



WILDLIFE ACT 1975
WHALE SWIM TOUR PERMIT

This permit is issued pursuant to the provisions of the:

- *Wildlife Act 1975*
- *Wildlife (Marine Mammal) Regulations 2019*

Permit holder: Mr James Murphy

Vessel: Maureen M MB611 VKH (UVI 432095)

Vessel description: Passenger Charter / Fishing 10.88m

Description of Authorised Dolphin Swim Tour Services within the Port Phillip Bay Whale (Dolphin) Limited Permit Area determination of 17 September 2020:

<i>Operating season:</i>	1 September to 30 June
<i>Maximum number of swim tours per day:</i>	Two
<i>Vessel departure point:</i>	Queenscliff Harbour
<i>Maximum number of passengers per tour:</i>	37 (maximum of 25 swimmers)

Unless cancelled or suspended in accordance with the relevant Acts/ Regulations or conditions of the permit, this document shall remain in force from:

Permit period: 11 November 2020 to 30 June 2025

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Jennifer Cane
Director, Regulatory Strategy and Permissions
Conservation Regulator
Delegate for the Secretary to the Department of Environment, Land, Water and Planning



General conditions:

1. The Permit applies only to the “Port Phillip Bay Whale (Dolphin) Swim Tour Limited Permit Area” as proclaimed by the “Determination of the Port Phillip Bay Whale (Dolphin) Swim Tour Limited Permit Area” as published on 17 September 2020 in the Victorian Government Gazette.
2. The provisions of the *Wildlife Act 1975* and the *Wildlife (Marine Mammals) Regulations 2019* or equivalent legislation or regulations must be observed at all times unless otherwise allowed by this permit.
3. An authorised officer may direct a person to cease immediately any activity being carried out under this permit, if the authorised officer reasonably believes that the activity is detrimental to the welfare of any whale.

Prescribed conditions:

Tour services

4. The permit holder must ensure that the requirements of the *Wildlife (Marine Mammals) Regulations 2019* and the conditions of the permit are displayed on the permit holder's website.
5. The permit holder must ensure that customers are advised of the requirements of *Wildlife (Marine Mammals) Regulations 2019* and the conditions of the permit prior to their tour.
6. The permit holder must, for each tour conducted, provide each customer on the tour, with clear and accurate information on the biology and conservation status of and threats facing each species of marine mammal encountered on the tour.
7. The permit holder must ensure that signs are clearly posted on the tour vessel in places where all passengers on the tour vessel are reasonably likely to see them, advising of the requirements of the *Wildlife (Marine Mammals) Regulations 2019* and the conditions of the permit.
8. 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 the *Wildlife (Marine Mammals) Regulations 2019*.
9. The permit holder must ensure that all customers on the tour vessel, other than an employee of the permit holder, are under the direct supervision of a tour supervisor at all times.
10. The permit holder must take reasonable steps to ensure that no person on the tour vessel breaches the *Wildlife (Marine Mammals) Regulations 2019*
11. 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.



12. 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.
13. The permit holder must ensure that any person on the vessel or in the water must not feed or attempt to feed a marine mammal during the tour.

Vessel operations

14. 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.
15. 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.
16. 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.
17. 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.
18. 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
 - ii. 200 metres for a non-dolphin whale.
19. 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—
 - 60 minutes each tour
 - 120 minutes each day.
20. 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.
21. The permit holder may not enter the caution zone of a whale if more than two vessels are already within that caution zone, unless it is necessary to ensure safe passage through a narrow waterway.

Conditions within the caution zone of a marine mammal

22. The permit holder must not cause or permit that vessel to -
 - i. approach the marine mammal from head on at an angle less than 30 degrees to its observed direction of travel
 - ii. approach the marine mammal from the rear at an angle less than 30 degrees to its observed direction of travel



- iii. be in the path ahead of the marine mammal at an angle less than 30 degrees to its observed direction of travel
23. The permit holder must not cause or allow the vessel to separate any individual marine mammal from a group of marine mammals.
24. The permit holder must not cause or allow the vessel to come between a mother whale and calf.
25. The permit holder must not cause or allow the vessel to pursue a marine mammal.
26. The permit holder must move the vessel at a constant speed that does not exceed 5 knots.
27. The permit holder must avoid sudden changes in speed or direction.
28. 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.
29. The permit holder must manoeuvre the vessel to outside the caution zone if the marine mammal shows any sign of disturbance. The signs include—
 - i. attempts to leave the area or vessel
 - ii. sudden changes in surface behaviour
 - iii. rapid changes in direction or speed of swimming
 - iv. deep dives away from the vessel
 - v. changes in breathing patterns
 - vi. increased time spent under water compared to time spent at the surface
 - vii. changes in acoustic behaviour
 - viii. the onset of aggressive behaviours such as tail slaps or trumpet blows
30. The permit holder must ensure that any person on the vessel or in the water must not dispose of food or waste within the caution zone of a marine mammal.
31. The permit holder must ensure that any person must not touch or attempt to touch a marine mammal.
32. The permit holder must not play back or cause to be played back an underwater sound or a recording of any kind.

Dolphin swims

33. The permit holder must not conduct a dolphin swim within a whale sanctuary zone.
34. The permit holder must not conduct a dolphin swim if a calf is present.
35. The permit holder must ensure that if a dolphin 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 100 metres from the vessel for a dolphin calf.
36. The permit holder must not conduct a dolphin swim if signs of mating are detected. This includes -



- jaw clicks;
 - fin or tail slaps;
 - visible penises;
 - aggressive behaviour such as repeated tail slaps;
 - belly to belly contact;
 - female swimming upside down and pursued by males;
 - flanking behaviour observed, being 3 or more dolphins in close contact side-by-side exhibiting increased surface activity.
37. The permit holder must ensure that if a dolphin 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 dolphin mating activity is at least 100 metres from the vessel.
38. The permit holder must conduct no more than one dolphin swim for each approach within the caution zone of a dolphin.
39. The permit holder must ensure that a mermaid line is placed in the water before any person enters the water from the tour vessel.
40. The permit holder must ensure that any person on the vessel or in participating in a dolphin swim must not make or cause to be made any loud or sudden noise.
41. The permit holder 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 each person is in the water.
42. The permit holder must remain within 10 metres of the mermaid line and must not approach a dolphin from head on, from directly behind or from above or from underneath.
43. The permit holder must ensure that an employee of the permit holder, while in the water for any purpose must -
- i. remain within 10 metres of the mermaid line;
 - ii. not approach a dolphin from head on or from directly behind; and
 - iii. not approach a dolphin from above or from underneath.
44. The permit holder must ensure that the tour vessel is not repositioned during a dolphin swim.
45. The permit holder must ensure that the tour vessel is in a neutral gear at all times during a dolphin swim except where it is necessary to avoid damage or prevent further damage to person or property.
46. The permit holder must not tow swimmers during a dolphin swim.
47. The permit holder must not enter the water from the tour vessel 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;
48. 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 dolphin swim at any one time.
49. The permit holder must not attempt to attract or herd dolphins towards the tour vessel or a person.



50. The permit holder must ensure that an employee of the permit holder does not attempt to attract or herd a dolphin towards the vessel or a person.
51. 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.
52. 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 dolphin.

Trip returns

53. The permit holder must keep a monthly return in the form provided.
54. The permit holder must ensure that, for each tour conducted, the following information is recorded—
 - i. the name of the tour supervisor on the tour;
 - ii. the number of persons, other than the permit holder and any employee of the permit holder on the tour
 - iii. the number of persons, other than the permit holder and any employee of the permit holder, on the tour who participated in a dolphin swim during that tour
 - iv. the date and time of day the tour commenced and finished
 - v. the time of day for each instance that the vessel entered and left the caution zone of a whale
 - vi. the time of day that the dolphin swim commenced and finished
 - vii. the location of the dolphin swim
 - viii. the location of any whales sighted
 - ix. the species and number of whales sighted
 - x. any other information required by the Secretary.

Additional conditions:

55. The permit holder agrees to provide the Secretary with a perpetual non-exclusive paid up license (including a right to sub-license) to use trip return data required under this permit for whatever purpose the Secretary sees fit.
56. The permit holder shall carry an operational range finder and global positioning system (GPS) during all activities authorised under this Permit.
57. The permit holder must demonstrate continuous use of the permit to conduct dolphin swim tours (excluding seasonal closures). Failure to conduct tours over an extended period may form a basis for cancellation of the permit.
58. This permit only applies to the vessel nominated on this permit.
59. This permit is not transferable.
60. Permit Holders must when requested by the Secretary, allow an observer or researcher nominated by the Secretary on board tours to monitor adherence to permit conditions and to monitor the effects tour activities may have on dolphins.