

# TOURIST ACT 1977

## Section 29

### DRAFT WHALE AND DOLPHIN WATCHING REGULATIONS 2009

In exercise of the powers conferred by section 29 of the Tourist Act 1977 the Minister of Tourism, with the consent of His Majesty in Council, makes the following regulations;

Short title

1. These regulations may be cited as the Whale and Dolphin Watching Regulations 2009.

Interpretation

2. In these regulations, unless the context otherwise requires-  
“Commercial aircraft operation” means operation using any aircraft as defined in the Civil Aviation Act [specify year of Act]

**Commercial fishing** means taking fish for sale within Tonga or Tongan fisheries waters:

**“Commercial Operator”** means a person or company duly registered under the **Companies Act** who carries on a commercial operation:

**“Commercial operation”** or **“operation”** means an operation carried on for any form of hire or reward in which persons are transported, conveyed conducted, or guided where either the purpose or a significant purpose is to view or come into contact with any whale or dolphin within Tongan territorial or waters:

**“Contact”**, in relation to a marine mammal, includes any interaction involving a person and a whale or dolphin that is likely to produce an effect on the whale and dolphin:

**“Calf”** means a young whale, approximately half the size or less of adult individuals of its species.

**“Dolphin”** means-

- (a) All species commonly known as dolphins and includes, bottlenose dolphins and spinner dolphins but;
- (b) Does not include the species known as killer whales and pilot whales:

**“Director”** means-  
**The Director of Tourism**

**Fisheries waters** means the territorial waters of the Kingdom, internal waters including lagoons, and such other waters over which the Kingdom of Tonga from time to time claims sovereign rights or jurisdiction with respect to the marine living resources by legislative enactment or by Royal Proclamation;

**“Harass”** includes to do any act that-

- (a) Causes or is likely to cause injury or distress to any whale/dolphin or

- (b) Disrupts significantly or is likely to disrupt significantly the normal behavioural patterns of any marine mammal

“**Leap-frogging**” is the manoeuvre of moving past a vessel or vessels that may be engaged in whale-watching or whale-swimming in order to place a vessel or swimmers in the path of a whale or dolphin so as to achieve the closest approach to it.

“**License**” means a license issued under the Whale Watching and Swimming Act 2008

“**Pod**” means an individual or a group of more than 1 whale or dolphin

**Special Interaction Permit” (SIP)**

Special Interaction Permit (SIP) is a permit issued by the Director of TVB in consultation with the Department of Fisheries and the Department of Environment for interacting with whales and dolphins for the purpose of: [Scientific research], Education, Photography (still and film) and/or by Aircraft

“**Whale**” means all species commonly known as whales and includes all baleen whales, sperm whales, beaked whales, killer whales and pilot whales;

Application

- 3. These regulations shall apply throughout the Kingdom of Tonga and Tongan fisheries waters;
  - (1) Nothing in these regulations applies in respect of any fishing vessel while the vessel is engaged in commercial fishing, unless-
    - (a) the vessel is also engaged in a commercial operation or
    - (b) the vessel deviates off course to engage in recreational viewing of whales and dolphins.
  - (2) The purpose of these regulations is to make provision for the protection, conservation and management of whales/dolphins and in particular-
    - (a) To regulate human interaction with Whales and Dolphins either by commercial operators or other persons, in order to prevent adverse effects on, and interference with, Whales and Dolphins;
    - (b) To prescribe appropriate behaviour by commercial operators and other persons seeking to come into contact with Whales and Dolphins.

**BEHAVIOUR AROUND WHALES AND DOLPHINS**

Conditions governing all interaction (Commercial and private operations) around any whale or dolphin

- 4. Every commercial operation and every person coming into contact with whales and dolphins shall comply with the following conditions:

- (a) Persons shall use their best endeavours to operate vessels and aircraft so as not to disrupt the normal movement or behaviour of any whale or dolphin;
- (b) Stop contact with any whale or dolphin at any sign of the animal becoming disturbed or alarmed;
- (c) No person shall cause any whale or dolphin to become separated from a group of whales or dolphins or cause any members of such a group to be scattered;
- (d) No rubbish or food shall be thrown near or around any whale or dolphin;
- (e) No sudden or repeated change in the speed or direction of any vessel shall be made except in the case of emergency;
- (f) Where a vessel stops to enable the passengers to watch any whale or dolphin, the engines shall be placed in neutral or be switched off within a minute of the vessel stopping;
- (g) No person shall disturb or harass any whale or dolphin;
- (h) A vessel shall not chase, encircle, block the direction of travel of, or position itself in the middle of a pod of whales/dolphins;
- (i) No person shall touch or feed any whale/dolphin;
- (j) No person shall place a vessel up wind of, or in a position where it will drift into, the direction of travel of any whale/dolphin;
- (k) Any vessel within 300 metres of a whale or dolphin shall move at a constant slow speed no faster than the slowest whale or dolphin in the vicinity, or at idle or “no wake” speed;
- (l) Vessels departing from the vicinity of any whale or dolphin shall proceed slowly at idle or “no wake” speed until the vessel is at least 300 metres from the nearest whale or dolphin.

Special conditions  
Applying to whales.

- 5. In addition to complying to the conditions set out in regulation 4 of these regulations every commercial and private operation coming into contact with any whale shall also comply with the following conditions:
  - (a) No person shall be in the water with any whale unless he or she enters the water from a licensed whale swimming commercial operator’s vessel;
  - (b) No operator of a private vessel may approach closer than 300 metres to any whale unless it complies with regulation 7 of these regulations;
  - (c) Commercial operators licensed for whale watching may approach an adult whale no closer than 50 metres and any pod containing a calf, no closer than 100 metres;
  - (d) Commercial operators licensed for whale swimming may approach only in accordance with regulation 6 governing swimming with whales;
  - (e) If a whale approaches a vessel, the master of the vessel shall, wherever practicable:
    - (i). Manoeuvre the vessel so as to keep out of the whale’s direction of travel;
    - (ii) Maintain a minimum distance of 300 metres from the whale unless the vessel is operated by a licensed commercial operator.

- (f) A vessel shall approach a whale from a direction that is parallel to the whale and slightly to the rear of the whale and never in the area directly in front or behind a whale;
- (g) A helicopter must not get closer (in height or distance) than 500 metres to a whale or dolphin. A plane must not get closer (in height or distance) than 300 metres to a whale or dolphin.
- (h) No person shall make any loud or disturbing noise near whales;
- (i) No person shall use SCUBA for diving or swimming with whales;
- (j) No person shall use artificial light sources around whales;
- (k) No person shall use jet skis or motorized swimming aids for whale watching;
- (l) No person shall use a jet ski to approach closer than 2,000 metres to any whale;
- (m) The maximum interaction time of any vessel or vessels with any individual pod of whales is one and a half hours.

Special conditions  
Applying to  
Swimming with  
Whales.

6. In addition to complying with the regulations set out in regulations 4 and 5 of these regulations every licensed commercial operator shall also comply with the following conditions:
- (a) Only licensed 'whale swimming' commercial operators are permitted to put swimmers in the water with whales;
  - (b) Each commercial operator shall enter into and sign a written waiver agreement with each client, in the form set out in Schedule 1 of these regulations. The waiver of indemnity must specifically indemnify the Government of the Kingdom of Tonga from any liability that may result from any accident of any kind;
  - (c) No more than four clients plus one trained local guide per vessel may be in the water with any one pod of whales at a time;
  - (d) Only one licensed commercial vessel may have swimmers in the water with any one pod of whales;
  - (e) Each licensed commercial operator is solely responsible for determining whether the conditions for clients to swim with whales are safe.;
  - (f) Vessels carrying six or more passengers must carry a minimum of two crew including the master;
  - (g) Vessels with swimmers in the water must fly the alpha flag;
  - (h) Vessels must carry an approved first aid kit and at least one member of the crew is to have a current First Aid Certificate;
  - (i) All vessels must meet Ports & Marine survey requirements;
  - (j) All licensed operators must have third party liability insurance coverage;
  - (k) The maximum interaction time for any licensed whale swimming vessel with any one pod of whales is one-and-a-half hours unless under special permit

(under regulation 7). After any one-and-a-half hour interaction, during which an operator may leave the pod and another operator may interact with it, no vessel may attempt to interact with the pod for at least **[2 hours]**

- (l) If a second licensed operator arrives, the approaching vessel must make contact by VHF radio (Channel 74 - low power) and stay outside 100 metres;
- (m) The practice of leap-frogging is prohibited;
- (n) Swimmers distance from the whales will be at the discretion of the licensed whale watch guide.
- (o) No vessel shall approach any whale closer than **[30 metres]** for the purposes of dropping off or picking up any swimmer except in an emergency where the safety of a swimmer is at risk;
- (p) Any dinghy, small boat, kayak that is launched for the purpose of whale watching and approaches closer than 100 metres to a whale must carry a handheld VHF radio;
- (q) Two or more kayaks within 100 metres of a whale shall be considered as one operator.

### **“Special Interaction Permit” (SIP)**

7. Special Interaction Permit (SIP) is a permit issued by the Director of TVB in consultation with the Department of Fisheries and the Department of Environment for interacting with whales and dolphins for the purpose of: [Scientific research], Education, Photography (still and film) and/or by Aircraft.

- 1) Every applicant for a SIP must name a local guide/observer who will be responsible for ensuring compliance with the conditions of the Permit
- 2) The Director may issue a permit for any period of time not exceeding 3 years.
- 3) Fees pertaining to every SIP shall be determined by the nature of the activity and are payable to the TVB
- 4) Every applicant for a SIP shall submit to the Director for approval an application in writing, setting out the following:
  - (a) Details of the proposed operation, including –
    - (i) The type and number of vessels intended for use;
    - (ii) The proposed area of operation;
    - (iii) The proposed base of operation;
    - (iv) The duration of trips proposed;
    - (v) The frequency of trips proposed;
    - (vi) The proposed kind of contact with marine mammals;
    - (vii) The maximum numbers of passengers intended to be taken at any one time;
    - (viii) The species of cetaceans with which the operation will have contact;
    - (ix) The masters proposed to be engaged in the operation and their qualification;
  - (b) The experience with cetaceans of the proposed operation and such of the operator’s proposed staff who may come into contact with cetaceans;
  - (c) The details of any convictions of the proposed operator and of those employees of the operator who may come into contact with cetaceans, for offences involving the mistreatment of animals.
  - (d) The details of any educational material to be provided or educational aspects of the proposed operation.