

Review of Limited Permit Area for Port Phillip Bay

Response to submissions

Four submissions were received in response to the proposed new Limited Permit Areas for Whale (Dolphin) Swim Tours and Whale (Dolphin) Watching (Vessel) Tours that were published on 19 February 2020.

In making Limited Permit Area determinations, the *Wildlife Act 1975* requires the decision maker to ensure that the maximum number of permits available is ecologically sustainable. While the decision-maker must consider submissions from those who may be affected by the determinations, their primary responsibility under the Wildlife Act is to ensure the ecological sustainability of the whale populations that may be impacted by tours.

Accordingly, the Department of Environment, Land, Water and Planning (DELWP) has considered the submissions and made changes to the proposals in the final Limited Permit Area determinations. While the area covered by the Limited Permit Areas is unchanged, the number of permits that will be available has been adjusted to:

- four (4) whale (dolphin) swim tour permits; and
- no (0) whale (dolphin) watching (vessel) tour permits.

This is based on the best available information, which suggests that:

- it is the close approach of vessels that is the key disturbing activity in vessel-based dolphin tourism; given that approach conditions for whale swim and whale watching tours are largely equivalent under Victoria's Wildlife (Marine Mammals) Regulations 2019, the number of permits considered sustainable should be applied across both categories;
- a maximum of four permits is considered sustainable for Port Phillip Bay dolphins; the potential impacts of increasing this number are unknown; and
- assigning the maximum number entirely to the whale (dolphin) swim category will maximise the economic opportunities available to tour operators within the limits that have been applied.

Specific comments that were submitted through the consultation process are addressed in more detail below.

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Comment	Response
<i>Number of whale swim permits</i>	
<p>The key threat to dolphin populations is non-compliance rather than the number of vessels.</p>	<p>Even where vessels are compliant, research findings are clear that the close approach of vessels to groups of dolphins can interrupt key behaviours^{1, 2}, with potential for longer-term consequences. More permitted vessels means more approaches, even if all are abiding by the rules.</p> <p>However, in addition to the limits imposed by the Limited Permit Area, compliance with the Wildlife (Marine Mammals) Regulations 2019 is essential to minimise the impacts of vessel disturbance as much as possible.</p>
<p>The dolphin swim Limited Permit Area should be restricted to three, in line with the current level of active swim tour offerings (the fourth permit is allocated but not currently being used for swim tours).</p>	<p>The Wildlife Act requires the maximum number of permits specified to be the number that is ecologically sustainable. DELWP is confident from available information that four permits in total is sustainable.</p> <p>The decision to allow four dolphin swim tour permits will enable the businesses who offer those tours to provide opportunities for customers to both swim with and observe the Port Phillip Bay dolphins.</p>
<p>Research specifically studying the impacts of the Port Phillip Bay dolphin swim tour industry on the local dolphin population, published in 2017, found that “the industry may be sustainable in its current form”¹ (i.e. four permits). Therefore, the current maximum of four swim permits should be retained.</p>	<p>This research focused only on the impacts of the dolphin swim tour industry and didn't consider any additional pressures from other activities, including whale watching. In fact, although the paper was published in 2017, the research was undertaken between 2010 and 2013 – at that time, there were no permitted whale watching tours operating in Port Phillip Bay.</p> <p>This and other research² studying the Port Phillip Bay Burrnan dolphin population notes that the key impact comes from the vessel approach, conditions of which are the same for both whale swim and whale watching tours. Therefore, it is appropriate to consider the impacts of both as equivalent when assessing impacts on the population.</p> <p>DELWP's view is therefore that this paper in fact supports the argument for limiting permits across both categories to four in total.</p> <p>The paper also notes that the relatively low impact of the Port Phillip Bay industry is in part because of the restricted permits. The paper argues against increasing permit numbers even by one.</p>

¹ Filby, N.E., Christiansen, F., Scarpaci, C., Stockin, K.A., 2017, Effects of swim-with-dolphin tourism on the behaviour of a threatened species, the Burrnan dolphin *Tursiops australis*, *Endangered Species Research*, 32, pp. 479-490.

² Hale, P., 2002, *Interactions between vessels and dolphins in Port Phillip Bay*, final report to Victorian Department of Natural Resources and Environment.

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Noncompliance with tour operator conditions is frequently observed among existing operators, and restricting swim tour permits to three is likely to perpetuate current practices.

This is based on an assumption that current permit holders will be successful in obtaining permits again, based on their long history of operation and an assumed advantage of experience, existing business infrastructure, etc.

Retaining the existing limit of four permits would provide a better opportunity for new entrants to compete for permits.

Number of whale watching permits

If only one whale watching permit was issued, the single whale watching operator would be at a disadvantage, as the majority of customers want the opportunity to swim.

Opportunities for whale watching are also incorporated into swim tours.

The number of whale watching permits allowed should be increased to three, in addition to the proposed three whale swim permits. There are currently three vessels offering whale watching tours in Port Phillip Bay.

Reducing the number of available whale watching permits may severely impact these businesses.

DELWP is committed to running a fair and transparent process to allocate permits under the new Limited Permit Area. When considering applications, DELWP will be looking for best practice and innovative approaches, including on how to further minimise the environmental impacts of tours.

In addition to the limits imposed by the Limited Permit Area, compliance with the Wildlife (Marine Mammals) Regulations 2019 is essential to minimise the impacts of vessel disturbance as much as possible.

The final determinations provide for four whale swim tour permits and no whale watching tour permits.

DELWP acknowledges that some existing businesses will be affected by the decision to not permit whale (dolphin) watching tours in Port Phillip Bay. However, the Wildlife Act makes it clear that the primary responsibility of the decision-maker in setting the Limited Permit Area is to ensure the ecological sustainability of whale and dolphin populations.

The current situation, with multiple whale watching tours on offer, has only come about recently. Until a few years ago, no whale watching permits were issued to tour operators operating in Port Phillip Bay. The impact of these vessels, in addition to the three active dolphin swim tour operators, targeting a small, geographically-limited dolphin population has not been specifically measured. However, the fact that the Burren dolphin population is listed as threatened under the *Flora and Fauna Guarantee Act 1988* indicates that a precautionary approach should be adopted.

As available research indicates that (a) the impacts of dolphin watching tours is almost equivalent to that of dolphin swim tours and that (b) four permits is sustainable for the Port Phillip Bay dolphins, DELWP maintains that four permits in total is the maximum number that should be issued across both categories.

DELWP also notes that those businesses currently operating whale watching tours typically do so as part of a much broader offering involving other marine wildlife and biodiversity experiences. For example,

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tours might visit local seal haul outs to view or swim with seals, visit and observe seabird colonies, and visit other sites of interest in Port Phillip Bay

Area of Limited Permit Area

Whale swim permits should be restricted to the southern part of Port Phillip Bay to protect the tourism benefits to Mornington and Bellarine Peninsulas.

The Sorrento channel / Point King area should continue to be an allowable swim area.

The whale swim Limited Permit Area has encompassed the whole of Port Phillip Bay since at least 2003. The extent of the new Limited Permit Area is unchanged from the previous one, apart from (a) the exclusion of a 100 metre zone surrounding declared fisheries reserves, and (b) Ticonderoga Bay Sanctuary Zone (TBSZ) no longer being specifically excluded from the determination.

Leaving TBSZ out of the determination does not affect what tour operators can or cannot do in that area. The conditions applying to TBSZ and any other sanctuary zones that may be declared in future, including a prohibition on dolphin swims occurring in those areas, are prescribed in the Wildlife (Marine Mammals) Regulations 2019.

Other comments

The Port Phillip Bay population of Short-Beaked Common Dolphins should be provided with additional protection because of the small size and localised distribution of the population, and its atypical (for the species) ecology and social structure.

The Wildlife (Marine Mammals) Regulations 2019 introduced a new power for the Secretary of DELWP to declare an area as a 'whale sanctuary zone'. Additional restrictions, including larger approach distances to whales, apply to all vessels in a sanctuary zone. In addition, whale swim permit holders are forbidden from conducting swims in these areas.

If more protection is required for the local Common Dolphin population, declaring a new sanctuary zone in the area where the population resides would be the most appropriate mechanism to use.

DELWP will investigate the need for and practicalities of declaring a sanctuary zone to protect the Common Dolphin population.

Ongoing monitoring of local dolphin populations and the impacts of tourism on them is needed.

DELWP acknowledges that ongoing monitoring is important to better understand the impacts of tour activity on the Port Phillip Bay dolphins, and to continue to improve how we manage those impacts.

Opportunities for creating or directing appropriate research and monitoring will be explored as resourcing allows.

Improved management procedures for tour operators should be put in place.

The Wildlife (Marine Mammals) Regulations 2019 provide the minimum standard that all tour operators must adhere to. Additional improved management procedures will be considered as part of the selection criteria for the application process and through additional permit conditions.



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If the number of whale watching vessels was increased, stricter conditions could be imposed on these permits to offset the impacts of having more permits; for example, allowing them to make fewer approaches than dolphin swim permit holders can.

Whale swim tours should be given priority over whale watching tours to enter the caution zone of dolphins, given that the regulations limit the number of vessels allowed in the caution zone at one time to three.

As previously noted, the key impact to the dolphin population comes from the vessel approach. DELWP does not believe it to be fair or practicable to reduce the number of approaches only for whale watching permits.

The final determinations provide for four whale swim tour permits and no whale watching tour permits.

Under the final Limited Permit Area determinations there will be no whale watching permits operating in Port Phillip Bay.

However, there may sometimes be competition not just between marine mammal permit holders for entry to the caution zone, but also between marine mammal tour vessels and other vessels.

Priority of access to the caution zone is not something that is within the Victorian Government's responsibility to regulate. Tour operators will need to negotiate among themselves on a proactive or case-by-case basis to ensure equitable access to marine mammal viewing and swimming opportunities.
