

South Australia

National Parks and Wildlife (Whales and Dolphins) Regulations 2000

under the *National Parks and Wildlife Act 1972*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *National Parks and Wildlife (Whales and Dolphins) Regulations 2000*.

2—Commencement

These regulations will come into operation on 1 January 2001.

3—Regulations under section 68(1)(c) of the Act

- (1) These regulations are made under section 68(1)(c) of the Act.
- (2) The Minister is able to grant a permit to a person to act in contravention of these regulations under section 68(2) of the Act.

4—Interpretation

In these regulations, unless the contrary intention appears—

the Act means the *National Parks and Wildlife Act 1972*;

adult whale means a whale that is not a whale calf;

aircraft means any machine or equipment that is designed to be flown by a person who has control over its speed and direction of movement but does not include a hovercraft;

dolphin means an animal of one of the following genera:

- (a) Delphinus;
- (b) Grampus;
- (c) Lagenorhynchus;
- (d) Orcinus;
- (e) Pseudorca;
- (f) Tursiops;

marine mammal means a mammal of a species whose natural habitat is a marine environment;

motorised vessel means a vessel that has a motor or engine as its principal source, or one of its principal sources, of motive power;

observe in relation to a marine mammal means to watch, or listen to, the mammal and includes to take photographs or films or to make audio, video or other recordings of the mammal;

porpoise means an animal of the genus *Phocoena*;

prescribed vessel means a jet ski or a hovercraft;

submersible means a machine designed to move one or more persons underwater;

swimmer includes a person using a surfboard;

vessel means a boat or other craft or a device that is designed to float on water and to be manoeuvred by a person who has control over its speed and direction of movement and includes—

- (a) a submersible; and
- (b) a hovercraft,

but does not include a surfboard;

whale means an animal of one of the following families:

- (a) Balaenidae;
- (b) Balaenopteridae;
- (c) Neobalaenidae;
- (d) Physeteridae;
- (e) Kogiidae;
- (f) Ziphiidae,

or of the genus *Globicephala*;

whale calf means a young whale that is less than two thirds of the length of an adult female whale.

5—Application of these regulations

- (1) These regulations only apply to, and in relation to, marine mammals living in the wild.
- (2) These regulations apply to, and in relation to, a vessel or aircraft except where the observing of marine mammals or swimming near marine mammals is not the purpose, or one of the purposes, for which the vessel or aircraft is being used.
- (3) Where a whale, dolphin or porpoise is in a situation in which it is reasonable to assume that it is distressed, the whale, dolphin or porpoise will be taken to appear to be distressed for the purposes of these regulations.
- (4) Subregulation (3) does not limit the circumstances in which a whale, dolphin or porpoise may appear to be distressed.

Part 2—Whales

Division 1—Interaction of vessels and whales

6—Distance from whales and speed of vessels

- (1) A person who is in control of a prescribed vessel must not move it closer to a whale than 300 metres.
- (2) A person who is in control of any other kind of vessel must not—
 - (a) move it closer than 300 metres to—
 - (i) a whale that appears to be distressed; or

- (ii) a whale calf; or
 - (b) move it closer than 100 metres to any other whale.
- (3) A person who is in control of a vessel that is within 300 metres of a whale—
 - (a) must not approach the whale head on or tail on;
 - (b) if the whale is moving towards the vessel—must not use, or continue using, the vessel to enable persons on the vessel to observe the whale or swim near it unless he or she either maintains the vessel's position or moves it away from the whale;
 - (c) must not move the vessel between the whale and another whale that is within 300 metres of the vessel;
 - (d) must not drop an anchor from the vessel.
- (4) A person who is in control of a motorised vessel must not drive the vessel at a speed exceeding 5 knots if the vessel is within 300 metres of a whale.

7—Obligation where whale too close to vessel

- (1) Subject to subregulation (2), where a whale is—
 - (a) within 300 metres of a prescribed vessel; or
 - (b) within 100 metres of any other vessel,

the person in control of the vessel must not use, or continue using, it to enable persons on the vessel to observe the whale or swim near it unless he or she maintains the position of the vessel or moves it away from the whale.
- (2) Where a whale that appears to be distressed or a whale calf is within 300 metres of a vessel, the person in control of the vessel must not use, or continue using, it to enable persons on the vessel to observe the whale or swim near it unless—
 - (a) in the case of a whale that appears to be distressed by the presence of the vessel—he or she moves the vessel away from the whale until the distance between the whale and the vessel—
 - (i) is such that the whale is no longer distressed by the vessel; or
 - (ii) is 300 metres,whichever is the greater;
 - (b) in the case of a whale that appears to be distressed but not by the presence of the vessel—he or she moves the vessel away from the whale until the distance between the whale and the vessel is 300 metres;
 - (c) in the case of a whale calf that does not appear to be distressed—he or she moves the vessel away from the whale calf until the distance between the whale calf and the vessel is 300 metres.

Division 2—Interaction of aircraft and whales

8—Restrictions on aircraft

- (1) A person who is in control of a helicopter must not fly it—
 - (a) at an altitude of less than 600 metres above a whale; or
 - (b) at an altitude of less than 600 metres above any part of a circular area that has a whale at its centre and a radius of one kilometre.
- (2) A person who is in control of an aircraft other than a helicopter must not fly it—
 - (a) at an altitude of less than 300 metres above a whale; or
 - (b) at an altitude of less than 300 metres above any part of a circular area that has a whale at its centre and a radius of 300 metres.
- (3) Where a whale appears to be distressed by the presence of an aircraft, the person in control of the aircraft must not use, or continue using, it to enable persons in the aircraft to observe the whale unless he or she flies it away from the whale until the whale is no longer distressed by the presence of the aircraft.

Division 3—Swimming and whales

9—Restrictions on swimming

- (1) A swimmer must not—
 - (a) approach closer than 30 metres to a whale;
 - (b) approach closer than 100 metres to a whale calf.
- (2) A swimmer who is using scuba or hookah equipment must not approach closer than 100 metres to a whale.

10—Circumstances in which swimmers must move away from a whale

If a person is swimming to observe whales and is—

- (a) closer than 100 metres to a whale calf; or
- (b) using scuba or hookah equipment and is closer than 100 metres to an adult whale; or
- (c) closer than 30 metres to an adult whale in any other circumstances,

he or she must not continue swimming for that purpose unless he or she either maintains his or her position or moves away from the whale.

11—Non application of this Division to submersibles

Division 1 applies, instead of this Division, to a swimmer who is using a submersible or other vessel.

Division 4—Commercial operations

12—Restrictions on the commercial observation of whales

- (1) A person must not, for fee or reward, use a vessel or an aircraft to take another person into the vicinity of a whale for the purpose of—
 - (a) observing the whale from the vessel or aircraft; or
 - (b) swimming near the whale.
- (2) A person must not, for fee or reward—
 - (a) take another person by any other means into the vicinity of a whale; or
 - (b) assist another person in the vicinity of a whale,
for the purpose of enabling that person to swim near the whale.

Division 5—The Encounter Bay restricted area

13—The Encounter Bay restricted area

- (1) A person who is in control of a vessel must not move it closer than 300 metres to a whale that is in the Encounter Bay restricted area.
- (2) The boundary of the Encounter Bay restricted area is as follows:

Commence at longitude 138°34'5" latitude 35°36'23" (being a point at high water about 1.5 kilometres west of Kings Head) then one nautical mile to the south east to longitude 138°35'0" latitude 35°37'0" then to longitude 138°46'25" latitude 35°31'23" (being a point at high water near the Goolwa Beach car park) then to the point of commencement along the high water mark.

Division 6—General

14—Noise in the vicinity of whales

A person who is in the vicinity of a whale for the purpose of observing the whale must not—

- (a) make, or cause to be made, a noise that is likely to frighten or otherwise cause distress to the whale because of its loudness or suddenness or for any other reason; or
- (b) play back a recording of sounds made under water in a manner that is likely to be heard by the whale.

Part 3—Dolphins and porpoises

15—Distance from dolphins and porpoises and speed of vessels

- (1) A person who is in control of a prescribed vessel must not move it closer to a dolphin or a porpoise than 150 metres.
- (2) A person who is in control of any other kind of vessel must not move it closer to a dolphin or a porpoise than 50 metres.

- (3) If a dolphin or a porpoise is closer to a vessel than the distance prescribed by subregulation (1) or (2) for that vessel, the person who is in control of the vessel must not use, or continue using, it to enable persons on the vessel to observe the dolphin or porpoise or to swim near it unless he or she avoids as far as is reasonably practicable changing course or speed suddenly.
- (4) Where a dolphin or a porpoise appears to be distressed by the presence of a vessel, the person in control of the vessel must not use, or continue using, it to enable persons on the vessel to observe the dolphin or porpoise unless he or she moves the vessel away from the dolphin or porpoise until it is no longer distressed by the presence of the vessel.
- (5) A person who is in control of a motorised vessel must not drive the vessel at a speed exceeding 5 knots if the vessel is within 150 metres of a dolphin or a porpoise.

16—Swimming and dolphins and porpoises

- (1) A swimmer must not approach closer than 10 metres to a dolphin or porpoise.
- (2) If a person is swimming to observe dolphins or porpoises and is closer than 10 metres to a dolphin or porpoise, he or she must not continue swimming for that purpose unless he or she either maintains his or her position or moves away from the dolphin or porpoise.

Part 4—Miscellaneous

17—Swimmers and marine mammals

- (1) This regulation applies to marine mammals except whales, dolphins and porpoises.
- (2) A swimmer must not approach closer than 10 metres to a marine mammal.
- (3) If a swimmer is swimming to observe marine mammals and is closer than 10 metres to a marine mammal, he or she must not continue swimming for that purpose unless he or she either maintains his or her position or moves away from the marine mammal.

18—Approaching marine mammals on land

A person who is on land must not approach closer than 10 metres to a marine mammal that is on land or in the water.

19—Feeding marine mammals

A person must not—

- (a) feed a marine mammal; or
- (b) dispose of any material into water if—
 - (i) the person knows, or ought reasonably to know, that a marine mammal is in the vicinity; and
 - (ii) the material is likely to be eaten, ingested or otherwise absorbed by the marine mammal.

20—Exemption

- (1) These regulations do not apply to a person to the extent that he or she is acting reasonably in the best interests of a marine mammal that is—
 - (a) suffering from injury, disease or exhaustion; or
 - (b) stranded or entangled or otherwise incapacitated by material of human origin.
- (2) These regulations do not apply to a person to the extent that he or she is responding in a reasonable manner to an emergency involving danger to human life.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Revocation of regulations

The *National Parks and Wildlife (Whales and Dolphins) Regulations 2000* were revoked by Sch 3 of the *National Parks and Wildlife (Protected Animals—Marine Mammals) Regulations 2010* on 16.4.2011.

Principal regulations

Year	No	Reference	Commencement
2000	278	<i>Gazette 7.12.2000 p3472</i>	1.1.2001: r 2