

**Version No. 012**  
**Wildlife (Whales) Regulations 1998**  
**S.R. No. 152/1998**

Version incorporating amendments as at 1 August 2004

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**PART 1—PRELIMINARY**

**1. Objectives**

The objectives of these Regulations are to—

- (a) provide for the long term protection of whales by—
  - (i) prohibiting or regulating activities connected with whale watching generally and activities related to the stranding of whales; and
  - (ii) prescribing conditions of whale sightseeing permits and whale swim tour permits; and

Reg. 1(a)(ii)  
substituted by  
S.R. No.  
107/2002  
reg. 5(a).

- (b) prescribe the fees payable for the issue of whale sightseeing permits or whale swim tour permits.

Reg. 1(b)  
substituted by  
S.R. No.  
107/2002  
reg. 5(b).

**2. Authorising provisions**

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

**3. Definitions**

In these Regulations—

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

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Reg. 3 def. of  
"dolphin  
swim"  
revoked by  
S.R. No.  
107/2002  
reg. 6(a).

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Reg. 3 def. of  
"dolphin  
sightseeing"  
revoked by  
S.R. No.  
107/2002  
reg. 6(a).

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Reg. 3 def. of  
"Logans  
Beach  
Exclusion  
Zone"  
inserted by  
S.R. No.  
4/2001 reg. 4,  
amended by  
S.R. No.  
44/2001  
reg. 3(a)–(d).

**"Logans Beach Exclusion Zone"** means the land and waters, the outward boundary of which commences at the south eastern most tip of Point Ritchie then out to sea in the direction 350° magnetic to a point located at latitude 38° 24' 50", longitude 142° 30' 18", then by a line in a south easterly direction to a point at latitude 38° 25' 54", longitude 142° 32' 29", then by a line in the direction of 35° magnetic towards Gaul's Cave to the low water mark and then by the low water mark following the shore line to the low water mark at the south eastern most tip of Point Ritchie;

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

Reg. 3 def. of  
"prohibited  
period"  
inserted by  
S.R. No.  
4/2001 reg. 4.

**"prohibited period"** means 1 June to 31 October in any year;

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**"Ticonderoga Bay Sanctuary Zone"** means all the waters of Port Phillip Bay that are within 500 metres of the low water mark between a line drawn due north from Police Point and a line drawn due north from Nepean Rock at Point Nepean;

Reg. 3 def. of  
"Ticonderoga  
Bay  
Sanctuary  
Zone"  
substituted by  
S.R. No.  
96/2004  
reg. 5(a).

**"tour"** means the activity that occurs between when a tour vessel leaves the jetty of departure and when it returns to that jetty;

Reg. 3 def. of  
"tour"  
inserted by  
S.R. No.  
96/2004  
reg. 5(b).

**"tour supervisor"** means a person appointed by the holder of a whale sightseeing permit or a whale swim tour permit to supervise persons participating in a tour conducted under that permit;

Reg. 3 def. of  
"tour  
supervisor"  
substituted by  
S.R. No.  
107/2002  
reg. 6(b).

**"tour vessel"** means the vessel specified in a whale sightseeing permit or a whale swim tour permit;

Reg. 3 def. of  
"tour vessel"  
substituted by  
S.R. No.  
107/2002  
reg. 6(c).

**"vessel"** has the same meaning as in the **Marine Act 1988**;

Reg. 3 def. of  
"vessel"  
inserted by  
S.R. No.  
4/2001 reg. 4,  
amended by  
S.R. No.  
107/2002  
reg. 6(d).

**"whale swim"** means an activity which involves persons being in the water to observe or swim with a whale.

Reg. 3 def. of  
"whale swim"  
inserted by  
S.R. No.  
107/2002  
reg. 6(e).

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**4. Prescribed minimum distance**

Reg. 4  
amended by  
S.R. No.  
107/2002  
reg. 7.

For the purposes of sections 83(1) and 83A(1) of the Act, the prescribed minimum distance is—

- (a) in the case of a whale which is stranded on land or in waters less than one metre deep, 50 metres; or
- (b) in the case of any other whale—

Reg. 4(b)(i)  
substituted by  
S.R. No.  
96/2004  
reg. 6(a).

- (i) if using a motorised vessel (including a personal watercraft)—

- (A) outside the waters of Ticonderoga Bay Sanctuary Zone, 100 metres; or

- (B) inside the waters of Ticonderoga Bay Sanctuary Zone, 200 metres;

Reg. 4(b)(ii)  
revoked by  
S.R. No.  
96/2004  
reg. 6(b).

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- (iii) if swimming or diving, 30 metres;

- (iv) if using a motorised swimming aid, 100 metres;

Reg. 4(b)(v)  
substituted by  
S.R. No.  
96/2004  
reg. 6(c).

- (v) if using a surfboard, 50 metres;

- (vi) if using any other watercraft, 100 metres.

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**PART 2—WHALE SIGHTSEEING PERMITS AND WHALE  
SWIM TOUR PERMITS**

Pt 2  
(Heading)  
inserted by  
S.R. No.  
107/2002  
reg. 8.

**5. Conditions of whale sightseeing permits and whale  
swim tour permits**

Reg. 5  
(Heading)  
inserted by  
S.R. No.  
107/2002  
reg. 9(1).

- (1) A whale sightseeing permit or a whale swim tour permit is subject to the conditions specified in this regulation.

Reg. 5(1)  
substituted by  
S.R. No.  
107/2002  
reg. 9(2).

- (1A) The holder of a whale sightseeing permit or a whale swim tour permit must not approach a whale at a distance that is less than the prescribed minimum distance other than a whale of a class specified in the permit.

Reg. 5(1A)  
inserted by  
S.R. No.  
96/2004  
reg. 7(1).

Penalty: 20 penalty units.

- (2) The permit holder—

- (a) must ensure that the tour vessel does not approach or remain within 300 metres of another tour vessel if that tour vessel is within 100 metres of a whale; and

Reg. 5(2)(a)  
amended by  
S.R. Nos  
107/2002  
reg. 9(3)(a),  
96/2004  
reg. 7(2)(a).

- (b) subject to paragraphs (a) and (j), must ensure that the tour vessel does not approach within a distance of less than 50 metres from a whale; and

Reg. 5(2)(b)  
amended by  
S.R. No.  
107/2002  
reg. 9(3)(a).

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Reg. 5(2)(c)  
amended by  
S.R. No.  
107/2002  
reg. 9(3)(b).

- (c) must ensure that a motorised diving or swimming aid is not used, or allowed to be used, from the tour vessel within 100 metres of a whale except in an emergency in which human lives are threatened; and

Reg. 5(2)(d)  
amended by  
S.R. No.  
107/2002  
reg. 9(3)(b).

- (d) must not touch or attempt to touch, and must ensure that no person on the tour vessel touches or attempts to touch, a whale; and

Reg. 5(2)(e)  
amended by  
S.R. No.  
107/2002  
reg. 9(3)(b).

- (e) must not feed or attempt to feed, and must ensure that no person on the tour vessel feeds or attempts to feed, a whale; and

- (f) 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; and

- (g) must ensure that all persons on the tour vessel, other than employees, are under the direct supervision of the tour supervisor at all times while they are on board the vessel; and

Reg. 5(2)(h)  
amended by  
S.R. No.  
107/2002  
reg. 9(3)(b)-(d),  
substituted by  
S.R. No.  
96/2004  
reg. 7(2)(b).

- (h) must ensure that the tour vessel—
  - (i) does not approach a whale head on; or
  - (ii) is not in the path of a whale; or
  - (iii) does not separate a whale from a group of whales; or
  - (iv) does not come between a mother whale and calf; or
  - (v) does not approach a whale closer than 100 metres more than 4 times each tour but in any event not more than 8 times each day; or



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- (vi) does not approach a whale closer than 100 metres without signalling the approach in the manner specified in the permit; or
- (vii) must ensure that if an approach has commenced and a foetal fold calf is detected the tour vessel immediately withdraws to more than 100 metres from the whale with the foetal fold calf; and
- (i) must ensure that, when the tour vessel is moved within 300 metres of a whale—
- (i) it is moved at a constant speed not exceeding 5 knots; and
- (ii) sudden changes in direction are avoided; and
- (iii) if the whale shows any sign of disturbance, the tour vessel is manoeuvred to a distance of at least 200 metres from the whale; and
- (j) while in the Ticonderoga Bay Sanctuary Zone must ensure that the tour vessel does not approach a whale within a distance of less than 200 metres; and
- (k) must not make, and must ensure that no person on the tour vessel makes, any loud or sudden noise; and
- (l) must not play back, and must ensure that no person on the tour vessel plays back, any underwater sound or recording of any kind; and
- Reg. 5(2)(i)**  
amended by  
**S.R. No.**  
**107/2002**  
**reg. 9(3)(b).**
- Reg. 5(2)(i)(iii)**  
amended by  
**S.R. No.**  
**107/2002**  
**reg. 9(3)(e).**
- Reg. 5(2)(j)**  
amended by  
**S.R. Nos**  
**107/2002**  
**reg. 9(3)(a),**  
**96/2004**  
**reg. 7(2)(c).**
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Reg. 5(2)(m)  
amended by  
S.R. No.  
107/2002  
reg. 9(3)(b).

- (m) must ensure that an anchor is not dropped or lowered overboard from the tour vessel within 300 metres of a whale.

Reg. 5(3)  
inserted by  
S.R. No.  
96/2004  
reg. 7(3).

- (3) Provided that the holder of a whale sightseeing permit or a whale swim tour permit complies with sub-regulation (2)(h)(vii), the first approach where a foetal fold calf is detected in each tour does not count as an approach for the purposes of sub-regulation (2)(h)(v).

Reg. 6  
(Heading)  
inserted by  
S.R. No.  
107/2002  
reg. 10(1).

**6. Additional conditions of whale swim tour permits**

Reg. 6(1)  
substituted by  
S.R. No.  
107/2002  
reg. 10(2).

- (1) In addition to the conditions specified in regulation 5, a whale swim tour permit is subject to the conditions specified in this regulation.

Reg. 6(2)  
amended by  
S.R. No.  
107/2002  
reg. 10(3)(a)-(c),  
substituted by  
S.R. No.  
96/2004  
reg. 8(1).

- (2) The permit holder—
  - (a) must ensure that a whale swim is not conducted within 100 metres of the low water mark; and
  - (b) must ensure that the tour vessel does not remain within 100 metres of a whale for more than 5 minutes unless a whale swim has commenced; and
  - (c) must, except in an emergency in which human lives are threatened—
    - (i) ensure that a mermaid line is placed in the water before any person enters the water from a tour vessel; and
    - (ii) ensure that any person who takes part in a whale swim from that tour vessel, who is not the permit holder or an

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- employee of the permit holder, holds onto the mermaid line at all times while in the water; and
- (iii) while in the water for the purposes of assisting persons taking part in a whale swim, remain within 10 metres of the mermaid line; and
- (iv) ensure that any of his or her employees, while in the water for the purposes of assisting persons taking part in a whale swim, remain within 10 metres of the mermaid line; and
- (d) must not reposition a tour vessel during a whale swim; and
- (e) must not enter, and must ensure that no person on the tour vessel, enters the water at a distance of less than 30 metres from a whale; and
- (f) must ensure that no more than 10 persons, not including himself or herself and any of his or her employees, participate in a whale swim; and
- (g) must not approach, and must ensure that no person involved in a whale swim approaches, a whale at a distance of less than 30 metres; and
- (h) must not approach, and must ensure that no person involved in a whale swim approaches, a whale closer than 100 metres if a foetal fold calf is present; and
- (i) must ensure that if a whale swim has commenced and a foetal fold calf is detected—
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- (i) all persons involved in the whale swim immediately return to and reboard the tour vessel; and
- (ii) the tour vessel withdraws to more than 100 metres from the whale with the foetal fold calf; and
- (j) must ensure that, before the first whale swim on each tour is commenced, all persons on the tour vessel are verbally advised of the requirements of these Regulations; and
- (k) must, in respect of each month, keep a monthly return in the form provided by the Secretary and must ensure that there is clearly and accurately recorded on the return at the end of each tour, conducted in the month to which the return applies, and before any person disembarks from the vessel—
  - (i) the name of the tour supervisor on that tour; and
  - (ii) the number of persons, other than employees, on the tour vessel during that tour; and
  - (iii) the number of persons, other than employees, on that tour who participated in a whale swim during that tour; and
  - (iv) the time of day that the tour vessel makes each approach within 100 metres of a whale during that tour; and
  - (v) the time of day that each whale swim commenced during that tour; and
  - (vi) the time of day the tour vessel withdraws to beyond 100 metres of a whale during that tour; and

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- (vii) any other information required by the Secretary; and
  - (l) must ensure that each return completed under paragraph (k) is forwarded to the Secretary by the 14th day of the month following the period of the return; and
  - (m) must ensure that a return referred to in paragraph (k) is made available for inspection by an authorised officer on request; and
  - (n) must ensure that any person who participates in a whale swim from that tour vessel does not use underwater breathing equipment while in the water, other than a snorkel; and
  - (o) must ensure that when all persons who participate in a whale swim are back on board the tour vessel, the tour vessel immediately withdraws to more than 100 metres from any whale.
- (3) For the purposes of this regulation, a whale swim is deemed to commence when the first person enters the water from the tour vessel.

Reg. 6(3)  
amended by  
S.R. No.  
107/2002  
reg. 10(4),  
substituted by  
S.R. No.  
96/2004  
reg. 8(2).

**7. Additional conditions of whale sightseeing permits**

Reg. 7  
(Heading)  
inserted by  
S.R. No.  
107/2002  
reg. 11(1).

- (1) In addition to the conditions specified in regulation 5, a whale sightseeing permit is subject to the conditions specified in this regulation.

Reg. 7(1)  
substituted by  
S.R. No.  
107/2002  
reg. 11(2).

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(2) The permit holder—

Reg. 7(2)(a)  
amended by  
S.R. No.  
107/2002  
reg. 11(3).

(a) must ensure that, before a whale is approached at a distance of less than 100 metres, all persons on the tour vessel are verbally advised of the requirements of these Regulations; and

(b) must, in respect of each month keep a monthly return in the form provided by the Secretary and must ensure that there is clearly and accurately recorded on the return at the end of each tour conducted in the month to which the return applies, and before any person disembarks from the vessel—

Reg. 7(2)(b)(i)  
amended by  
S.R. No.  
107/2002  
reg. 11(3).

(i) the number of occasions that the tour vessel remained within 100 metres of a whale during that tour; and

Reg. 7(2)(b)(ii)  
amended by  
S.R. No.  
107/2002  
reg. 11(3),  
substituted by  
S.R. No.  
96/2004  
reg. 9(a).

(ii) the time of day the tour vessel makes each approach within 100 metres of a whale during that tour; and

Reg. 7(2)(b)(iii)  
substituted by  
S.R. No.  
96/2004  
reg. 9(a).

(iii) the time of day the tour vessel withdraws to beyond 100 metres of a whale during that tour; and

Reg. 7(2)(b)(iv)  
inserted by  
S.R. No.  
96/2004  
reg. 9(a).

(iv) any other information required by the Secretary; and

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Part 2—Whale Sightseeing Permits and Whale Swim Tour Permits

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- (c) must ensure that every return completed under paragraph (b) is forwarded to the Secretary by the 14th day of the month following the period of the return; and
- (d) must ensure that a return referred to in paragraph (b), is made available for inspection by an authorised officer upon request; and
- (e) must ensure that the tour vessel does not remain within 100 metres of a whale for more than 5 minutes at a time.

Reg. 7(2)(e)  
amended by  
S.R. Nos  
107/2002  
reg. 11(3),  
96/2004  
reg. 9(b).

**8. Fees for whale sightseeing permits and whale swim tour permits**

Reg. 8  
substituted by  
S.R. No.  
107/2002  
reg. 12.

- (1) The fee payable for a whale sightseeing permit is 37.5 fee units.

Reg. 8(1)  
amended by  
S.R. No.  
88/2004  
reg. 4(Sch. 1  
item 55.1).

- (2) The fee payable for a whale swim tour permit is 70 fee units.

Reg. 8(2)  
amended by  
S.R. No.  
88/2004  
reg. 4(Sch. 1  
item 55.2).

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**PART 3—GENERAL RESTRICTIONS ON ACTIVITIES  
RELATING TO WHALES**

**9. Offences relating to persons in charge of vessels or  
using personal watercraft in waters in the vicinity of  
whales**

- (1) A person in charge of a vessel or a personal watercraft in waters within 300 metres of whales must not—
- (a) cause or permit that vessel or personal watercraft—
    - (i) to approach a whale head on; or
    - (ii) to be in the path of a whale; or
    - (iii) to separate any whale from a group of whales; or
    - (iv) to come between a mother and calf; or
  - (b) cause or permit an anchor to be dropped or lowered overboard from the vessel.

Penalty: 20 penalty units.

- (2) A person in charge of a vessel or using a personal watercraft in waters within 300 metres of a whale must—
- (a) when moving the vessel or personal watercraft, do so at a constant speed that does not exceed 5 knots; and
  - (b) avoid sudden changes in direction; and
  - (c) manoeuvre the vessel or personal watercraft to a distance of at least 200 metres from the whale if the whale shows any sign of disturbance.

Penalty: 20 penalty units.



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Part 3—General Restrictions on Activities Relating to Whales

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- (3) A person in charge of a vessel or using a personal watercraft must not be within 100 metres of a tour vessel conducting a whale swim.

Penalty: 20 penalty units.

Reg. 9(3)  
amended by  
S.R. No.  
107/2002  
reg. 13.

**10. Offence relating to person in charge of aircraft in the vicinity of whales**

A person in charge of an aircraft must not manoeuvre the aircraft lower than 300 metres above an area within 300 metres of a whale.

Penalty: 20 penalty units.

**11. Offence to make noise or play back recordings in the vicinity of whales**

A person who is within 300 metres of a whale must not—

- (a) make, or cause to be made, any loud or sudden noise; or
- (b) play back, or cause to be played back, any underwater sound or recording of any kind.

Penalty: 20 penalty units.

**12. Offence to feed whales**

A person must not feed or attempt to feed a whale.

Penalty: 20 penalty units.

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Part 4—Prohibition on Activities in Logans Beach Exclusion Zone

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Pt 4  
(Heading and  
reg. 13)  
inserted by  
S.R. No.  
4/2001 reg. 5.

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BEACH EXCLUSION ZONE**

Reg. 13  
inserted by  
S.R. No.  
4/2001 reg. 5.

**13. Offence to enter Logans Beach Exclusion Zone**

- (1) A person in charge of a vessel (including a personal watercraft) must ensure that the vessel does not enter in or remain in the Logans Beach Exclusion Zone at any time during the prohibited period.

Penalty: 20 penalty units.

- (2) Sub-regulation (1) does not apply to—

Reg. 13(2)(a)  
substituted by  
S.R. No.  
96/2004  
reg. 10.

- (a) any authorised officer or any employee of the Department of Sustainability and Environment or the Department of Primary Industries, acting in the course of his or her duties; or
- (b) a person who has been granted a permit in accordance with section 78(1)(c), (d), (e) or (f) of the Act.
- (3) The Minister, by instrument published in the Government Gazette, may declare that sub-regulation (1) does not apply during any part of a prohibited period and, if the Minister has made such a declaration, sub-regulation (1) does not apply during any period so declared.
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Endnotes

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**ENDNOTES**

**1. General Information**

The Wildlife (Whales) Regulations 1998, S.R. No. 152/1998 were made on 1 December 1998 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 1998.

The Wildlife (Whales) Regulations 1998 will sunset 10 years after the day of making on 1 December 2008 (see section 5 of the **Subordinate Legislation Act 1994**).

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<b>Endnotes</b>
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## **2. Table of Amendments**

This Version incorporates amendments made to the Wildlife (Whales) Regulations 1998 by statutory rules, subordinate instruments and Acts.

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Wildlife (Whales) (Logans Beach) Regulations 2001, S.R. No. 4/2001

*Date of Making:* 30.1.01

*Date of Commencement:* 1.2.01: reg. 3

Wildlife (Whales) (Further Amendment) Regulations 2001, S.R. No. 44/2001

*Date of Making:* 22.5.01

*Date of Commencement:* 22.5.01

Wildlife (Whales) (Amendment) Regulations 2002, S.R. No. 107/2002

*Date of Making:* 29.10.02

*Date of Commencement:* 1.11.02: reg. 3

Monetary Units Regulations 2004, S.R. No. 88/2004

*Date of Making:* 29.6.04

*Date of Commencement:* 1.7.04: reg. 3

Wildlife (Whales) (Amendment) Regulations 2004, S.R. No. 96/2004

*Date of Making:* 27.7.04

*Date of Commencement:* 1.8.04: reg. 3

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*S.R. No. 152/1998*

<b>Endnotes</b>
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**3. Explanatory Details**

No entries at date of publication.