

Authorised Version No. 002
Wildlife (Marine Mammals) Regulations
2009

S.R. No. 143/2009

Authorised Version as at
1 May 2013

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PART 1—PRELIMINARY

1 Objectives

The objectives of these Regulations are to—

- (a) provide for the long-term protection of marine mammals by—
 - (i) prohibiting or regulating activities connected with whale and seal watching;
 - (ii) prohibiting or regulating activities in the vicinity of whales and seals;
 - (iii) prescribing conditions for whale watching tour permits, whale swim tour permits and seal tour permits;
 - (iv) prescribing minimum approach distances for whales and seals; and
- (b) 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 commence on 1 December 2009.

4 Exemption

These Regulations do not apply to a zoological park within the meaning of the **Zoological Parks and Gardens Act 1995**, or at premises operating in accordance with a licence or authorisation issued under the Act.

5 Definitions

In these Regulations—

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

calf means a young whale that is less than half the average length of an adult female whale of the same species;

Cape Bridgewater means the area shown hatched on the plan in Schedule 6;

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

- (a) for a dolphin: 150 metres;
- (b) for a whale, other than a dolphin: 300 metres;
- (c) for a seal: 50 metres;

commercial fisher means the holder of a commercial fishery licence within the meaning of the Fisheries Regulations 2009;

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

Lady Julia Percy Island means the area shown hatched on the plan in Schedule 7;

Logan's Beach Exclusion Zone means the area shown hatched on the plan in Schedule 3;

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 a waterway of less than 300 metres in width at its widest point;

Examples

Examples of narrow waterways include—

- (a) rivers and river mouths;
- (b) confined bays and inlets;
- (c) navigation channels in shallow waterways—

that are less than 300 metres in width at their widest point.

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;

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

Examples

Examples of prohibited vessels include—

- (a) jet skis;
- (b) motorised underwater scooters;
- (c) remote-controlled speed boats.

protected seal breeding colony means a place listed in Schedule 2;

Rag Island, Clifty Group means the area shown hatched on the plan in Schedule 8;

seal breeding season means the period between 1 November in any year and the last day of February in the following year;

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

Seal Rocks, Phillip Island means the area shown hatched on the plan in Schedule 5;

seal swim means any part of a seal tour that involves one or more persons being in water to observe or swim with one or more seals;

significant seal breeding colony means a place listed in Schedule 1;

swimming includes snorkelling or 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**;

The Skerries, Croajingolong National Park means the area shown hatched on the plan in Schedule 9;

Ticonderoga Bay Sanctuary Zone means the area shown hatched on the plan in Schedule 4;

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 that permit;

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

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

Note

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

PART 2—PRESCRIBED MINIMUM DISTANCES

6 Prescribed minimum distance in the case of whales

- (1) Subject to subregulation (2), for the purposes of section 77A(1) of the Act, the prescribed minimum distance is—
- (a) 300 metres, if the person is operating a prohibited vessel; or
 - (b) 500 vertical metres if the person is operating an aircraft within a 500-metre radius of a whale and observing whales is the purpose, or one of the purposes, for which the person is operating that aircraft; or
 - (c) in the case of a dolphin outside the waters of Ticonderoga Bay Sanctuary Zone—
 - (i) 30 metres, if the person is swimming;
 - (ii) 100 metres, if the person is operating an allowable vessel; or
 - (d) in the case of a dolphin inside the waters of Ticonderoga Bay Sanctuary Zone—
 - (i) 30 metres, if the person is swimming;
 - (ii) 200 metres, if the person is operating an allowable vessel; or
 - (e) in the case of a whale that is not a dolphin—
 - (i) 50 metres, if the person is swimming;
 - (ii) 200 metres, if the person is operating an allowable vessel; or
 - (f) in the case of a dolphin in a narrow waterway, 30 metres, if the person is swimming or operating an allowable vessel;
or

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- (g) in the case of a whale that is not a dolphin in a narrow waterway—
- (i) 100 metres, if the person is swimming;
or
 - (ii) 30 metres, if the person is operating an allowable vessel.
- (2) For the purposes of section 77A(1) of the Act, the prescribed minimum distance for a whale that is stranded or entangled is 300 metres.

Note

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.

7 Minimum approach distance in the case of seals

- (1) Subject to subregulations (3), (4) and (5), a person must not approach a seal at a distance that is less than 30 metres, if the seal is on land.

Penalty: 20 penalty units.

- (2) For the purposes of this regulation, land does not include a man-made water-based structure.

Examples

Examples of man-made water-based structures include—

- (a) boat ramps;
 - (b) piers;
 - (c) the Port Phillip Bay seal platform (Chinaman's Hat).
- (3) A person operating a prohibited vessel must not approach or cause the vessel to approach a seal at a distance of less than 300 metres if the seal is at a protected seal breeding colony.

Penalty: 20 penalty units.

- (4) A person operating an allowable vessel must not approach or cause the vessel to approach a seal at a distance that is less than 30 metres if the seal is at a significant seal breeding colony.

Penalty: 20 penalty units.

- (5) A person operating an allowable vessel must not approach a seal at a protected seal breeding colony at a distance that is less than—

- (a) 100 metres, in the seal breeding season; or
(b) 50 metres, outside the seal breeding season.

Penalty: 20 penalty units.

- (6) A person must not approach a seal at a distance that is less than 5 metres if the seal is on a man-made, water-based structure.

Penalty: 20 penalty units.

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

Penalty: 20 penalty units.

- (8) A person does not commit an offence against subregulation (1), (3), (4), (5), (6) or (7) merely because—

- (a) the person is acting in accordance with a commercial fishery licence within the meaning of the Fisheries Regulations 2009 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

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- (c) the person is an authorised officer acting in the course of his or her duties or a person acting under the direction of an authorised officer; or
- (d) the person is a POCTA inspector within the meaning of the **Prevention of Cruelty to Animals Act 1986** and is acting in the course of his or her duties.
- (9) A person does not commit an offence against subregulation (1) or (6) merely because the person approaches a seal at a distance that is less than the distance specified in that regulation because it was necessary to do so in order to—
- (a) avoid damage or prevent further damage to person or property;
- (b) enable the person to launch or retrieve a vessel.
- (10) A person does not commit an offence against subregulation (1), (3), (4), (5), (6) or (7) merely because the person approaches a seal at a distance that is less than the distance specified in that regulation because it was necessary to do so in order to comply with an Act or regulations relating to navigation.
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**PART 3—GENERAL RESTRICTIONS ON ACTIVITIES
RELATING TO MARINE MAMMALS**

**8 Restrictions on operation of aircraft in the vicinity
of marine mammals**

- (1) A person who is operating an aircraft, where the purpose or one of the purposes of operating the aircraft is to observe marine mammals, must not—
- (a) approach a marine mammal from head on; or
 - (b) fly directly over or pass the shadow of the aircraft directly over a marine mammal; or
 - (c) land on water to observe marine mammals.

Penalty: 20 penalty units.

- (2) A person operating an aircraft must not do so in the vicinity of a marine mammal if the marine mammal shows signs of disturbance.

Penalty: 20 penalty units.

Examples

Examples of signs of disturbance include—

- (a) for a whale—
 - (i) attempts to leave the area or vessel;
 - (ii) sudden changes in surface behaviour;
 - (iii) rapid changes in direction or speed of swimming;
 - (iv) hasty dives;
 - (v) changes in breathing patterns;
 - (vi) increased time diving compared to time spent at the surface;
 - (vii) changes in acoustic behaviour;
 - (viii) the onset of aggressive behaviours such as tail slashes or trumpet blows;

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- (b) for a seal—
- (i) rapid movement toward the water if on land;
 - (ii) sudden awakening from sleep on land;
 - (iii) female attempting to shield a seal pup with her body or by her movements;
 - (iv) vocalisation or growling at the disturbance.
- (3) A person operating a helicopter or gyrocopter must not cause or permit that craft to hover within a 500-metre vertical radius of a marine mammal.
- Penalty: 20 penalty units.
- (4) A person does not commit an offence against subregulation (1), (2) or (3) merely because it is necessary to operate the aircraft, helicopter or gyrocopter in order to—
- (a) avoid damage or prevent further damage to person or property; or
 - (b) allow the aircraft, helicopter or gyrocopter to take-off or land; or
 - (c) comply with an Act or regulations relating to the operation of aircraft, helicopters or gyrocopters.

9 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 a marine mammal from head on at an angle closer than 30 degrees to its observed direction of travel; or
 - (b) approach a marine mammal from the rear, at an angle closer than 30 degrees to its observed direction of travel; or

- (c) be in the path ahead of a marine mammal, at an angle closer than 30 degrees to its observed direction of travel; or
- (d) separate any individual from a group of marine mammals; or
- (e) come between a mother whale and calf or a seal and pup.

Penalty: 20 penalty units.

- (2) A person operating a vessel, within the caution zone of a marine mammal, must—
- (a) move the vessel at a constant speed that does not exceed 5 knots; and
 - (b) avoid sudden changes in speed or direction; and
 - (c) manoeuvre the vessel to outside the caution zone if a marine mammal shows any sign of disturbance.

Penalty: 20 penalty units.

Note

Examples of signs of disturbance are set out at the foot of regulation 8(2).

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

Penalty: 20 penalty units.

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

Penalty: 20 penalty units.

- (5) A person operating a vessel in a narrow waterway must not remain in 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.

10 Feeding marine mammals

- (1) A person must not feed or offer food to a marine mammal.

Penalty: 20 penalty units.

- (2) A person must not dispose of food or waste in the water within the caution zone of 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 an authorised officer acting in the course of his or her duties or a person acting under the direction of an authorised officer; or
- (b) the person is acting in accordance with an authorisation under the Act; or
- (c) the person is a commercial fisher routinely returning bycatch, if he or she takes reasonable efforts to avoid doing so near a marine mammal.

11 Touching marine mammals

- (1) A person must not touch or attempt to touch a marine mammal.

Penalty: 20 penalty units.

- (2) A person does not commit an offence against subregulation (1) if—
- (a) the person is a registered veterinary practitioner within the meaning of the **Veterinary Practice Act 1997** or a person acting under the control 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 who is acting in the course of his or her duties or a person acting under the direction of an authorised officer; or
 - (d) the person is a POCTA inspector within the meaning of the **Prevention of Cruelty to Animals Act 1986** and is acting in the course of his or her duties.

12 Noise in the vicinity of marine mammals

- (1) A person within the caution zone of a marine mammal must not—
- (a) make or cause to be made any loud or sudden noise; or
 - (b) play back or cause to be played back an underwater sound or recording of any kind.

Penalty: 20 penalty units.

- (2) A person does not commit an offence against subregulation (1) if—
- (a) the person is acting in accordance with a permit or authorisation granted or issued under the Act; or

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- (b) the person is an authorised officer who is acting in the course of his or her duties or a person acting under the direction of an authorised officer.

13 Dogs in the vicinity of marine mammals

- (1) A person who owns or is in charge of controlling a dog must not allow that dog to approach within 50 metres of a seal if the seal is on land.

Penalty: 20 penalty units.

- (2) A person who owns or is in charge of controlling a dog must not allow that dog to enter the water within the caution zone of a marine mammal.

Penalty: 20 penalty units.

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

- (a) it is necessary to allow the dog to approach closer than 50 metres to a marine mammal to enable the person to pass the marine mammal; and

- (b) the dog is on a leash.
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**PART 4—PROHIBITION ON ACTIVITIES IN LOGAN'S
BEACH EXCLUSION ZONE**

14 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 his or her duties; or
 - (b) the person is an employee of the Department of Sustainability and Environment or the Department of Primary Industries acting in the course of his or her duties; or
 - (c) the person has been granted a permit under section 78(1) 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.
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PART 5—CONDITIONS OF PERMITS

15 Prescribed conditions of whale watching tour permits (aircraft)

- (1) For the purposes of section 83H of the Act, the conditions set out in this regulation are prescribed conditions for a whale watching permit that specifies that the holder may conduct tours from an aircraft.
- (2) The holder of a permit must, for each tour he or she conducts, provide all persons on the tour, other than employees 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.

Note

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

- (3) The holder of a permit 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.
- (4) The holder of a permit must take reasonable steps to ensure that no person on the aircraft breaches these Regulations.
- (5) The holder of a permit must, for each month, keep a monthly return in the form provided by the Secretary.
- (6) The holder of a permit must ensure that, for each tour he or she conducts, the following information is recorded—
 - (a) the name of the tour supervisor on the tour;
and

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- (b) the number of persons, other than employees, on the aircraft during the tour; and
 - (c) the date and time of day the tour commenced and finished; and
 - (d) the time of day for each instance the aircraft passed over a whale or whales; and
 - (e) the location of whales sighted; and
 - (f) the species and number of whales sighted; and
 - (g) any other information required by the Secretary.
- (7) The holder of a permit must ensure that the information recorded under subregulation (6) is included in the return kept under subregulation (5) for the month in which the relevant tour is conducted.
- (8) The holder of a permit must ensure that each return kept under subregulation (5) is forwarded to the Secretary by the fourteenth day of the month following the month to which the return relates.
- (9) The holder of a permit must ensure that a return kept under subregulation (5) is made available for inspection by an authorised officer upon request.
- (10) The holder of a permit must not do any of the following—
- (a) fly lower than 300 vertical metres within a 300-metre radius of a whale;
 - (b) fly lower than 300 vertical metres within a 300-metre radius of a seal at a protected seal breeding colony;

- (c) if operating a helicopter or gyrocopter, cause or permit that craft to hover within a 300-metre vertical radius of a marine mammal.

16 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 conditions set out in this regulation 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.

Note

Additional prescribed conditions for whale swim tour permits are set out in regulation 17.

- (2) The holder of a permit must, for each tour he or she conducts, provide all persons on the tour, other than employees 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.

Note

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

- (3) The holder of a permit 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.
- (4) The holder of a permit must ensure that before the tour vessel enters the caution zone of a marine mammal, all persons on the tour vessel are verbally advised of the requirements of these Regulations.

- (5) The holder of a permit must ensure that all persons on the tour vessel, other than employees of the permit holder, are under the direct supervision of a tour supervisor at all times during a whale watching tour.
- (6) The holder of a permit must take reasonable steps to ensure that no person on the tour vessel breaches these Regulations.
- (7) The holder of a permit must ensure that no motorised diving or swimming aid is used or allowed to be used within the caution zone of a marine mammal from the tour vessel.
- (8) The holder of a permit must ensure that when the tour vessel enters the caution zone of a marine mammal, the approach is signalled in the manner specified in the permit, if any.
- (9) Subregulations (7) and (8) do not apply in an emergency in which human lives are threatened.
- (10) The holder of a permit must ensure that the tour vessel does not approach to within a distance of 50 metres of a dolphin or 100 metres of a whale other than a dolphin, except when the tour vessel is in a narrow waterway.
- (11) The holder of a permit must ensure that when the tour vessel is in a narrow waterway, the tour vessel does not approach to within a distance of 25 metres of a whale.
- (12) The holder of a permit must ensure that while in the Ticonderoga Bay Sanctuary Zone, the tour vessel does not approach a whale within a distance of 200 metres.
- (13) The holder of a permit must ensure that if a calf is detected, the tour vessel immediately withdraws to at least the prescribed minimum distance for that whale.

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- (14) The holder of a permit must ensure that the tour vessel does not remain within the caution zone of any whale or whales for more than a cumulative total of 60 minutes per tour, up to a maximum total of 120 minutes per day.
- (15) The holder of a permit must, for each month, keep a monthly return in the form provided by the Secretary.
- (16) The holder of a permit must ensure that, for each tour he or she conducts, the following information is recorded before any person disembarks from the tour vessel—
- (a) the name of the tour supervisor on the tour; and
 - (b) the number of persons, other than employees, on the tour vessel during the tour; and
 - (c) the date and time of day the tour commenced and finished; and
 - (d) the time of day for each instance that the tour vessel entered and left the caution zone of a whale; and
 - (e) the location of whales sighted; and
 - (f) the species and number of whales sighted; and
 - (g) any other information required by the Secretary.
- (17) The holder of a permit must ensure that the information recorded under subregulation (16) is included in the return kept under subregulation (15) for the month in which the relevant tour is conducted.

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- (18) The holder of a permit must ensure that each return kept under subregulation (15) is forwarded to the Secretary by the fourteenth day of the month following the month to which the return relates.
 - (19) The holder of a permit must ensure that a return kept under subregulation (15) is made available for inspection by an authorised officer upon request.

17 Prescribed conditions of whale swim tour permits

- (1) In addition to the conditions set out in regulation 16 for the purposes of section 83H of the Act, the conditions set out in this regulation are prescribed conditions for a whale swim tour permit.
- (2) The holder of a permit must ensure that all persons on the tour vessel, other than employees of the permit holder, are under the direct supervision of a tour supervisor at all times during the whale swim tour.
- (3) The holder of a permit must not conduct a whale swim within 100 metres of a low water mark.
- (4) The holder of a permit must not conduct a whale swim within the Ticonderoga Bay Sanctuary Zone.
- (5) The holder of a permit must ensure that the tour vessel does not approach closer than 100 metres to a whale or whales more than 5 times in a whale swim tour and not more than 10 times each day.
- (6) The holder of a permit may conduct only one whale swim for each approach within the caution zone of a whale.
- (7) The holder of a permit must ensure that a mermaid line is placed in the water before any person enters the water from the tour vessel.

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- (8) The holder of a permit must ensure that any 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 he or she is in the water.
 - (9) The holder of a permit must, while in the water for the purposes of assisting a person taking part in a whale swim, remain within 10 metres of the mermaid line.
 - (10) The holder of a permit must ensure that his or her employees remain within 10 metres of the mermaid line while in the water for the purposes of assisting a person taking part in a whale swim.
 - (11) The holder of a permit must not reposition the tour vessel during a whale swim.
 - (12) The holder of a permit must not tow swimmers during a whale swim.
 - (13) The holder of a permit must—
 - (a) not enter the water from the tour vessel;
 - (b) ensure that no person enters the water from the tour vessel—
at a distance of less than 30 metres from a whale.
 - (14) The holder of a permit must ensure that no more than 10 persons, not including the permit holder or any of his or her employees, participate in a whale swim at any one time.
 - (15) The holder of a permit must not conduct a whale swim if a calf is present.
 - (16) The holder of a permit must ensure that if a whale swim has commenced and a calf is detected—
 - (a) all persons involved in the whale swim immediately reboard the tour vessel; and

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- (b) the tour vessel withdraws to at least the prescribed minimum distance for that whale.
- (17) The holder of a permit 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.
- (18) The holder of a permit must ensure that when all persons who participate in a whale swim are on board the tour vessel at the end of the whale swim, the mermaid line is retrieved immediately and the tour vessel withdraws outside the caution zone of the whale.
- (19) The holder of a permit must ensure that, for each whale swim tour he or she conducts, the following information is recorded before any person disembarks from the tour vessel—
- (a) the number of persons, other than the permit holder and his or her employees, on the whale swim tour who participated in the whale swim during that tour; and
 - (b) the time of day that each whale swim commenced and finished; and
 - (c) the location of the whale swim; and
 - (d) any other information required by the Secretary.
- (20) The holder of a permit must ensure that the information recorded under subregulation (19) is included in the return kept under regulation 16(15) for the month in which the relevant tour is conducted.
- (21) For the purposes of this regulation, a whale swim commences when a person first enters the water from the tour vessel.

18 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 the minimum approach distance of a seal at a significant seal breeding colony or a protected seal breeding colony is a prescribed person in the prescribed circumstances.

19 Prescribed conditions of seal tour permits

- (1) For the purposes of section 85H of the Act, the conditions set out in this regulation are prescribed conditions for a seal tour permit.
- (2) The holder of a permit must, for each tour he or she conducts, provide all persons on the tour, other than employees 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.

Note

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

- (3) The holder of a permit 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.
- (4) The holder of a permit must ensure that before the tour vessel approaches a significant seal breeding colony or a protected seal breeding colony, all persons on the tour vessel are verbally advised of the requirements of these Regulations.

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- (5) The holder of a permit must ensure that all persons on the tour vessel, other than employees of the permit holder, are under the direct supervision of a tour supervisor at all times during a seal tour.
- (6) The holder of a permit must take reasonable steps to ensure that no person on the tour vessel breaches these Regulations.
- (7) The holder of the permit must—
- (a) subject to paragraphs (b), (c) and (d), ensure that the tour vessel does not approach a seal within a distance of 10 metres, if the seal is on land;
 - (b) ensure that the tour vessel does not approach a seal at a significant seal breeding colony within a distance of 10 metres;
 - (c) ensure that the tour vessel does not approach a seal at a protected seal breeding colony within a distance of 50 metres during the seal breeding season;
 - (d) ensure that the tour vessel does not approach a seal at a protected seal breeding colony within a distance of 30 metres outside the seal breeding season.
- (8) The holder of a permit must ensure that the tour vessel moves at a constant speed not exceeding 5 knots if within the minimum approach distance of a seal at a significant seal breeding colony or a protected seal breeding colony.

Note

The minimum approach distances in the case of seals are set out in regulation 7.

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- (9) The holder of a permit must ensure that the tour vessel does not make sudden changes in speed or direction within the minimum approach distance of a seal at a significant seal breeding colony or a protected seal breeding colony.
- (10) The holder of a permit must ensure that if a seal shows any signs of disturbance, the tour vessel is immediately moved outside the minimum approach distance of a seal at a significant seal breeding colony or a protected seal breeding colony.

Note

Examples of signs of disturbance are set out at the foot of regulation 8(2).

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

20 Prescribed fees for tour permits

- (1) For the purposes of section 83GE of the Act, the prescribed fee payable for a whale watching tour permit that specifies that the holder may conduct tours from an aircraft is an amount equal to 25 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 payable for a whale watching tour permit that specifies that the holder may conduct tours from a tour vessel is an amount equal to 21 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 payable for a whale swim tour permit is an amount equal to 45 fee units for each year of the period for which the permit is granted.

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- (4) For the purposes of section 85E of the Act, the prescribed fee payable for a seal tour permit is an amount equal to 21 fee units for each year of the period for which the permit is granted.
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SCHEDULES

SCHEDULE 1

Regulations 7(4), 18, 19(4), 19(7), 19(8), 19(9) and 19(10)

SIGNIFICANT SEAL BREEDING COLONIES

- 1 Seal Rocks, Phillip Island
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SCHEDULE 2

Regulations 7(3), 7(5), 7(7), 18, 19(4),
19(7), 19(8), 19(9) and 19(10)

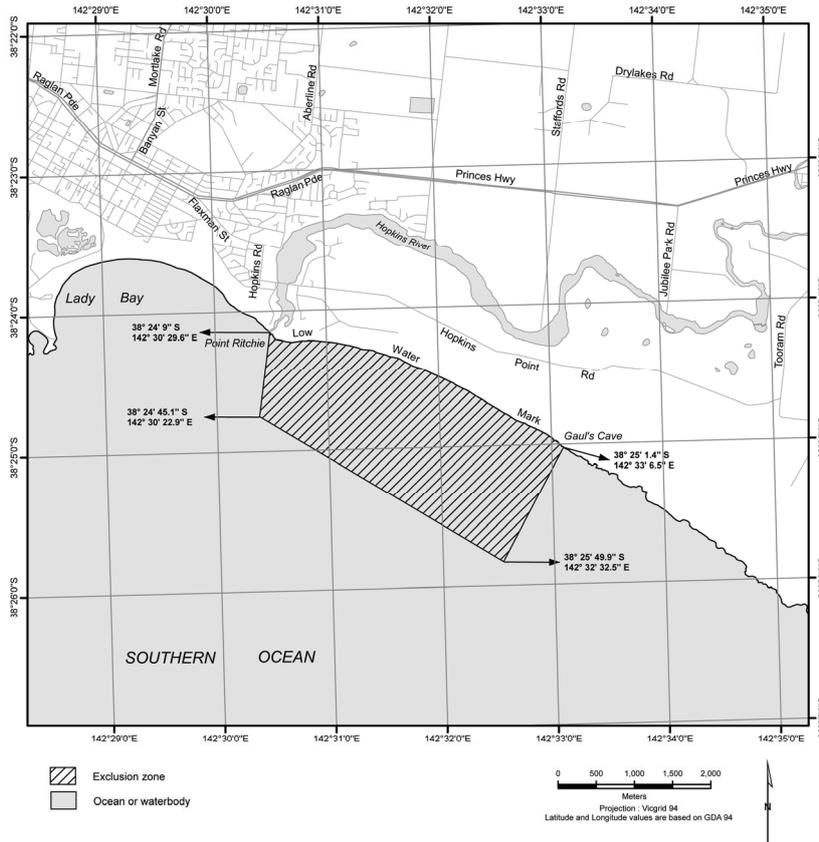
PROTECTED SEAL BREEDING COLONIES

- 1 Cape Bridgewater
 - 2 Lady Julia Percy Island
 - 3 Rag Island, Clifly Group
 - 4 The Skerries, Croajingolong National Park
-

SCHEDULE 3

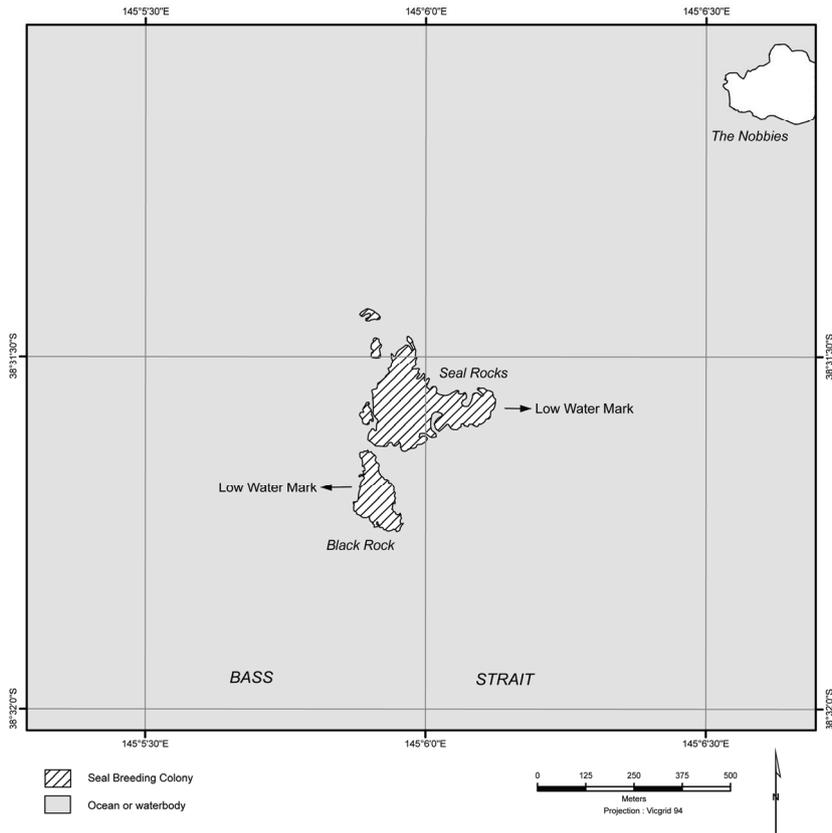
Regulation 14(1)

LOGAN'S BEACH EXCLUSION ZONE



SCHEDULE 5

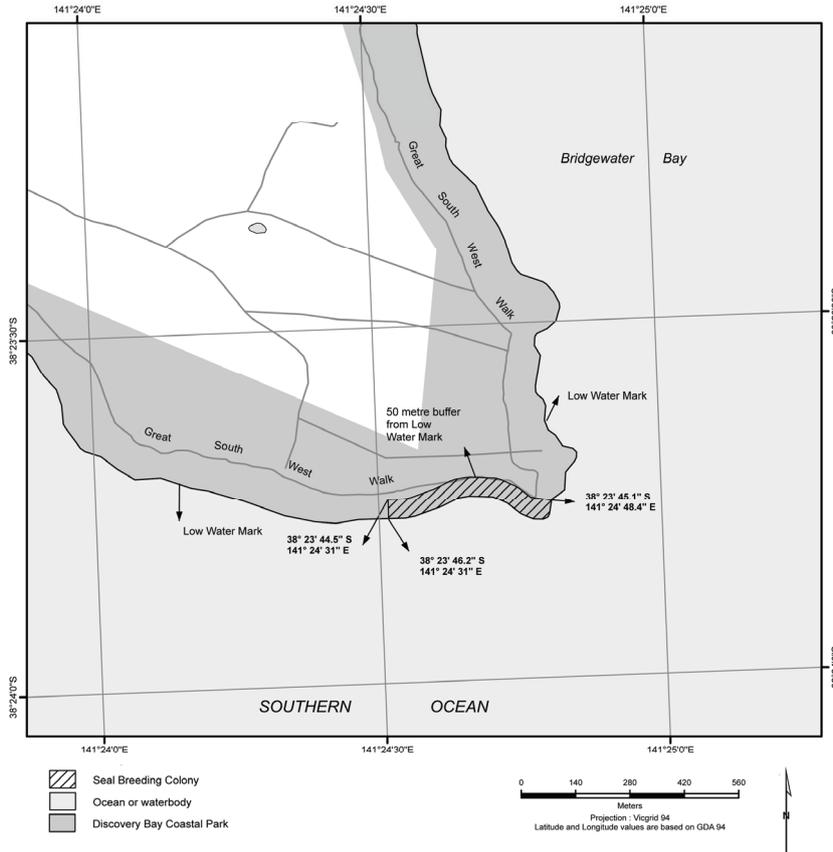
SEAL ROCKS, PHILLIP ISLAND



Sch. 6

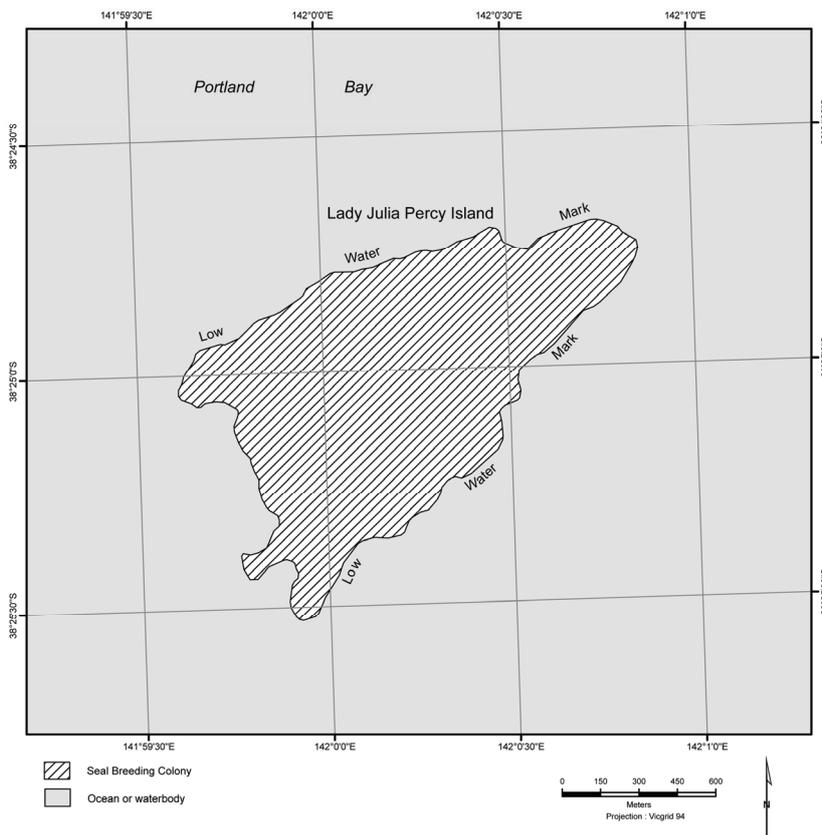
SCHEDULE 6

CAPE BRIDGEWATER



SCHEDULE 7

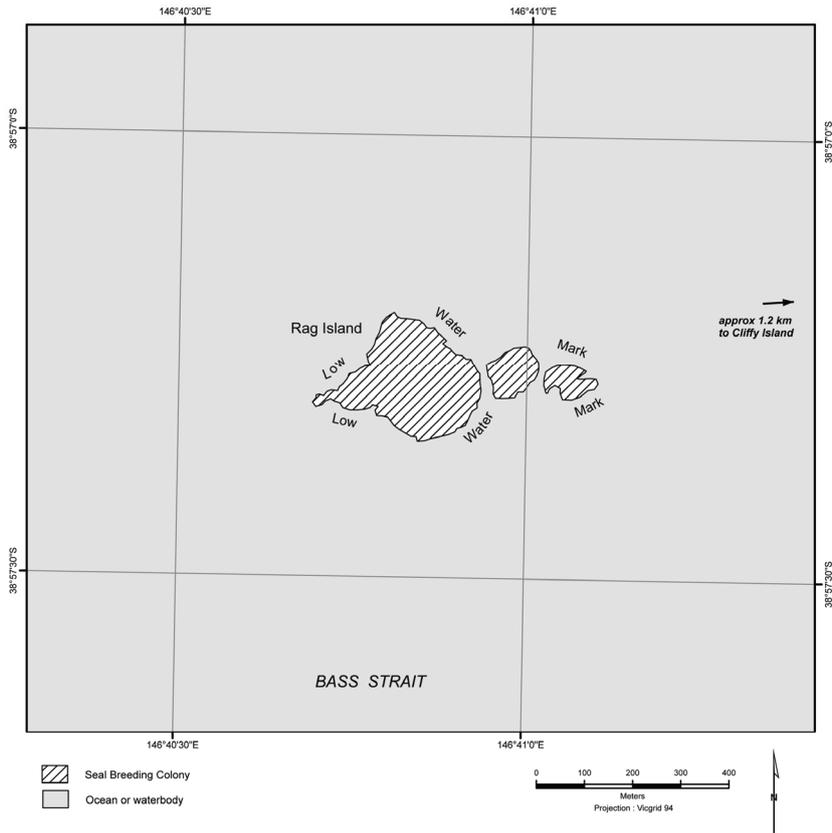
LADY JULIA PERCY ISLAND



Sch. 8

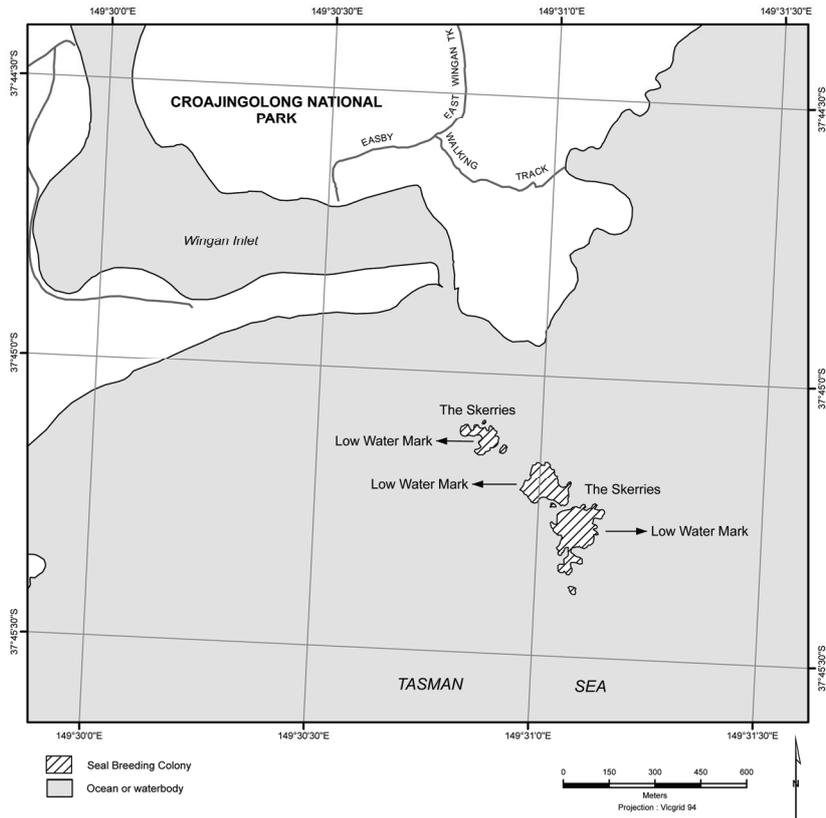
SCHEDULE 8

RAG ISLAND, CLIFFY GROUP



SCHEDULE 9

THE SKERRIES, CROAJINGOLONG NATIONAL PARK



ENDNOTES

1. General Information

The Wildlife (Marine Mammals) Regulations 2009, S.R. No. 143/2009 were made on 24 November 2009 by the Governor in Council under sections 85A and 87 of the **Wildlife Act 1975**, No. 8699/1975 and came into operation on 1 December 2009: regulation 3.

The Wildlife (Marine Mammals) Regulations 2009 will sunset 10 years after the day of making on 24 November 2019 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Wildlife (Marine Mammals) Regulations 2009 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

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 2012 is \$12.53. 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.

In accordance with section 11 of the **Monetary Units Act 2004**, the value of a penalty unit for the financial year commencing 1 July 2012 is \$140.84.

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.