inlets; and

(c) navigation channels in shallow waterways—

that are less than 300 metres in width.

non-dolphin whale means a whale that is not a dolphin;

operate, in relation to a vessel, includes—

(a) determining or exercising control over the course or direction of a vessel or over the means of propulsion of a vessel (whether or not the vessel is underway); and

(b) piloting a vessel;

permit holder's website means, in relation to a whale watching tour permit, a whale swim tour permit or a seal tour permit, a website operated or controlled by the permit holder that contains information about the business operated by the permit holder under the permit;

POCTA inspector has the same meaning as in the **Prevention of Cruelty to Animals Act 1986**;

port manager has the same meaning as in the **Port Management Act 1995**;

prohibited vessel means a vessel that is a personal motorised water craft, a parasail, a hovercraft, a wing-in-ground effect craft, a tethered underwater mobile device or a motorised diving aid, and includes a remotely-operated water craft;

Examples

Jet skis, motorised underwater scooters and remote-controlled speed boats.

regulated aircraft means an aircraft or a remotely piloted device;

Note

Under the Act the definition of ***aircraft*** is limited to any machine or equipment designed to be flown by a person.

remotely piloted device means any machine or equipment capable of flying that is not under the direct physical control of a person when being flown;

seal breeding colony means an area determined by the Secretary under regulation 17(1);

seal pup means a seal that is not more than half the average length of an adult female of the same species;

Surf Life Saving Victoria means Surf Life Saving Victoria ACN 004 704 652;

swimming includes snorkelling, diving and the use of surfboards and small personal buoyant devices less than 2 metres in length that are not vessels;

the Act means the **Wildlife Act 1975**;

tour operator exclusion zone means an area specified under regulation 17(2)(b);

tour supervisor means a person appointed by the holder of a whale watching tour permit, a whale swim tour permit or a seal tour permit to supervise persons participating in a tour conducted under the permit;

tour vessel, in relation to a whale watching tour permit, a whale swim tour permit or a seal tour permit, means the vessel specified in the permit;

Victoria Police has the same meaning as in the **Victoria Police Act 2013**;

Victorian Fisheries Authority has the same meaning as ***Authority*** has in the **Victorian Fisheries Authority Act 2016**;

water infrastructure means a structure—

(a) any part of which is connected or attached to land above the low water mark; and

(b) which is designed for or used by persons, vessels or other vehicles to access or enter the water;

Examples

Boat ramp, jetty, platform and pier.

whale sanctuary zone means an area determined by the Secretary under regulation 16(1);

whale swim means any part of a whale swim tour that involves persons being in water to observe or swim with whales.

Note

Distances are to be measured horizontally, unless otherwise specified in these Regulations—see section 43 of the **Interpretation of Legislation Act 1984**.

Division 2—Application of Regulations

6 Exemptions

These Regulations do not apply to—

(a) a zoological park within the meaning of the **Zoological Parks and Gardens Act 1995**; or

(b) a person acting in accordance with a licence or authorisation issued under the Act at a premises in respect of which the licence or authorisation has been issued.

Part 2—Minimum distances from marine mammals

Division 1—Minimum distances for whales

7 Prescribed minimum distance from whales for regulated aircraft

(1) For the purposes of section 77A(1) of the Act, the prescribed minimum distance for a person operating a regulated aircraft is 500 vertical metres if the person is operating the regulated aircraft within a 500-metre radius of a whale.

(2) The minimum distance specified in subregulation (1) does not apply if the regulated aircraft is being used—

(a) to search for or rescue persons under the authority of Victoria Police; or

(b) to patrol for sharks under the authority of Surf Life Saving Victoria; or

(c) by a person acting in accordance with a permit or authorisation granted or issued under the Act; or

(d) by a person attending an emergency within the meaning of the **Emergency Management Act 2013**.

8 Prescribed minimum distance from whales for prohibited vessels

For the purposes of section 77A(1) of the Act, the prescribed minimum distance from a whale for a person operating a prohibited vessel is 300 metres.

9 Prescribed minimum distances from non-dolphin whales and dolphins for allowable vessels

(1) Subject to regulation 11, for the purposes of section 77A(1) of the Act, the prescribed minimum distance from a non-dolphin whale for a person operating an allowable vessel is—

(a) 200 metres; or

(b) 100 metres, if in a narrow waterway.

(2) Subject to regulation 11, for the purposes of section 77A(1) of the Act, the prescribed minimum distance from a dolphin for a person operating an allowable vessel is—

(a) 100 metres, if outside a whale sanctuary zone; or

(b) 200 metres, if inside a whale sanctuary zone; or

(c) 30 metres, if in a narrow waterway.

10 Prescribed minimum distances from non-dolphin whales and dolphins for swimming

(1) Subject to regulation 11, for the purposes of section 77A(1) of the Act, the prescribed minimum distance from a non-dolphin whale for a person who is swimming is—

(a) 50 metres; or

(b) 30 metres, if in a narrow waterway.

(2) Subject to regulation 11, for the purposes of section 77A(1) of the Act, the prescribed minimum distance from a dolphin for a person who is swimming is 30 metres.

11 Prescribed minimum distance for a stranded or entangled whale

For the purposes of section 77A(1) of the Act, for any person the prescribed minimum distance from a whale that is stranded or entangled is 300 metres, unless—

(a) the person is acting in accordance with a commercial fishery licence within the meaning of the Fisheries Regulations 2009[2] and is tending to commercial fishing equipment within the meaning of the **Fisheries Act 1995**; or

(b) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

(c) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(d) the person is a POCTA inspector acting in the course of the inspector's duties or a person acting under the direction of a POCTA inspector; or

(e) the person is within a distance that is less than 300 metres because it was necessary to do so in order to comply with an Act or regulations relating to navigation; or

(f) the person has been engaged by a port manager to undertake work to review or maintain the integrity of navigational aids under the control and management of the port manager; or

(g) the person is undertaking research, study or investigation pursuant to section 20 of the **National Parks Act 1975**.

Notes

1 For the penalty for approaching a whale at a distance that is less than the prescribed minimum distance, see section 77A(1) of the Act.

2 Different minimum approach distances apply to permit holders acting in accordance with a permit granted under Division 2 of Part X of the Act. See Part 5 of these Regulations.

Division 2—Minimum distances for seals

12 Minimum distances from seals for prohibited vessels

A person operating a prohibited vessel must not allow that vessel to approach within 50 metres of a seal, if the seal is on land or a haul out.

Penalty: 20 penalty units.

13 Minimum distances from seals for allowable vessels

(1) A person operating an allowable vessel must not allow that vessel to approach within—

(a) 10 metres of a seal—

(i) if the seal is on a haul out; and

(ii) the person operating the vessel is the holder of a tour operator licence granted under the **National Parks Act 1975**; or

(b) 30 metres of a seal—

(i) if the seal is on a haul out; or

(ii) if the seal is on land; or

(c) 5 metres, if the seal is on water infrastructure.

Penalty: 20 penalty units.

(2) A person does not commit an offence against subregulation (1) merely because the person is within a distance that is less than the approach distance specified in subregulation (1)(a) or (b) (as the case requires) because it was necessary to—

(a) avoid damage or prevent further damage to person or property; or

(b) pass through the entrance to the structure known as Pope's Eye within the Port Phillip Heads Marine National Park located at 38.277°S 144.699°E.

14 Minimum distances from seals for persons

(1) A person must not approach within—

(a) 5 metres of a seal, if the seal is on water infrastructure or on a haul out; or

(b) 30 metres of a seal, if the seal is on land.

Penalty: 20 penalty units.

(2) A person does not commit an offence against subregulation (1) merely because the person is within a distance that is less than the approach distance specified in subregulation (1)(a) or (b) (as the case requires) because it was necessary to—

(a) pass a seal on land; or

(b) pass a seal on water infrastructure; or

(c) avoid damage or prevent further damage to person or property; or

(d) enable the person to launch or retrieve a vessel.

15 Exceptions to offences

A person does not commit an offence against regulation 12, 13(1) or 14(1) merely because—

(a) the person is—

(i) acting in accordance with a commercial fishery licence within the meaning of the Fisheries Regulations 2009; and

(ii) tending to commercial fishing equipment within the meaning of the **Fisheries Act 1995**; or

(b) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

(c) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(d) the person is a POCTA inspector acting in the course of the inspector's duties or a person acting under the direction of a POCTA inspector; or

(e) the person is within a distance that is less than the distance specified in regulation 12, 13(1) or 14(1) (as the case requires) because it was necessary to do so in order to comply with an Act or regulations relating to navigation; or

(f) the person has been engaged by a port manager within the meaning of the **Port Management Act 1995** to undertake work to review or maintain the integrity of navigational aids under the control and management of the port manager; or

(g) the person is undertaking research, study or investigation pursuant to section 20 of the **National Parks Act 1975**.

Note

Different minimum approach distances apply to permit holders acting in accordance with a permit granted under Part XA of the Act. See Part 5 of these Regulations.

Part 3—Protected areas

16 Whale sanctuary zones

(1) The Secretary, by determination published in the Government Gazette, may declare any area of water in which there is a need to protect whales as a whale sanctuary zone.

(2) A determination under subregulation (1) must specify—

(a) the type of whale to which the whale sanctuary zone applies; and

(b) the area or limits of the whale sanctuary zone.

(3) A determination under subregulation (1) may specify any area of the whale sanctuary zone by reference to any of the following—

(a) a map contained in the determination;

(b) a description of the area containing geographical coordinates;

(c) a plan lodged in the Central Plan Office.

17 Seal breeding colonies

(1) The Secretary, by determination published in the Government Gazette, may declare any area of land or of land and water in which seals breed as a seal breeding colony.

(2) A determination under subregulation (1) must specify—

(a) the area or limits of the seal breeding colony; and

(b) an area within the seal breeding colony that tour vessels are prohibited from entering.

(3) The Secretary must not make a determination under subregulation (1) unless the Secretary is satisfied that seals are breeding in, or are likely to breed in, the area or the limits of the seal breeding colony.

(4) A determination under subregulation (1) may specify any area referred to in subregulation (2) by reference to any of the following—

(a) a map contained in the determination;

(b) a description of the area containing geographical coordinates;

(c) a plan lodged in the Central Plan Office.

18 Offence to enter or approach a seal breeding colony

(1) A person must not enter a seal breeding colony.

Penalty: 20 penalty units.

(2) A person does not commit an offence against subregulation (1) merely because the person enters a seal breeding colony because it was necessary to do so in order to comply with an Act or regulations relating to navigation.

(3) Subregulation (1) does not apply to a person who is acting in accordance with a permit granted under section 85C of the Act.

(4) A person operating a regulated aircraft must not fly lower than 300 vertical metres within a 300-metre radius of a seal breeding colony.

Penalty: 20 penalty units.

(5) A person operating a prohibited vessel must not allow that vessel to approach within 200 metres of a seal breeding colony.

Penalty: 20 penalty units.

(6) A person does not commit an offence against subregulation (1), (4) or (5) merely because—

(a) the person is—

(i) acting in accordance with a commercial fishery licence within the meaning of the Fisheries Regulations 2009; and

(ii) tending to commercial fishing equipment within the meaning of the **Fisheries Act 1995**; or

(b) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

(c) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(d) the person is a POCTA inspector acting in the course of the inspector's duties or a person acting under the direction of a POCTA inspector; or

(e) the person has been engaged by a port manager to undertake work to review or maintain the integrity of navigational aids under the control and management of the port manager; or

(f) the person is undertaking research, study or investigation pursuant to section 20 of the **National Parks Act 1975**.

Note

Different minimum approach distances apply to permit holders acting in accordance with a permit granted under Part XA of the Act. See Part 5 of these Regulations.

19 Offence to enter Logan's Beach Exclusion Zone

(1) A person operating a vessel must ensure that the vessel does not enter or remain in the Logan's Beach Exclusion Zone at any time from 1 June to 31 October in any year.

Penalty: 20 penalty units.

(2) A person does not commit an offence against subregulation (1) if—

(a) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(b) the person is an employee of the Department or the Victorian Fisheries Authority acting in the course of the employee's duties; or

(c) the person has been granted a permit under section 78(1)(c), (d) or (e) of the Act.

(3) The Minister, by instrument published in the Government Gazette, may declare that subregulation (1) does not apply during any part of the time period during which subregulation (1) otherwise applies.

Part 4—General restrictions on activities relating to marine mammals

20 Restrictions on operation of regulated aircraft in the vicinity of marine mammals

(1) A person who is operating a regulated aircraft must not approach a marine mammal from head on.

Penalty: 20 penalty units.

(2) A person who is operating a regulated aircraft must not fly directly over or pass the shadow of the aircraft directly over a marine mammal.

Penalty: 20 penalty units.

(3) A person who is operating a regulated aircraft must not land on water or taxi on water within the caution zone of a marine mammal.

Penalty: 20 penalty units.

(4) A person operating a regulated aircraft capable of hovering must not cause or permit that aircraft to hover if the person is operating the regulated aircraft within a 500-metre radius of a marine mammal.

Penalty: 20 penalty units.

(5) A person does not commit an offence under subregulation (1), (2), (3) or (4) if the regulated aircraft is being used—

(a) to search for or rescue persons under the authority of Victoria Police; or

(b) to patrol for sharks under the authority of Surf Life Saving Victoria; or

(c) by a person acting in accordance with a permit or authorisation granted or issued under the Act; or

(d) by a person attending an emergency within the meaning of the **Emergency Management Act 2013**.

(6) A person does not commit an offence against subregulation (1), (2), (3) or (4) merely because it is necessary to operate the regulated aircraft in order to—

(a) avoid damage or prevent further damage to person or property; or

(b) allow the regulated aircraft to take off or land; or

(c) comply with an Act or regulations relating to the operation of the regulated aircraft.

21 Restrictions on operation of vessels in the vicinity of marine mammals

(1) A person operating a vessel within the caution zone of a marine mammal must not cause or permit that vessel to—

(a) approach the marine mammal from head on at an angle less than 30 degrees to its observed direction of travel; or

(b) approach the marine mammal from the rear at an angle less than 30 degrees to its observed direction of travel; or

(c) be in the path ahead of the marine mammal at an angle less than 30 degrees to its observed direction of travel.

Penalty: 20 penalty units.

(2) A person operating a vessel within the caution zone of a marine mammal must not cause or permit that vessel to separate any individual marine mammal from a group of marine mammals.

Penalty: 20 penalty units.

(3) A person operating a vessel within the caution zone of a marine mammal must not cause or permit that vessel to come between a mother whale and calf or a mother seal and seal pup.

Penalty: 20 penalty units.

(4) A person operating a vessel within the caution zone of a marine mammal must not cause or permit that vessel to pursue a marine mammal, unless the person is acting in accordance with a permit granted under section 83A or 83D of the Act.

Penalty: 20 penalty units.

(5) A person operating a vessel within the caution zone of a marine mammal must move the vessel at a constant speed that does not exceed 5 knots.

Penalty: 20 penalty units.

(6) A person operating a vessel within the caution zone of a marine mammal must avoid sudden changes in speed or direction.

Penalty: 20 penalty units.

(7) A person operating a vessel within the caution zone of a marine mammal must manoeuvre the vessel to outside the caution zone if the marine mammal shows any sign of disturbance.

Penalty: 20 penalty units.

Examples

The following are signs of disturbance—

(a) for a whale—

(i) attempts to leave the area or vessel; and

(ii) sudden changes in surface behaviour; and

(iii) rapid changes in direction or speed of swimming; and

(iv) deep dives away from the vessel; and

(v) changes in breathing patterns; and

(vi) increased time spent under water compared to time spent at the surface; and

(vii) changes in acoustic behaviour; and

(viii) the onset of aggressive behaviours such as tail slaps or trumpet blows;

(b) for a seal—

(i) rapid movement toward or into the water if on land; and

(ii) sudden awakening from sleep on land; and

(iii) female attempting to shield a seal pup with her body or by her movements; and

(iv) vocalisation or growling in the direction of a vessel or person; and

(v) baring teeth in the direction of a vessel or person; and

(vi) blowing bubbles from the mouth, if in the water, in the direction of a vessel or person.

(8) A person operating a vessel within the caution zone of a marine mammal must manoeuvre the vessel to outside the caution zone if a calf is detected.

Penalty: 20 penalty units.

(9) A person operating a vessel must not enter a caution zone of a whale if more than 2 vessels are already within that caution zone, unless it is necessary to ensure safe passage through a narrow waterway.

Penalty: 20 penalty units.

(10) A person operating a vessel must not be within 100 metres of a tour vessel conducting a whale swim.

Penalty: 20 penalty units.

(11) A person operating a vessel in a narrow waterway must not remain within the caution zone of a marine mammal for longer than is necessary to ensure safe passage of the vessel through that waterway.

Penalty: 20 penalty units.

(12) A person does not commit an offence against subregulation (1), (2), (3), (4), (5), (6), (7), (8) or (10) merely because it is necessary to operate the vessel in order to—

(a) avoid damage or prevent further damage to person or property; or

(b) comply with an Act or regulations relating to navigation.

(13) In this regulation—

pursue, in relation to a marine mammal, means to alter speed or course to remain with the marine mammal.

22 Entering the water in the vicinity of whales

(1) A person must not enter the water within 50 metres of a non-dolphin whale.

Penalty: 20 penalty units.

(2) A person must not enter the water within 30 metres of a dolphin.

Penalty: 20 penalty units.

(3) A person does not commit an offence against subregulation (1) or (2) if—

(a) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(b) the person is acting in accordance with a permit or authorisation granted or issued under the Act.

23 Feeding marine mammals

(1) A person must not feed a marine mammal.

Penalty: 20 penalty units.

(2) A person must not attempt to feed a marine mammal.

Penalty: 20 penalty units.

(3) A person must not dispose of food or waste within the caution zone of a marine mammal.

Penalty: 20 penalty units.

(4) A person does not commit an offence against subregulation (1), (2) or (3) if—

(a) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(b) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

(c) the person is undertaking licensed commercial fishing operations and is routinely returning bycatch, if that person takes reasonable efforts to avoid doing so near a marine mammal.

24 Touching marine mammals

(1) A person must not touch a marine mammal.

Penalty: 20 penalty units.

(2) A person must not attempt to touch a marine mammal.

Penalty: 20 penalty units.

(3) A person does not commit an offence against subregulation (1) or (2) if—

(a) the person is a registered veterinary practitioner within the meaning of the **Veterinary Practice Act 1997** or a person acting under the direction of a registered veterinary practitioner; or

(b) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

(c) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer; or

(d) the person is a POCTA inspector acting in the course of the inspector's duties or a person acting under the direction of a POCTA inspector.

25 Noise in the vicinity of marine mammals

(1) A person within the caution zone of a marine mammal must not make or cause to be made any loud or sudden noise.

Penalty: 20 penalty units.

(2) A person within the caution zone of a marine mammal must not play back or cause to be played back an underwater sound or a recording of any kind.

Penalty: 20 penalty units.

(3) A person does not commit an offence against subregulation (1) or (2) if—

(a) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

(b) the person is an authorised officer acting in the course of the officer's duties or a person acting under the direction of an authorised officer.

26 Dogs in the vicinity of marine mammals

(1) A person who is in charge of a dog must not allow that dog to be within the caution zone of a seal.

Penalty: 20 penalty units.

(2) A person who is in charge of a dog must not allow that dog to enter the water within the caution zone of a whale.

Penalty: 20 penalty units.

(3) A person who is in charge of a dog must not allow that dog to be within 300 metres of a stranded whale.

Penalty: 20 penalty units.

(4) A person does not commit an offence against subregulation (1) if—

(a) it is necessary to allow the dog to be within the caution zone of a seal to enable the person to pass the seal; and

(b) the dog is on a leash; and

(c) the dog is not within 10 metres of the seal.

(5) A person does not commit an offence against subregulation (1) if the dog is on a vessel.

(6) A person does not commit an offence against subregulation (3) if—

(a) it is necessary to allow the dog to be within 300 metres of a whale to enable the person to pass the whale; and

(b) the dog is on a leash; and

(c) the dog is not within 50 metres of the whale.

Part 5—Conditions of permits

27 Prescribed conditions of whale watching tour permits (aircraft)

For the purposes of section 83H of the Act, the following are prescribed conditions for a whale watching tour permit that specifies that the holder may conduct tours from an aircraft—

(a) the permit holder must, for each tour conducted, provide each person on the tour, who is not an employee of the permit holder, with clear and accurate information on the biology and conservation status of and threats facing each species of marine mammal encountered on the tour;

Examples

Information on the biology of marine mammals includes information on their morphology, behaviour, distribution and reproductive cycle.

(b) the permit holder must ensure that signs are clearly posted on the aircraft in places where all persons on the aircraft are reasonably likely to see them, advising of the requirements of these Regulations;

(c) the permit holder must take reasonable steps to ensure that no person on the aircraft breaches these Regulations;

(d) the permit holder must ensure that the aircraft does not fly lower than 300 vertical metres within a 300-metre radius of a whale;

(e) if operating a helicopter or gyrocopter, the permit holder must ensure that the aircraft does not hover within a 300-metre radius of a whale.

28 Prescribed conditions of whale watching tour permits (tour vessel) and whale swim tour permits

(1) For the purposes of section 83H of the Act, the following are prescribed conditions for a whale watching tour permit that specifies that the holder may conduct tours from a tour vessel and for a whale swim tour permit—

(a) the permit holder must ensure that the requirements of these Regulations and the conditions of the permit are displayed on the permit holder's website;

(b) the permit holder must ensure that customers are advised of the requirements of these Regulations and the conditions of the permit prior to their tour;

(c) the permit holder must, for each tour conducted, provide each person on the tour, who is not an employee of the permit holder, with clear and accurate information on the biology and conservation status of and threats facing each species of marine mammal encountered on the tour;

Examples

Information on the biology of marine mammals includes information on their morphology, behaviour, distribution and reproductive cycle.

(d) the permit holder must ensure that signs are clearly posted on the tour vessel in places where all persons on the tour vessel are reasonably likely to see them, advising of the requirements of these Regulations and the conditions of the permit;

(e) the permit holder must ensure that before the tour vessel enters the caution zone of a whale, all persons on the tour vessel are verbally advised of the conditions of the permit and the requirements of these Regulations;

(f) the permit holder must ensure that all persons on the tour vessel, other than an employee of the permit holder, are under the direct supervision of a tour supervisor at all times;

(g) the permit holder must take reasonable steps to ensure that no person on the tour vessel breaches these Regulations;

(h) the permit holder must ensure that no motorised diving or swimming aid is used or allowed to be used within the caution zone of a whale from the tour vessel;

(i) the permit holder must ensure that no prohibited vessel is used or allowed to be used within 300 metres of a whale from the tour vessel;

(j) unless a greater distance is specified in the permit—

(i) the permit holder must ensure that the tour vessel does not approach within 50 metres of a dolphin or 100 metres of a non-dolphin whale, except when the tour vessel is in a narrow waterway; and

(ii) the permit holder must ensure that when the tour vessel is in a narrow waterway, the tour vessel does not approach within 25 metres of a whale; and

(iii) the permit holder must ensure that when the tour vessel is in a whale sanctuary zone, the tour vessel does not approach within 200 metres of a whale;

Note

While section 77A of the Act provides that the prescribed minimum approach distances in Division 1 of Part 2 of these Regulations do not apply to the holder of a whale watching tour permit or a whale swim tour permit, the approach distances for seals specified in Division 2 of Part 2 of these Regulations apply to the holders of these permits.

(k) the permit holder must ensure that when the tour vessel is within the caution zone of a whale, the tour vessel is not within 100 metres of another tour vessel;

(l) the permit holder must ensure that if a calf is detected, the tour vessel immediately withdraws to a distance from the calf that is at least—

(i) 100 metres for a dolphin; or

(ii) 200 metres for a non-dolphin whale;

(m) the permit holder must ensure that the tour vessel does not remain within the caution zone of any whale for more than a cumulative total of—

(i) 60 minutes each tour; and

(ii) 120 minutes each day.

(2) Subregulation (1)(f) does not apply in an emergency if human lives are threatened.

Note

Additional prescribed conditions for whale swim tour permits are set out in regulation 29.

29 Additional prescribed conditions of whale swim tour permits

(1) In addition to the conditions set out in regulation 28, for the purposes of section 83H of the Act, the following are prescribed conditions for a whale swim tour permit—

(a) the permit holder must not conduct a whale swim within a whale sanctuary zone;

(b) the permit holder must ensure that the tour vessel does not approach within 100 metres of a whale more than—

(i) 5 times each whale swim tour; and

(ii) 10 times each day;

(c) the permit holder must not conduct a whale swim if a calf is present;

(d) the permit holder must not conduct a whale swim if signs of mating are detected;

Examples

The following are signs of mating—

(a) jaw clicks;

(b) fin or tail slaps;

(c) visible penises;

(d) aggressive behaviour such as repeated tail slaps;

(e) belly to belly contact;

(f) female swimming upside down and pursued by males;

(g) flanking behaviour observed, being 3 or more dolphins in close contact side-by-side exhibiting increased surface activity.

(e) the permit holder must conduct no more than one whale swim for each approach within the caution zone of a whale;

(f) the permit holder must ensure that a mermaid line is placed in the water before any person enters the water from the tour vessel;

(g) the permit holder must ensure that each person who takes part in a whale swim tour from the tour vessel, who is not the permit holder or an employee of the permit holder, holds onto the mermaid line at all times while each person is in the water;

(h) while in the water for any purpose—

(i) the permit holder must remain within 10 metres of the mermaid line; and

(ii) the permit holder must not approach a whale from head on or from directly behind; and

(iii) the permit holder must not approach a whale from above or from underneath;

(i) the permit holder must ensure that an employee of the permit holder, while in the water for any purpose—

(i) remains within 10 metres of the mermaid line; and

(ii) does not approach a whale from head on or from directly behind; and

(iii) does not approach a whale from above or from underneath;

(j) the permit holder must ensure that the tour vessel is not repositioned during a whale swim;

(k) the permit holder must ensure that the tour vessel is in a neutral gear at all times during a whale swim except where it is necessary to avoid damage or prevent further damage to person or property;

(l) the permit holder must not tow swimmers during a whale swim;

(m) at a distance of less than 30 metres from a whale, the permit holder must not enter the water from the tour vessel;

(n) at a distance of less than 30 metres from a whale, the permit holder must ensure that no person enters the water from the tour vessel;

(o) the permit holder must ensure that no more than 10 persons, not including the permit holder or an employee of the permit holder, participate in a whale swim at any one time;

(p) the permit holder must not attempt to attract or herd a whale towards the tour vessel or a person;

(q) the permit holder must ensure than an employee of the permit holder does not attempt to attract or herd a whale towards the vessel or a person;

(r) the permit holder must ensure that if a whale swim has commenced and a calf is detected—

(i) all persons involved in the whale swim immediately reboard the tour vessel; and

(ii) the tour vessel remains in neutral gear until the calf is at least—

(A) 100 metres from the vessel for a dolphin calf; or

(B) 200 metres from the vessel for a non-dolphin whale calf;

(s) the permit holder must ensure that if a whale swim has commenced and signs of mating are detected—

(i) all persons involved in the whale swim immediately reboard the tour vessel; and

(ii) the tour vessel remains in neutral gear until the mating activity is at least—

(A) 100 metres from the vessel for a dolphin; or

(B) 200 metres from the vessel for a non-dolphin whale;

(t) the permit holder must ensure that a person who participates in a whale swim from the tour vessel does not use underwater breathing equipment other than a snorkel while the person is in the water;

(u) the permit holder must ensure that at the end of a whale swim, the mermaid line is retrieved immediately and the tour vessel withdraws outside the caution zone of the whale.

(2) Subregulation (1)(j), (k) and (l) do not apply in an emergency if human lives are threatened.

30 Offence to conduct seal tour—prescribed person

For the purposes of section 85B(2) of the Act, a person who conducts a seal tour outside a seal breeding colony is a prescribed person in the prescribed circumstances.

31 Prescribed conditions of seal tour permits

For the purposes of section 85H of the Act, the following are prescribed conditions for a seal tour permit—

(a) the permit holder must ensure that the requirements of these Regulations and the conditions of the permit are displayed on the permit holder's website;

(b) the permit holder must ensure that customers are advised of the requirements of these Regulations and the conditions of the permit prior to their tour;

(c) for each tour conducted, the permit holder must provide all persons on the tour, other than an employee of the permit holder, with clear and accurate information on the biology and conservation status of and threats facing each species of marine mammal encountered on the tour;

Examples

Information on the biology of marine mammals includes information on their morphology, behaviour, distribution and reproductive cycle.

(d) the permit holder must ensure that signs are clearly posted on the tour vessel in places where all persons on the tour vessel are reasonably likely to see them, advising of the requirements of these Regulations and the conditions of the permit;

(e) the permit holder must ensure that before the tour vessel approaches a seal breeding colony, all persons on the tour vessel are verbally advised of the requirements of these Regulations;

(f) the permit holder must ensure that all persons on the tour vessel, other than an employee of the permit holder, are under the direct supervision of a tour supervisor at all times during a seal tour;

(g) the permit holder must take reasonable steps to ensure that no person on the tour vessel breaches these Regulations;

(h) at a seal breeding colony, the permit holder must ensure that the tour vessel does not enter the tour operator exclusion zone;

(i) outside of a seal breeding colony, the permit holder must ensure that the tour vessel does not approach a seal within a distance of 10 metres, if the seal is on land;

(j) the permit holder must ensure that the tour vessel moves at a constant speed not exceeding 5 knots within a seal breeding colony;

(k) the permit holder must ensure that the tour vessel does not make sudden changes in speed or direction within a seal breeding colony;

(l) the permit holder must ensure that no prohibited vessel launched from the tour vessel is used or allowed to be used within a seal breeding colony;

(m) the permit holder must ensure that if a seal shows any signs of disturbance, the tour vessel is immediately moved outside the seal breeding colony;

Note

Examples of signs of disturbance are set out at the foot of regulation 21(7).

(n) the permit holder must ensure that when a seal is in a cave, no vessel operated by the permit holder, or any person on the tour, enters the cave;

(o) the permit holder must ensure that the tour vessel does not come between a mother seal and a seal pup.

Part 6—Fees and record keeping

32 Prescribed fees for tour permits

(1) For the purposes of section 83GE of the Act, the prescribed fee for a whale watching tour permit that specifies that the holder may conduct tours from an aircraft is 26 fee units for each year of the period for which the permit is granted.

(2) For the purposes of section 83GE of the Act, the prescribed fee for a whale watching tour permit that specifies that the holder may conduct tours from a tour vessel is 26 fee units for each year of the period for which the permit is granted.

(3) For the purposes of section 83GE of the Act, the prescribed fee for a whale swim tour permit is 121 fee units for each year of the period for which the permit is granted.

(4) For the purposes of section 85E of the Act, the prescribed fee for a seal tour permit is 26 fee units for each year of the period for which the permit is granted.

(5) If a permit referred to in subregulation (1), (2), (3) or (4) is issued for less than 12 months, the prescribed fee is the fee prescribed in the subregulation divided by 12 and multiplied by the number of months the permit will remain valid.

(6) If a permit referred to in subregulation (1), (2), (3) or (4) is issued for more than 12 months, but less than 18 months, the prescribed fee is the number of fee units prescribed for one year for a permit in the subregulation divided by 12 and multiplied by the number of months the permit will remain valid.

(7) For the purposes of subregulation (5) or (6), when calculating the number of months the permit will remain valid, a part month should not be included in any calculation.

(8) The prescribed fee for an application for the replacement of a lost or damaged permit referred to in subregulation (1), (2), (3) or (4) is 1 fee unit.

(9) The prescribed fee for an application to vary a permit referred to in subregulation (1), (2), (3) or (4) is 2 fee units.

33 Monthly returns

(1) The holder of a whale watching tour permit, a whale swim tour permit or a seal tour permit must, for each month, keep a monthly return in the form provided by the Secretary.

Penalty: 20 penalty units.

(2) The holder of a whale watching tour permit or whale swim tour permit must ensure that, for each tour conducted, the following information is recorded—

(a) the name of the tour supervisor on the tour;

(b) the number of persons, other than the permit holder and any employee of the permit holder, on the aircraft or vessel during the tour;

(c) the date and time of day the tour commenced and finished;

(d) for a whale watching tour permit that specifies that the holder may conduct tours from an aircraft, the time of day for each instance the aircraft passed over a whale or whales;

(e) for a whale watching tour permit or whale swim tour permit that specifies that the holder may conduct tours from a vessel, the time of day for each instance that the vessel entered and left the caution zone of a whale;

(f) the location of any whales sighted;

(g) the species and number of whales sighted;

(h) any other information required by the Secretary.

(3) In addition to any information required to be recorded under subregulation (2), the holder of a whale swim tour permit must ensure that, for each whale swim tour conducted, the following information is recorded before any person disembarks from the tour vessel—

(a) the number of persons, other than the permit holder and any employee of the permit holder, on the whale swim tour who participated in the whale swim during that tour;

(b) the time of day that the whale swim commenced and finished;

(c) the location of the whale swim;

(d) any other information required by the Secretary.

(4) The holder of a seal tour permit must ensure that, for each tour conducted, the following information is recorded—

(a) the name of the tour supervisor on the tour;

(b) the number of persons, other than the permit holder and any employee of the permit holder, on the vessel during the tour;

(c) the date and time of day the tour commenced and finished;

(d) the time of day for each instance that the vessel entered a seal breeding colony;

(e) the location of seals sighted;

(f) any other information required by the Secretary.

(5) The holder of a permit must ensure that any information required to be recorded under subregulation (2), (3) or (4) is included in the return kept under subregulation (1) for the calendar month in which the relevant tour is conducted.

Penalty: 20 penalty units.

(6) The holder of a permit must ensure that each return kept under subregulation (1) is submitted to the Secretary by the fourteenth day of the month following the calendar month to which the return relates.

Penalty: 20 penalty units.

(7) The holder of a permit must ensure that a return kept under subregulation (1) is made available for inspection by an authorised officer upon request.

(8) The holder of a permit must comply with a request from an authorised officer to inspect a return kept under subregulation (1).

Penalty: 20 penalty units.

34 Electronic recording of information

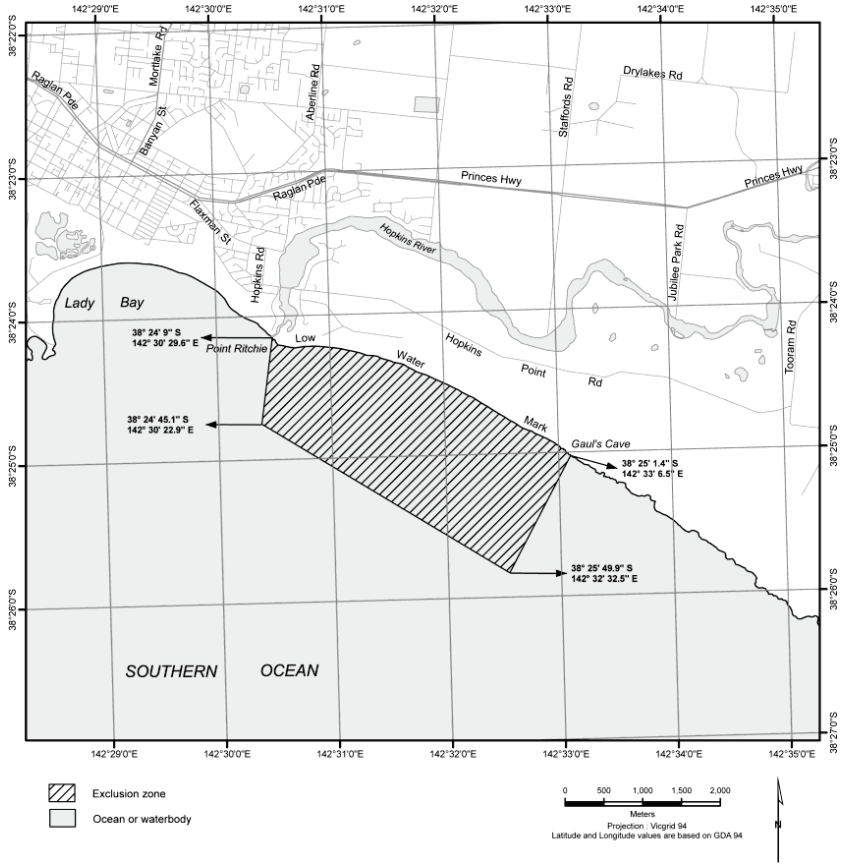
(1) Where these Regulations require a person to record or keep information for any purpose, the Secretary may require the information to be recorded or kept in an electronic form.

(2) Where these Regulations require a person to provide or submit information for any purpose, the relevant body may require the information to be provided or submitted to the Secretary by means of an electronic communication.

(3) Where the Secretary has issued a requirement under this regulation, a reference to an application in regulation 32 or reference to a return in regulation 33 includes a reference to the application or return in that electronic form.

Schedule 1—Logan's Beach Exclusion Zone

Regulations 5, 19(1)



Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Wildlife (Marine Mammals) Regulations 2019, S.R. No. 109/2019 were made on 19 November 2019 by the Governor in Council under sections 85A and 87 of the **Wildlife Act 1975**, No. 8699/1975 and came into operation on 23 November 2019: regulation 3.

The Wildlife (Marine Mammals) Regulations 2019 will sunset 10 years after the day of making on 19 November 2029 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms.
See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before

1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the Wildlife (Marine Mammals) Regulations 2019 by statutory rules, subordinate instruments and Acts.

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

[1] Reg. 4: S.R. No. 143/2009.

[2] Reg. 11(a): S.R. No. 2/2009. Reprint No. 2 as at 1 July 2017. Reprinted to S.R. No. 58/2017. Extended in operation by S.R. No. 112/2018 and subsequently amended by S.R. No. 11/2019.

———

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2019 is $14.81. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2019 is $165.22.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.