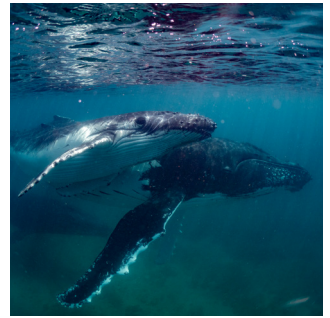


Draft Management Program

for managing interactions
with humpback whales
along the Ningaloo Coast

January 2020



Department of Biodiversity,
Conservation and Attractions



Australian Government

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January 2020

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Warning: This program mentions names, and/or refers to quotations from Aboriginal people who may have passed away.

This draft program was prepared by Jessica Strickland.

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This document is available in alternative formats on request.

A supporting document with research, information and references to sources utilised to inform this draft management program is available upon request.

Acknowledgments

Ngarnurra nhuna nhugurarrima Baiyungu, Thalanyji and Yinikurtura ganyarajarri thanardi ngarrari.
We acknowledge Baiyungu, Thalanyji and Yinikurtura People as the original custodians of the management area.

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Thanks go to the Ningaloo Coast Joint Management Body for collaboration and support in preparing this draft.

Gujawari in the Ningaloo (Nyinggulu) area

The following story is told by Hazel Walgar, a Baiyungu woman from the Ganyara language group, a traditional owner who lives on country at Cardabia Station and is involved in the joint management of Ningaloo Marine Park (NMP) and adjacent lands. Hazel has shared the following story about the Gujawari, our regular visitors to the Nyinggulu Coast, in order to highlight the cultural connection and understanding that traditional owners have for the land and sea.

“Gujawari, the Baiyungu word for whale. Our regular visitors to the Ningaloo Coast, he’s not from here, he’s from somewhere else. It’s springtime and the Gujawari makes his journey to Ningaloo, Buluwha cold/cooler time. For traditional owners, it’s the right time of the year when most of our traditional food is available as the land and the ocean are flourishing. The winter rains come delivering rich nutrients into the ocean, this helps create food sources. Fish are fat, our shellfish are rich and plump, large quantities of food is available for the Gujawari. The temperature of the water changes and mums have their babies. Around September the Gujawari heads south making their journey home by now on country its coming into summer Thubayurri – Hot time. Studying these creatures still continues in the scientific world but we traditional owners know exactly what is happening here on the Ningaloo Coast, these stories have been passed down by our Baiyungu elders.” – Hazel Walgar 2019

This story is not to be copied, reproduced or used without the author’s consent.

Invitation to comment

This draft management program has been released for a one-month period between 13 January and 13 February 2020 to provide the public with an opportunity to comment. To find out more, visit: dpaw.wa.gov.au/swimming-with-humpback-whales.

To ensure your submission is as effective as possible

- be clear and concise;
- refer your points to the page numbers or specific sections in the program;
- say whether you agree or disagree with any or all of the management arrangements – clearly state your reasons, particularly if you disagree;
- give sources of information where possible; and
- suggest alternatives for those aspects of the program with which you disagree.

The draft management program will be reviewed in light of the submissions, according to the criteria outlined below.

The draft management program may be modified if a submission

- a) provides additional information of direct relevance to management;
- b) indicates a change in (or clarifies) government legislation or management policy;
- c) proposes strategies that would better achieve management objectives; or
- d) indicates omissions, inaccuracies or a lack of clarity.

The draft management program may not be modified if a submission

- i. clearly supports proposals in the program or makes general or neutral statements,
- ii. refers to issues beyond the scope of the program,
- iii. refers to issues that are already noted within the program or already considered during its preparation,
- iv. is one among several widely divergent viewpoints received on the topic but the approach in the program is still considered the best option,
- v. contributes options that are not feasible (generally due to conflict with legislation or government policy), or
- vi. is based on unclear or factually incorrect information.

The draft management program can be viewed and submissions made online at: dbca.wa.gov.au/haveyoursay.

Alternatively, you can write to:

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All submissions must be received by midnight on 13 February 2020.

Summary

The *Draft Management Program for managing interactions with Humpback whales along the Ningaloo Coast* (hereafter referred to as ‘the management program’) has been developed by the Western Australian Department of Biodiversity, Conservation and Attractions (DBCA) to guide the management of interaction activities affecting humpback whales (*Megaptera novaeangliae*), also known in the Ningaloo (Nyinggulu) region as gujawari. The program applies to Ningaloo Marine Park (State waters) and Muiron Islands Marine Management Area, but some actions apply to surrounding State waters such as Exmouth Gulf. The program has a focus on in-water humpback whale interactions and also considers recreational activities, commercial whale watching and other marine operations.

Management of humpback whales occurs in accordance with the *Biodiversity Conservation Act 2016* and the *Conservation and Land Management Act 1984* and is underpinned by the *principles of ecologically sustainable development* and an adaptive management approach. For Ningaloo Marine Park (State waters) and Muiron Islands Marine Management Area, management is consistent with the *Management Plan for the Ningaloo Marine Park and Muiron Islands Marine Management Area 2005–2015*.

The population of humpback whales that uses the waters of Western Australia (WA) migrates annually from Antarctic feeding grounds to breeding grounds in State waters. Pressures on humpback whales include risk of vessel strike, noise pollution, marine pollution, habitat modification, human disturbance, and climate change. In WA, the Department of Biodiversity, Conservation and Attractions (DBCA) has the legislative responsibility for the conservation and management of this species. The management program proposes four objectives for humpback whales in the management area:

- Improve the understanding of WA’s humpback whale population to inform management.
- Promote public awareness, appreciation, and conservation of humpback whales.
- Facilitate activities that provide for safe and meaningful humpback whale interactions.
- Mitigate pressures to WA’s humpback whale population and its individuals.

In-water interactions

In-water humpback whale interactions have occurred under a trial in Ningaloo Marine Park (State waters) and Muiron Islands Marine Management Area with licensed operators since 2016. The transition to a permanent licensed industry in this management area is proposed for 2021 and this management program provides a framework for this to occur. Feedback on the following key licensing arrangements is sought.

Number of licences: Based on research and consultation undertaken during the development of this draft program, consideration is being given to offering fewer licences; for example, two licences to operate out of Coral Bay and five to operate out of Tantabiddi or Exmouth Marina. Comment is invited on the number of licences to be offered for in-water humpback whale interaction tours.

Issuing of licences: Licences will be released through a competitive expression of interest process in 2020 and are proposed to be granted for a five-year duration with two five-year options to renew.

Licence conditions: Licensed commercial operators will be required to comply with conditions stipulated in their licence that outline how in-water interactions are to be undertaken. Licence conditions are an important management tool and can be changed in response to new information

under an adaptive management approach. It is proposed to amend the existing licence conditions to remove set season dates for in-water humpback whale interaction tours.

The proposed licence conditions include the following parameters:

- **Area of operation** for in-water humpback whale interactions is within the State waters of Ningaloo Marine Park and Muiron Islands Marine Management Area.
- **Swimmer group size** is limited to nine persons (seven passengers and two crew members).
- **Mother and Calf Protection Zone** is in place to protect mother and calf groups and requires the use of a spotter aircraft to confirm the absence of small calves (less than half the size of accompanying whales) prior to an interaction occurring in this area.
- **Interaction protocols** must be displayed and specify rules for the vessel and for swimmers during in-water interaction activities. No changes to the interaction protocols are proposed.
- **An Electronic Monitoring System (EMS)** is to be fitted onto approved vessels and records data crucial to DBCA's management of humpback whales and in-water interaction activities.
- **A time limit of 60 minutes** spent with any whale or pod is in place. Multiple operators may interact with the same pod if the cumulative time spent for all operators is no more than 60 minutes.
- **Multiple groups** are permitted in the water with resting whales, providing only one group is within 30 metre of a whale at a time.

DBCA is responsible for the implementation of the management program, with support from other entities with management responsibilities. The program will guide management of humpback whales along the Ningaloo Coast for a period of ten years and will then be subject to review.

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Acronyms

<i>CALM Act</i>	<i>Conservation and Land Management Act 1984</i>
DBCA	Department of Biodiversity, Conservation and Attractions
ECZ	Exclusive Contact Zone
EMS	Electronic monitoring system
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
FOC	Free-of-charge
MIMMA	Muiron Islands Marine Management Area
NMP	Ningaloo Marine Park
VRM	Visitor risk management
WA	Western Australia

1 Introduction

1.1 Management context

The *Draft Management Program for managing interactions with humpback whales along the Ningaloo Coast* (herein ‘the management program’) has been developed by the Western Australian Department of Biodiversity, Conservation and Attractions (DBCA) to guide the management of tourism, recreational and other activities affecting humpback whales (*Megaptera novaeangliae*), also known in the Ningaloo (Nyinggulu) region as gujawari.

Ningaloo is the only location in Western Australia (WA) where in-water interactions with humpback whales have been trialled and assessed and the findings of the trial have informed this management program. The management program establishes a framework for decision-making on this activity in the State waters of Ningaloo Marine Park (NMP) and Muiron Islands Marine Management Area (MIMMA) as it transitions from a trial to a licensed industry. The management program identifies objectives, desired outcomes and management actions for State waters of the Ningaloo Coast, primarily NMP and MIMMA (see Map 1).

1.2 Legislative and policy framework

Humpback whales are of local, national and international significance and there is extensive scientific and public interest in the species. The population of humpback whales that uses the waters of WA migrates annually from feeding grounds in Antarctica to breeding and resting grounds in State waters. Nationally, humpback whales are listed as Vulnerable under the *Environmental Protection Biodiversity Conservation Act 1999* and within WA they are listed as Conservation Dependent under the *Biodiversity Conservation Act 2016*.

The proposed management program is consistent with the *Conservation and Land Management Act 1984*, the *Biodiversity Conservation Act 2016*, the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*, the *Management Plan for the Ningaloo Marine Park and Muiron Islands Marine Management Area 2005–2015* and relevant DBCA policies and guidelines. The management of humpback whales in WA will occur in the context of this legislative and policy framework. Appendix 1 provides a summary of the relevant instruments supporting the protection of humpback whales.

In WA, DBCA has the legislative responsibility for the conservation and management of this species in partnership with the Ningaloo Coast Joint Management Body and Conservation and Parks Commission. DBCA works in consultation with the Ningaloo Coast World Heritage Advisory Committee and local, state and national agencies with management responsibilities (Appendix 2).

1.3 Management objectives

The management of this species and any associated activities and programs along the Ningaloo Coast will be conducted in accordance with the following four key management objectives:

- Improve the understanding of WA’s humpback whales to inform management.
- Promote public awareness, appreciation, and conservation of humpback whales.
- Facilitate activities that provide for safe and meaningful humpback whale interactions.
- Mitigate pressures to WA’s humpback whale population and its individuals.

An adaptive management approach will allow findings from research and monitoring, as well as learnings from operators and managers, to be incorporated into decision-making on an ongoing basis.

2 Background

2.1 Ningaloo region

The Ningaloo region is located approximately 1,200km north of Perth, WA, and contains the towns of Exmouth (also known as Warnanggura) and Coral Bay, which have thrived on marine tourism for decades (Map 1). The Ningaloo Coast was inscribed on the World Heritage List on 24 June 2011 in recognition of its outstanding universal value.

The abundance and diversity of marine megafauna in the region is one reason the area was inscribed on the World Heritage List, with whale sharks, dugongs, marine turtles, dolphins, rays and sharks, as well as humpback and other whales, being prevalent in the region. This outstanding universal value recognised by the World Heritage listing is a drawcard for visitors to the region, particularly to experience the beaches, coastal scenery and unique natural sights. Exmouth Gulf, which is adjacent to the Ningaloo Coast World Heritage Area, is an important habitat for resident and migratory species and is a resting area for migrating humpback whales.

2.2 Humpback whale

The humpback whale (*Megaptera novaeangliae*) is a large baleen whale that can reach more than 17 metres in length and weights of 35-40 tonnes. The species has an almost global distribution but there is notable geographical segregation into individual populations. Two populations of humpback whales use Australian waters; Group D (West Coast) and Group E (East Coast). The West Coast population migrates annually from summer feeding grounds in the Antarctic, along the coast of WA to sub-tropical winter calving grounds as far north as the Kimberley region.

The population is currently considered to be significantly more than 30,000 individuals and has recovered from a near complete collapse due to intensive commercial whaling in the 20th century. This population generally leaves their Antarctic feeding grounds around March or April each year, reaching the Ningaloo Coast between approximately May and August on their northern migration. They commence their southern migration around August, with mothers and calves using known resting areas along the way. Humpback whales are present in the management area and surrounding waters from approximately May through October each year; however, the exact timing of the migration can vary slightly from year to year, potentially as a result of water temperature, the extent of Antarctic sea-ice, predation risk, prey abundance and changes to feeding grounds.

2.3 Threats

There are a host of anthropogenic pressures that humpback whales face globally and throughout their extensive range. Within the management area, threats include vessel strike, noise pollution, marine pollution, human disturbance, habitat modification and climate change. Consideration must be given not only to local pressures, but to the cumulative pressures that may be experienced repeatedly during the migration cycle. Key pressures are summarised in Table 1 along with their associated consequences.

Table 1: Key pressures to humpback whales along the Ningaloo Coast.

Pressure	Consequences
Vessel strike	May cause serious injuries (e.g. cuts, loss of blood, trauma, fractures) or death. Mother and calf pairs are particularly vulnerable. Larger and faster vessels are more likely to cause death.
Noise pollution	May cause displacement from critical habitat, disrupt behaviour temporarily or permanently, mask natural sounds, impact hearing, cause stress or physical harm, and interfere with communication including potentially causing separation of mother-calf pairs.
Marine pollution	<i>Including marine debris, oil spills and other anthropogenic contaminants (e.g. sewage)</i> Marine debris can be ingested or cause entanglement, resulting in injury, starvation, impaired movement or drowning. Chemical pollution can cause impaired reproduction and immune function.
Habitat modification	May cause changes to behaviours and displacement from areas of preferred habitat, which can lead to reduced condition and decreased reproductive success if there is an energy cost to movement and an alternative habitat is sub-optimal.
Human disturbance	Disturbance to whales can interrupt critical behaviour such as nursing, resting or mating, potentially leading to increased energy expenditure, stress and reduced condition.
Climate change	Consequences are not well understood however may include changes to prey distribution and abundance, habitat modification, use of habitats, and potential impacts to biological functions.
Cumulative pressures	There is the potential for long-term, cumulative impacts to result from short-term responses to disturbance, including stress, heightened energetic output and reductions in time engaged in important behaviours, such as resting, feeding, socialising and maternal care (including protection from predators and nursing). Little is understood about how these additional costs may affect animals long-term.

2.4 Humpback whale interactions

Humans interact with whales in many ways, either intentionally through targeted activities like whale watching, or unintentionally, from vessels being in the vicinity. Whale watching is one of the most rapidly growing and economically attractive tourism industries worldwide. The activity not only provides significant employment and economic benefits, but also has the potential to promote conservation of the species and provide important information about whales and their environments. Humpback whales are a favourite for whale watchers due to their acrobatic behaviour and relative curiosity.

Recently, there has been a growing popularity for in-water interactions with whales; however, this activity is only available in a few locations around the world, including the Kingdom of Tonga, Mexico, the Dominican Republic and Australia. Within Australia, in-water experiences with humpback whales are offered in Queensland (off the Sunshine Coast and in Hervey Bay), NSW (Coffs Harbour, Jervis Bay and Byron Bay), and in WA (within the management area).

Providing sustainable tourism opportunities in WA's parks and reserves is a key focus for the State Government. There is a valuable opportunity to strengthen the reputation of the Ningaloo Coast World Heritage Area as a quality destination for marine fauna interactions under best-practice management. In-water interactions with whale sharks at Ningaloo have already been developed into a tourism industry that is recognised as world's best practice. The seasonal presence of humpback whales offers the opportunity for visitors to the Ningaloo region to interact with whales. Boat-based whale watching tours have been operating in the area for many years. A number of commercial tour operators engage in whale watching activities in the management area and surrounding waters (in particular, the Exmouth Gulf, shown in Map 1), either as part of a dedicated whale watching tour, or as a supplementary activity on another type of tour.

Interactions along the Ningaloo Coast

Recreational activities

Members of the general public regularly interact with humpback whales along the Ningaloo Coast, either directly while whale watching, or indirectly while enjoying other recreational activities. All members of the public who encounter humpback whales must comply with the rules for interacting with whales in State waters.

Commercial whale watching

Boat-based whale watching tours have been running in the Ningaloo region for many years and some commercial tours incorporate whale watching into other activities (e.g. fishing charter, whale shark tour, scuba diving or snorkelling tour). DBCA manages the activities of all commercial tour operators and sets specific actions for the management of these activities as they relate to humpback whales.

In-water humpback whale interactions

In WA, interacting with humpback whales in the water is permitted only on tours with licensed operators, occurs only within the prescribed management area, and is done under a set of licence conditions managed by DBCA. The management of the in-water humpback whale interaction industry is underpinned by four principles:

- minimise and manage impacts to humpback whales, particularly on mothers and vulnerable calves;
- minimise and manage risks to swimmers engaging in in-water humpback whale interactions;
- contribute to the establishment of a sustainable and viable in-water humpback whale interaction industry; and
- ensure informed decision-making about the in-water humpback whale activity is underpinned by research and monitoring.

In-water interactions offer people the opportunity to view whales in their own environment, providing an outstanding tourism opportunity. DBCA has outlined desired outcomes and management actions to manage risks to swimmers and minimise impacts on whales (see section 3.2).

There may be interest in conducting in-water humpback whale interactions in other WA State waters; however, there has been no assessment of impacts on whales nor risks to swimmers in other areas to date, and expansion of the activity elsewhere is not proposed in this management program. The introduction of this activity in other areas would come with its own unique set of circumstances and these factors would need to be evaluated, along with the cumulative impact this may have on whales, to determine whether the activity would be appropriate and how it would be trialled to guide management specific to that context.

Other marine operations

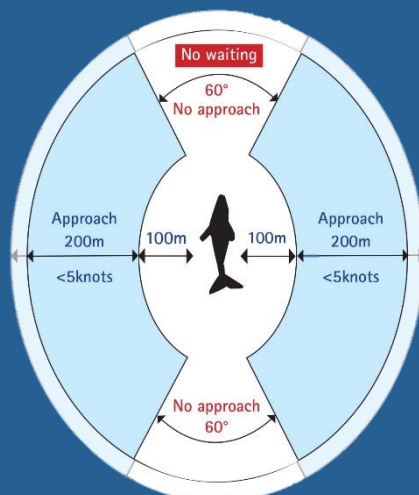
Other marine activities in the management area also have the potential to impact humpback whales, including scientific research, commercial shipping, commercial fishing, moorings or infrastructure. DBCA manages many of these activities in accordance with the *Management Plan for the Ningaloo Marine Park and Muiron Islands Marine Management Area 2005–2015*. In addition, the majority of the management area is listed as an Area to be Avoided (Map 2) because of the region’s ecological significance and its listing as an Environmentally Sensitive Area by the International Maritime Organisation. This helps to limit the number of large vessels traversing the management area.

3 Management

Many activities have the potential to impact humpback whales, either directly (through targeted activities like whale watching) or indirectly (by occurring in the vicinity). Everyone must comply with the rules for interacting with whales in State waters as outlined under State legislation.

Rules for interacting with whales in State waters

Humpback whales are protected under the *Biodiversity Conservation Act 2016* and the *Biodiversity Conservation Regulations 2018*, which outline a set of rules for interactions with whales by all people and vessels in State waters. These rules are designed to protect humpback whales from an unacceptable level of impact from human activities. Commercial and private vessels (including everything from surfboards and kayaks to yachts and launches) and aircraft (including unmanned aerial vehicles/ drones and ultralights) are bound by these rules when interacting with whales.



People not involved in a licensed in-water humpback whale interaction must not enter the water within 100m of a whale. Should a whale approach whilst a person is in the water, that person must endeavour to re-establish a minimum distance of 100m from the whale as soon as reasonably possible. All vessels not undertaking licensed commercial in-water humpback whale activities must not approach to closer than 100m to a whale and not closer than 300m in a 60° arc in front of or behind a whale. For the whale watching rules, refer to DBCA’s website.

Figure 1: Diagram showing separation distances for vessels around whales in WA waters.

3.1 Licensing

Licensing is a management tool that enables DBCA to authorise appropriate access and activities for commercial operators and monitor the operations and environmental impact of commercial businesses to ensure natural and cultural values are conserved. DBCA may grant licences to authorise commercial activities where they are consistent with the requirements of the legislation. Where an activity is being conducted in a conservation reserve, licences must be consistent with the purpose of the reserve and the management plan for the area. Commercial operators are required to obtain a licence to conduct their activities, to abide by specific conditions and to pay fees and charges towards conservation and management, which reflects a user-pays approach. Licensing is the key instrument used by DBCA to manage activities relating to humpback whales in the management area, including tourism and scientific research.

Licensing arrangements in the management area

Many commercial tourism activities in the management area, including whale watching, are managed under unrestricted commercial operations licences that are not limited in number. However, where there is a need to limit the number of licences for an activity in order to conserve protected species, environmental or cultural heritage values, or for management or public safety reasons, DBCA may restrict the number of licences granted in accordance with the *Conservation and Land Management Act 1984* or *Biodiversity Conservation Act 2016*. Restricted commercial operations licences have a higher level of requirements and contain key performance indicators to allow DBCA to monitor performance. These restricted commercial operations licences also have a higher licence charge to reflect the higher management costs and the restricted market. In-water interactions with humpback whales will be managed under a limited number of restricted commercial operations licences in order to manage and monitor the impact of this activity on humpback whales and to manage risks to visitors undertaking this activity.

Licence terms

The restricted commercial operations licences are proposed to be granted for an initial term of five years, with the possibility of renewal for two further terms of five years each, subject to a performance review that is provided for under the Conservation and Land Management Regulations 2002. At the end of the licence duration period, all licences will be reallocated via a competitive expression of interest process to allow DBCA to select the best commercial operators to undertake the activity.

Licence charges

Licence charges contribute towards the costs of managing commercial in-water interactions with humpback whales, including conservation, research, education and management activities. The charges are applied per passenger and are collected by the commercial operators. This reflects a 'user pays' approach. A daily licence charge has been set for all tour participants that swim or attempt to swim with humpback whales. DBCA will review the licence charges annually inline with State Government requirements to ensure they are appropriate and contribute towards cost recovery.

Licence conditions

Licensed commercial operators are required to comply with conditions stipulated in their licence that outline how the licensed activity must occur. The licence conditions for in-water humpback whale

interaction licences have been developed and refined during a trial period based on research and monitoring, and consultation with trial participants, scientists and an independent working group.

Licence conditions are designed to protect humpback whales and mitigate visitor risk. Licence conditions may be added to, cancelled, suspended and varied as required. This allows for licence conditions to be changed in response to new information under an adaptive management approach.

Under the trial, licence conditions confined the in-water humpback whale interaction tours to assigned season dates. DBCA proposes not to restrict the season by specifying dates in the licence conditions, to allow operators to conduct tours in response to the presence of humpback whales and market demand and because a set season was not considered necessary to manage impacts on whales. DBCA may amend the licence conditions in the future to reintroduce season dates if a temporal restriction is required to manage impacts on whales.

DBCA has proposed licence conditions for the in-water humpback whale interaction licences (outlined in Appendix 3), which include the following:

- **Area of operation** for in-water humpback whale interactions is within NMP (State waters) and MIMMA.
- **Swimmer group size** is limited to nine persons (seven passengers and two crew members) in order to manage safety of swimmers in the water.
- **Mother and Calf Protection Zone** is in place to protect mother and calf groups and requires the use of a spotter aircraft to confirm the absence of small calves (less than half the size of other whales) prior to an interaction occurring in this area (see Map 3 and Map 4).
- **The interaction protocols** must be displayed and specify various rules for the vessel and for the swimmers during in-water interaction activities. No changes to the interaction protocols are proposed (see Appendix 4).
- **An Electronic Monitoring System (EMS)** is to be fitted onto approved vessels to record data crucial to DBCA's management of humpback whales and in-water interaction activities.
- **A time limit of 60 minutes** spent with any whale or pod is in place. Multiple operators may interact with the same pod if the cumulative time spent is no more than 60 minutes and all other licence conditions are met (see 'leap-frogging' in Appendix 3).
- **Multiple groups** are permitted in the water with resting whales, providing only one group is within 30 metres of a whale.

Number of licences

In 2016, fifteen licences were offered for the in-water humpback whale interaction trial to provide a broad base of opportunity across a range of operators to explore this new activity. As the activity transitions to a permanent licenced industry, DBCA has considered the number of licences to be made available and has consulted with operators and considered science and conservation interests. Consideration is being given to offering two licences to operate out of Coral Bay and five to operate out of Tantabiddi or Exmouth Marina, and feedback on this matter is sought.

As part of an adaptive management approach, the number of restricted licences may be reviewed as more information becomes available through research, monitoring and learnings from the industry. DBCA has considered the *principles of ecologically sustainable development*, which underpin Commonwealth and State legislation relevant to interacting with humpback whales; the four principles for in-water interactions (see Page 4); as well as the five key factors described below.

1: Unknown longer-term consequences and cumulative impacts on individual humpback whales

Changes in short-term behaviours of individual humpback whales during interactions with vessels and swimmers are well-documented and were observed from in-water interactions during the trial. Whilst these behavioural changes on individual whales are not considered a threat to the population, the implications for individual whales is a topic for further research.

2: Minimal use of licences during the trial

Over the trial, an average of 0.7 tours per day were conducted from Coral Bay (where three licences were held) and an average of 2.8 tours per day were conducted out of Exmouth Marina and Tantabiddi (where 12 licences were held). Even in the busiest month over four years of the trial, the total number of in-water humpback whale interaction tours was equivalent to fewer than five licences. Only four days over the four years of the trial had more than seven tours on one day, across both locations.

3: Consultation with operators and scientists

DBCAs consulted with commercial operators who participated in the trial in the preparation of this draft management program. The majority of operators suggested there should be fewer than 15 licences because the industry cannot support 15 licences, largely due to the difficulties in finding and interacting with suitable and available humpback whales in the management area. Operators also suggested there could be safety risks from vessel congestion, as well as higher levels of impacts on the whales, if there were 15 licences issued long-term. Feedback from scientists was consistent with a precautionary approach and a preference for fewer licences was expressed.

4: Complexity of interactions

Although the whale shark industry has been operating successfully in NMP and MIMMA with 15 licensed operators, it is important to note that interactions with humpback whales can be far more complex, require a greater level of involvement from spotter aircraft, and may have a higher level of risk than whale shark interactions. Humpback whales in general are much faster, significantly larger, more unpredictable, more dangerous, and more likely to actively avoid an interaction. Compared to whale sharks, they are also potentially at much greater risk of being impacted by cumulative or sustained tourism pressure because they can be sensitive to noise, exhibit complex social bonds that can be affected by stress, must surface to breathe and are dependent on a limited energy budget while migrating and not feeding.

5: Spatial concentration of interactions

In-water humpback whale interactions are permitted in a smaller operational area than whale shark interactions, due to interactions only being permitted in State waters, not Commonwealth waters of NMP. During the trial, interactions were spatially condensed along the back of Ningaloo Reef due to the limited availability of suitable whales further offshore and the more difficult conditions generally considered to be involved in accomplishing successful whale interactions in deeper water. Maps showing low and high use areas off North West Cape (Map 5) and Coral Bay (Map 6) demonstrate the spatial distribution of swimming activities over the trial. The area used is frequented by the more vulnerable mother and calf groups. Although special conditions for interactions in this area are applied under the Mother and Calf Protection Zone, the implications of the concentration of effort in this area for humpback whale mothers and calves is a key consideration in the number of proposed licences. In addition, there is some concern that the concentration of tours may create safety risks including

risks to swimmers from vessels in the area and the concentration of effort from spotter aircraft. Congestion may also detract from the visitor experience and the intent to consolidate the reputation of the Ningaloo Coast as a destination of choice for outstanding marine wildlife interaction experiences.

Visitor Risk Management (VRM) for in-water interactions

VRM, which includes the risk assessment of a particular activity, is an important component of DBCA's role in managing all interactions with humpback whales. DBCA's VRM strategy has a particular focus on in-water humpback whale interactions as an activity associated with high risk. A risk assessment for the development of the in-water humpback whale interaction trial identified swimming with humpback whales as an inherently dangerous activity. Risks to swimmers include

- being struck by a whale in the water,
- being struck by vessels participating in the activity or any other vessels,
- humpback whale predators such as killer whales (*Orcinus orca*), and
- drowning.

DBCA sets licence conditions to mitigate risk to visitors for in-water interactions. DBCA also provides licensed operators with information that outlines the risks and how they should be assessed and managed to help make informed decisions regarding placing swimmers in the water with humpback whales. Licence conditions contain measures to mitigate risks to swimmers in the water (Appendix 3) and include the following:

- Swimming with neonates or with injured, sick or deceased whales is prohibited.
- Industry operators and employees are required to undertake DBCA training.
- A marine mammal lookout must be deployed, and interactions must be ceased immediately at the first sign of any whale showing potentially dangerous behaviours.
- A humpback whale flag is required to be displayed when swimmers attempting an interaction.
- Only one vessel is permitted in the Exclusive Contact Zone when swimmers are in the water and an interaction is occurring (see Appendix 4).
- Minimum separation distances exist from whales for swimmers in the water.
- There is a requirement to have in-water guides and a restricted number of swimmers.
- There is a requirement to display interaction protocols and provide visitors with briefings.
- In-water interactions are not permitted if a killer whale has recently been seen in the vicinity.

3.2 Management actions

Desired outcomes and management actions that guide and outline how DBCA will manage interactions with humpback whales in the management area are outlined below.

Desired outcome: To ensure that this management program is underpinned by the *principles of ecologically sustainable development*.

Management actions:

- Ensure that all aspects of decision-making for humpback whales consider the *principles of ecologically sustainable development*.

- Regularly review management strategies and adapt them to include findings from research, monitoring, consultation with operators and the community and to respond to changing conditions.
- Actively communicate and consult with key partners including Gnulli joint management partners, operators, researchers, and other agencies and groups.

Desired outcome: To ensure the protection of humpback whales is a consideration in making broader decisions in the management area.

Management actions:

- Provide advice on the management of humpback whales as required.
- Implement temporal or spatial vessel speed limit recommendations as required to minimise impacts on humpback whales, in consultation with affected stakeholders.

Desired outcome: To ensure appropriate licensing arrangements are implemented for humpback whale interactions that require a licence.

Management Actions:

- Grant all licences for humpback whale interactions, including for research, in accordance with the *Management Plan for the Ningaloo Marine Park and Muiron Islands Marine Management Area 2005–2015*.
- Allocate restricted commercial operations licences for humpback whale interactions through a competitive process to allow the best applicants to be selected.
- Review licence conditions annually and adapt them as required to ensure they are relevant, effective, and informed by research, monitoring, operator feedback and best practices.
- Consult with Gnulli joint management partners, the industry, science representatives and other stakeholders on licence conditions.
- Restrict the number of commercial operations licences available for in-water humpback whale interaction tours in the management area to manage impacts on whales, manage risks to swimmers and allow for effective management.
- Grant in-water interaction licences for a five-year duration with two five-year options to renew pending performance assessment.
- Review the number of restricted commercial operations licences available for in-water humpback whale interactions prior to each licence renewal period (every five years) to determine if the number of licences is appropriate and amend as required.
- Support the application of the Area to be Avoided declared by the International Maritime Organisation to reduce ship-related pressures to humpback whales across the majority of management area (see Map 2).

Desired outcome: Adopt a partnership approach with industry involving regular communications to foster best-practice and effective management.

Management Actions:

- Explore and implement ways of promoting effective communication between DBCA, operators and industry employees.
- Hold regular meetings with operators and provide pre-season letters and information packs to allow information exchange and foster good working relationships.

- Communicate research and monitoring findings back to operators and industry employees.

Desired outcome: To implement an effective enforcement and compliance regime in accordance with the *Biodiversity Conservation Act 2016* and *Conservation and Land Management Act (1984)* and DBCA policies and procedures.

Management actions:

- Develop and enact a compliance program to ensure that the general public, tourism operators and those engaged in other marine operations operate within the law and comply with legislation and any licence or permit conditions.
- Educate users on rules and regulations governing marine parks and wildlife interactions and promote the importance of compliance with legislation.

Desired outcome: Continue to encourage, monitor and respond to humpback whale related reports.

Management actions:

- Implement and regularly review standard operating and reporting procedures and data management for incidents related to humpback whale interactions.
- Respond to incidents as required, including whale entanglements, injuries, strandings or deaths.
- Establish, implement and regularly review a system for receiving and storing data about notable or unusual whale sightings or behaviours.

Desired outcome: Manage risks to swimmers involved in in-water interactions.

Management actions:

- Apply DBCA's visitor risk management (VRM) system to in-water interactions with humpback whales and adapt management of this activity accordingly to ensure that visitor risk is managed effectively by operators in accordance with licence conditions.
- Review VRM licence conditions annually as well as in light of any incidents.
- Provide VRM information and resources to operators and provide training in VRM as required.

Desired outcome: Improve the understanding of humpback whale distribution and use of the management area through a research and monitoring program.

Management actions:

- Support research and long-term monitoring of humpback whale abundance and distribution in the management area.
- Monitor how humpback whales use the management area and surrounding waters, including differences between different cohorts of humpback whales, how whales use the area at different times, and how these trends change over time.

Desired outcome: Identify and investigate threats and pressures to humpback whales.

Management actions:

- Develop partnerships and collaborations to address research and monitoring priorities.

- Monitor industry EMS data from licensed operations to inform management of in-water humpback whale interactions.
- Support research that improves the understanding of the potential impacts of in-water interactions on humpback whale mothers and calves.
- Support efforts to provide an updated Group D humpback whale population estimate.

Desired outcome: Ensure the humpback whale tourism industry provides visitors with a high-quality experience that is consistent with the management area's reputation for best-practice ecotourism.

Management actions:

- Conduct monitoring of visitors to assist management and the humpback whale tourism industry to ensure the tourism product provides high satisfaction.
- Monitor humpback whale visitor number trends to inform management.
- Support research to improve the understanding of the economic value of the humpback whale tourism industry and how it contributes to conservation.

Desired outcome: Develop and implement an education program that promotes humpback whale conservation behaviours within the management area and wider State waters.

Management actions:

- Educate users about safe boating practices including speed restrictions around humpback whales and other marine species.
- Educate users about the rules and regulations for interacting with humpback whales and other cetaceans (in particular, separation distances and unlicensed users not attempting to swim with them).
- Encourage users to report pollution, marine debris, entanglement hazards, and injured or dead wildlife, non-compliance and unusual whale sightings.
- Incorporate environmental awareness into educational messaging for recreational and commercial users (e.g. ensure users are informed about restrictions on pollution and sewage discharge).

Desired outcome: Develop and implement a training and education program to achieve an informed, supported and educated in-water humpback whale industry in the management area.

Management Actions:

- Review and improve in-water humpback whale interaction training as necessary.
- Provide commercial operators and industry employees with relevant educational messages.
- Ensure commercial operators and industry employees are educated about conservation of humpback whales, the latest research and monitoring findings, potential safety issues and procedures to manage visitor risk (i.e. value in using in-water radios, use of tenders, accurately estimating calf size and assessing whale behaviour).

Desired outcome: Raise community awareness of humpback whales.

Management Actions:

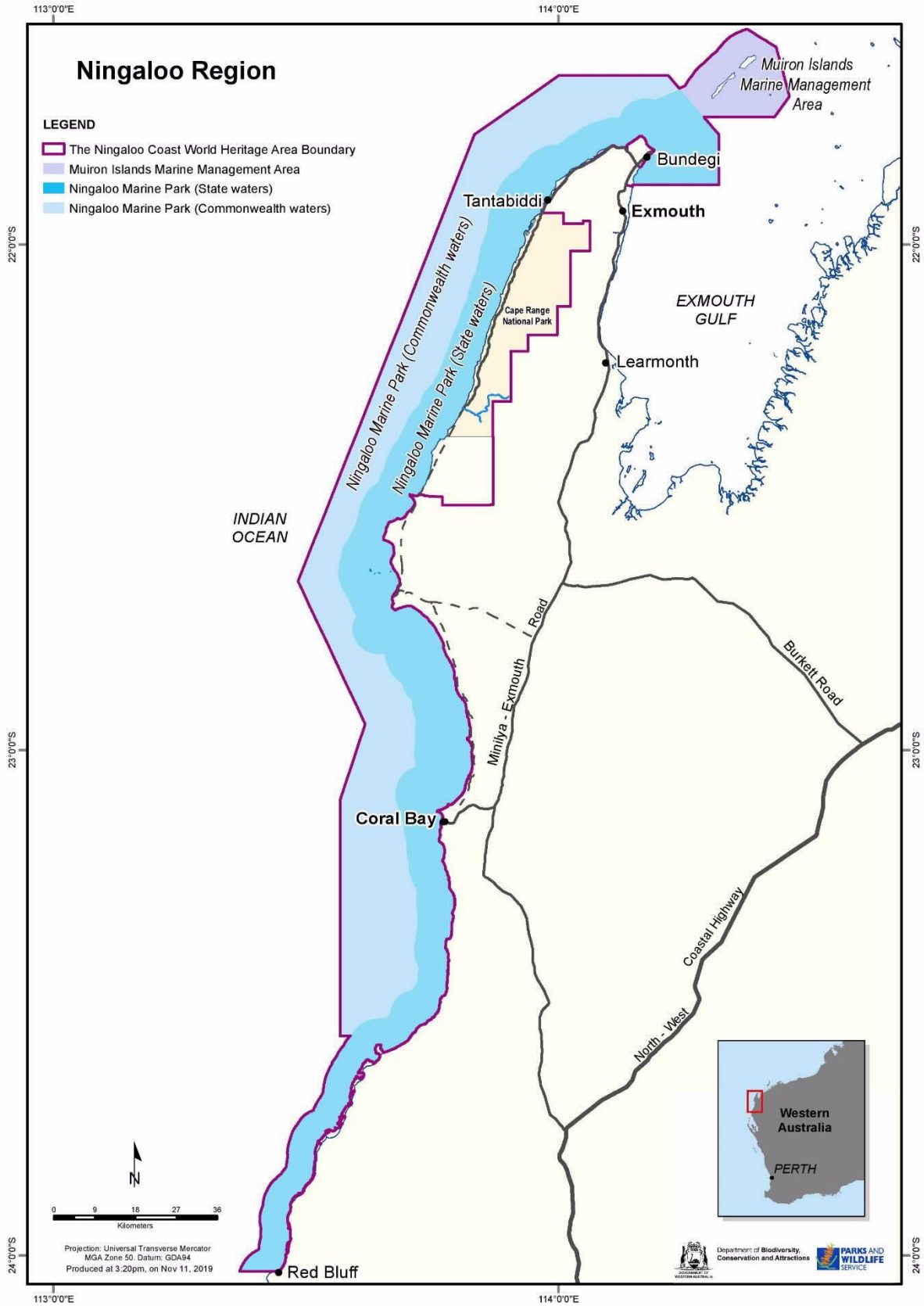
- Promote humpback whales as a value of the Ningaloo Coast World Heritage Area.

- Communicate research findings with users (tourism operators, stakeholders and the community) as appropriate.
- Include Gnulli traditional owners' culture and values into key messages and educational resources, as appropriate.
- Engage with users and the community to disseminate key educational messages through public engagement, including public talks, school outreach programs, boat ramp education, vessel patrols, and others, as appropriate.

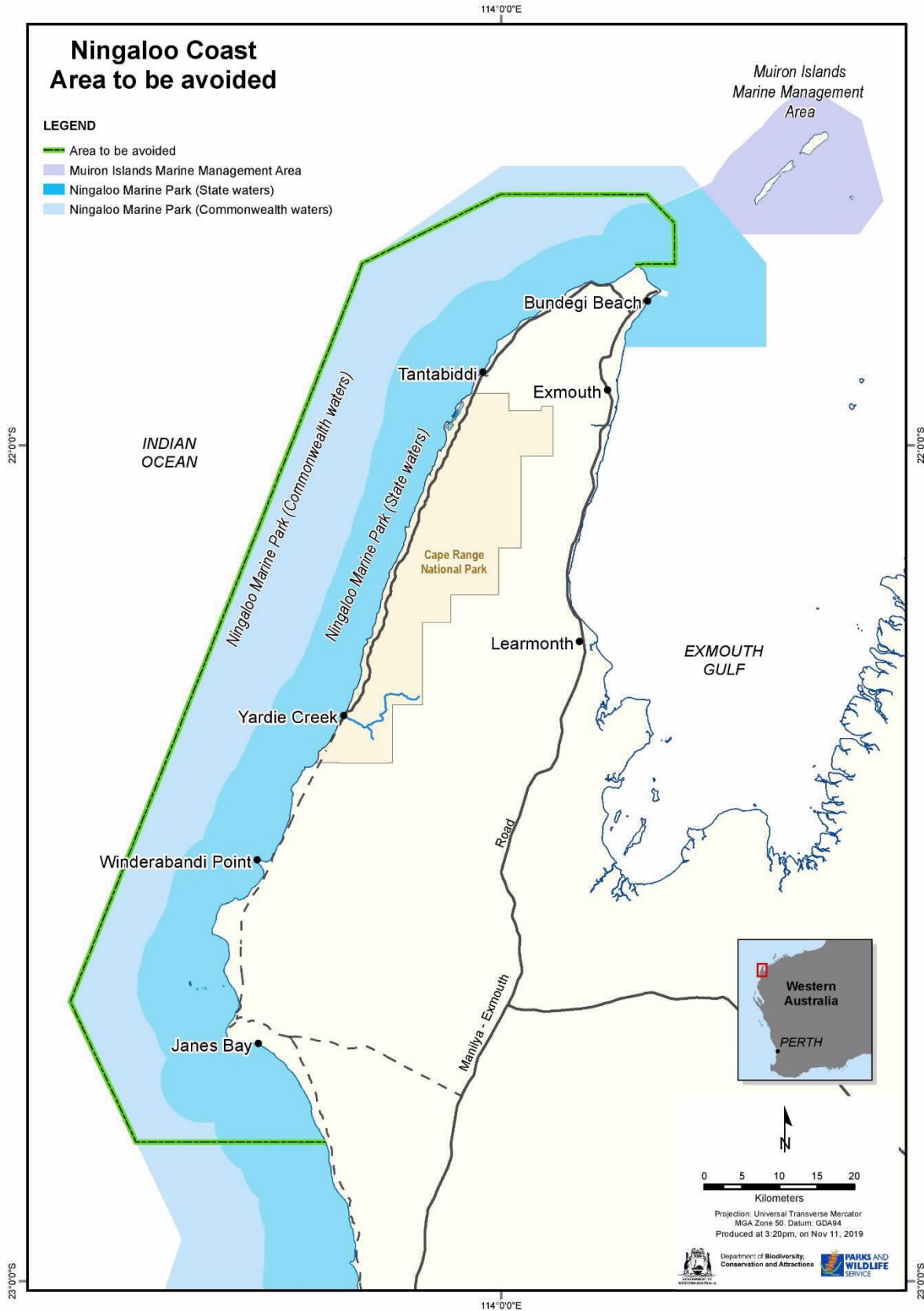
4 Implementation and Review

DBCA is responsible for the implementation of the management program. Other entities have responsibilities relating to the implementation of the management program and may also provide support. The Conservation and Parks Commission will audit DBCA's management of humpback whale-related activities in the management area in accordance with the *Management Plan for the Ningaloo Marine Park and Muiron Islands Management Area 2005–2015*. The Ningaloo Coast Joint Management Body will jointly manage humpback whale related activities in the State waters of NMP. The Ningaloo Coast World Heritage Advisory Committee will aid DBCA in the conservation and protection of the outstanding universal value of the World Heritage Area as it relates to humpback whales.

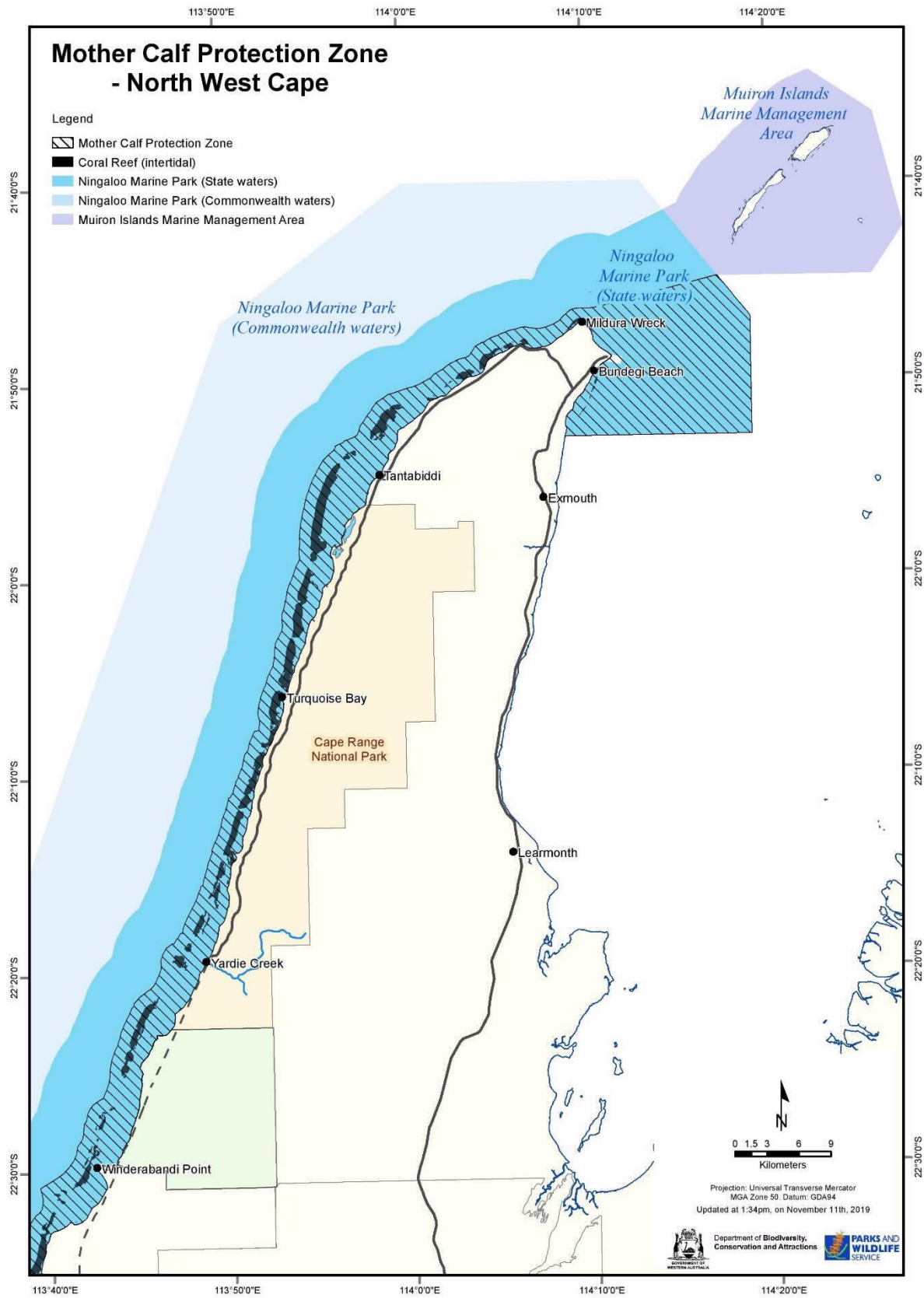
The management program will guide management of humpback whales along the Ningaloo Coast for a period of ten years from the date it is released in its final form. At the completion of the ten-year period, the management program will be reviewed. In the event of such a review not occurring within the management program's specified lifespan, the management program will remain in force in its original form, unless it is either revised, revoked by DBCA or until a new plan is approved.



Map 1: Location of Ningaloo Marine Park (State and Commonwealth waters), Muiron Islands Marine Management Area, and the Ningaloo Coast World Heritage Area.

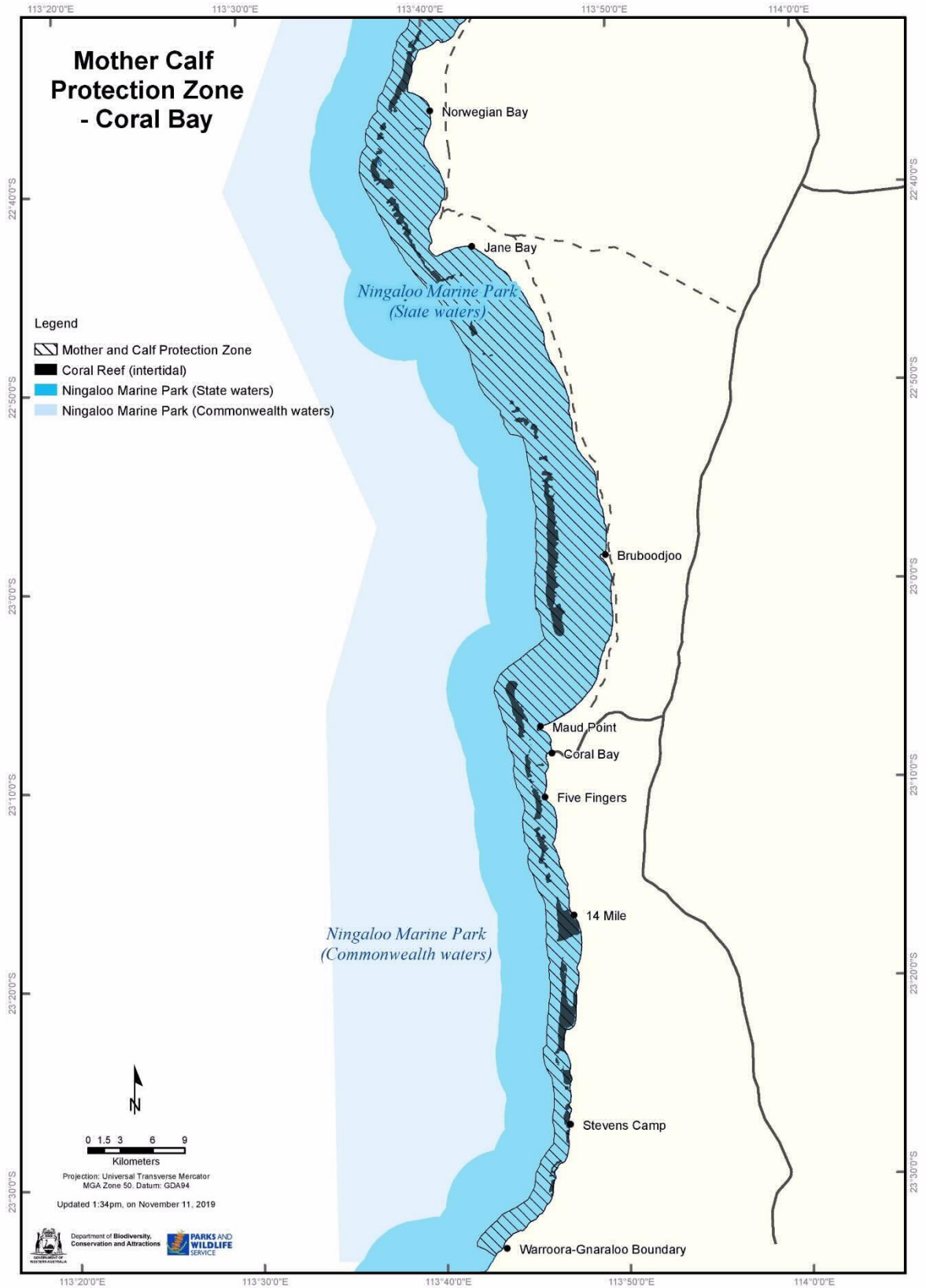


Map 2: Ningaloo Coast Area to be Avoided declared by the International Maritime Organisation.

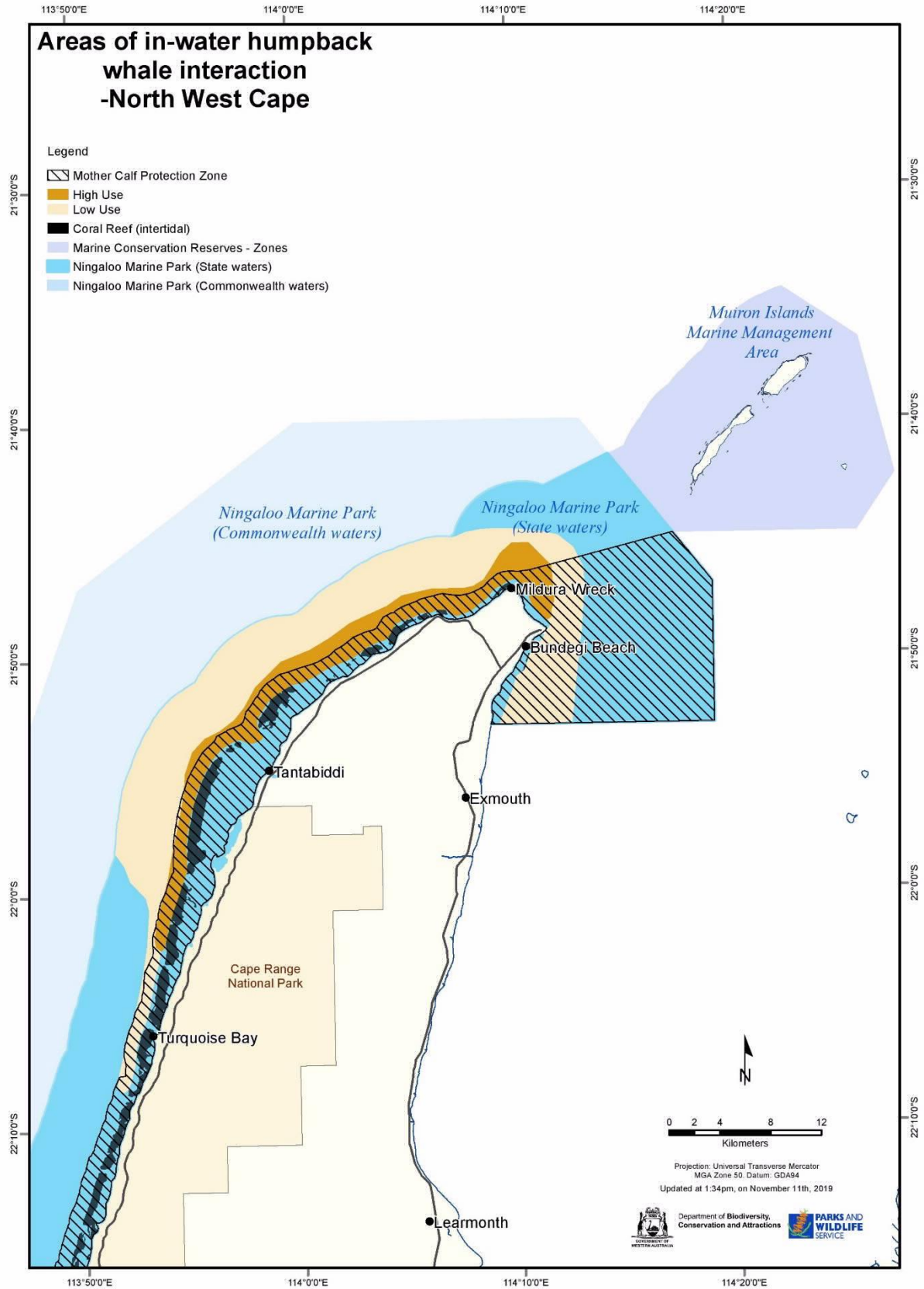


Map 3: Mother and Calf Protection Zone off the North West Cape.

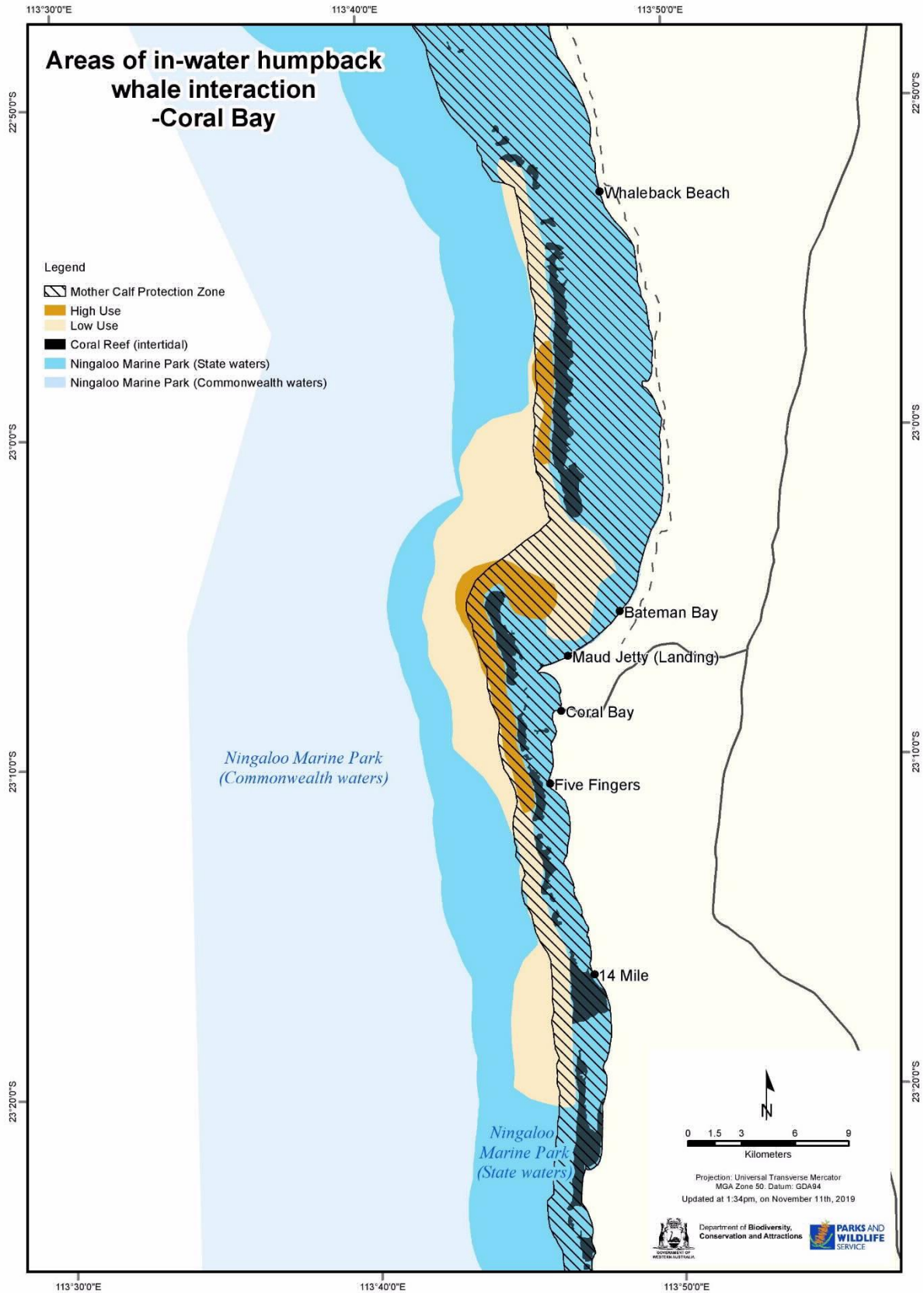
Draft Management Program for managing interactions with humpback whales
along the Ningaloo Coast



Map 4: Mother and Calf Protection Zone off Coral Bay.



Map 5: Areas of in-water humpback whale interactions off the North West Cape over the trial, showing areas of high use and low use.



Map 6: Areas of in-water humpback whale interactions out of Coral Bay over the trial, showing areas of high use and low use.

5 Appendices

Appendix 1: Relevant instruments for humpback whale management

Table 2 shows the instruments relevant for the protection and management of humpback whales as an international, national, state and regional level.

Table 2: Relevant instruments for protection or management of humpback whales and habitats.

Instrument	Level				Status/protection
	International	National	State	Regional	
<i>International Convention for the Regulation of Whaling</i>	✓				Moratorium on commercial whaling
<i>Whale Sanctuaries</i>	✓				Commercial whaling prohibited
<i>The Convention on the Conservation of Migratory Species of Wild Animals</i>	✓				Protected and listed under Appendix I
<i>Convention on International Trade of Endangered Species of Wild Fauna and Flora</i>	✓				Protected and listed under Appendix I
<i>Convention Concerning the Protection of the World Cultural and Natural Heritage</i>	✓				Protected within World Heritage Sites
<i>International Union for the Conservation of Nature Red List of Threatened Species</i>	✓				Listed as 'least concern'
<i>Convention on Biological Diversity</i>	✓				Ningaloo Environmentally Sensitive Sea Area
<i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>		✓			Listed as 'vulnerable' and 'migratory species'
<i>Australian Whale Sanctuary, under EPBC Act</i>		✓			Protected as a cetacean
<i>Australia's Biodiversity Conservation Strategy 2010-2030</i>		✓			Protected as biodiversity
<i>AMSA Marine Notice: Area to be Avoided declared by International Maritime Organisation</i>		✓			Area to be Avoided
<i>Biodiversity Conservation Act 2016 and Regulations 2018</i>			✓		Listed as 'specially protected species'

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Instrument	Level				Status/protection
	International	National	State	Regional	
<i>Conservation and Land Management Act 1984 and Regulations 2002</i>			✓		Protected on <i>Conservation and Land Management Act 1984</i> land (and waters)
<i>DBCA's Strategic Directions 2018-21</i>			✓		Indirectly protected and conserved
<i>Department of Transport Legislation</i>			✓		Management of vessels used in operations
<i>DBCA Corporate Policies and Guidelines</i>			✓		Part of management framework
<i>Management Plan for the Ningaloo Marine Park and Muiron Islands Management Area 2005–2015</i>				✓	Listed as a value with relevant management targets and strategies

Appendix 2: Entities relevant to humpback whale management

Table 3 shows the entities relevant to the management of humpback whales in the management area and their roles and responsibilities.

Table 3: Entities with roles relevant to the management of humpback whales in the management area.

Entity	Roles
<i>DBCA</i>	<ul style="list-style-type: none"> ▪ responsible for the management of State land and waters and conservation of flora and fauna, under the <i>Biodiversity Conservation Act 2016</i> and the <i>Conservation and Land Management Act 1984</i> ▪ manages all activities relating to or affecting humpback whales in State waters including recreational and commercial activities and other marine operations ▪ jointly-manages the Ningaloo Coast World Heritage Area, including the State waters of NMP, with Gnulli traditional owners through the Ningaloo Coast Joint Management Body ▪ manages the World Heritage values along the Ningaloo Coast in consultation with the Department of the Environment and Energy
<i>Conservation and Parks Commission</i>	<ul style="list-style-type: none"> ▪ independent statutory body reporting to the WA Minister for Environment in which marine parks and reserves are vested ▪ plays an important role in the development of policy, management plans and marine reserves that are vested in the Conservation and Parks Commission ▪ audits the management of marine reserves and their including the ecological values (such as humpback whales) identified within these areas
<i>Ningaloo Coast Joint Management Body</i>	<ul style="list-style-type: none"> ▪ collaborative decision-making body comprising representatives from the Gnulli native title claimants and DBCA staff ▪ draws on cultural knowledge and western scientific expertise to protect and conserve the cultural significance and the World Heritage values of the Ningaloo Coast ▪ guides management of State waters of NMP ▪ assists with decisions pertaining to the State waters of NMP and the activities within its boundaries, including those related to humpback whales
<i>Ningaloo Coast World Heritage Advisory Committee</i>	<ul style="list-style-type: none"> ▪ provides advice on the protection, conservation, presentation and management of the values of the World Heritage Area, including providing input into initiatives and opportunities for the promotion and presentation of the World Heritage Area values to the local, national and international communities ▪ contributes to enhancing the stewardship and connection of the community to the Ningaloo Coast World Heritage Area
<i>Department of the Environment and Energy</i>	<ul style="list-style-type: none"> ▪ Australian government department ▪ responsible for the Commonwealth waters of NMP, which is managed by DBCA under an agreement

Entity	Roles
	<ul style="list-style-type: none"> ▪ administers the <i>Environment Protection and Biodiversity Conservation Act 1999</i> that protects National and World Heritage values and migratory species including humpback whales
<i>Department of Transport</i>	<ul style="list-style-type: none"> ▪ State government department ▪ responsible for boating regulations, safety standards and marine pollution incidents ▪ manages the coastal infrastructure at the Coral Bay boat launching facility used by Coral Bay commercial operators ▪ manages and issues commercial surveys for vessels allowing the carrying of paying passengers, such as commercial operator vessels
<i>Shires of Exmouth and Carnarvon</i>	<ul style="list-style-type: none"> ▪ manage the lands and other facilities adjacent to the management area
<i>Australian Marine Safety Authority</i>	<ul style="list-style-type: none"> ▪ the national regulatory body for domestic commercial vessel activity ▪ responsible for vessel safety, protection of the environment from ship pollution and pressures, provision of infrastructure for safe navigation, and maintenance of a national search and rescue service ▪ regulating vessels used in commercial operations
<i>Civil Aviation Safety Authority</i>	<ul style="list-style-type: none"> ▪ the national regulatory body for civil aviation ▪ responsible for licensing pilots, registration of aircraft, and overseeing safety ▪ regulating spotter aircrafts and unmanned aerial vehicles (UAVs) used for commercial operations

Appendix 3: Proposed licence conditions

PROPOSED SCHEDULE 3 COMMERCIAL OPERATIONS CONDITIONS (IN-WATER HUMPBACK WHALE INTERACTION TOURS)

DEFINITIONS

In this schedule of licence conditions, unless the context otherwise requires, the following words and terms have the meanings ascribed:

Act means the *Conservation and Land Management Act 1984*.

Approved Vessel means the vessel nominated by the Operator to carry out the Operations and which has been approved by the Director General or Delegate or the District Manager.

Authorised Officer for the purpose of the Schedule 3 conditions is a person defined by section 102(1) of the Act.

CALM land means land, or land and waters, to which the Act and Regulations apply, and includes caves and parts of caves on or under that land.

Companion Card-holder means Passengers who hold a Companion Card[®] issued within Australia and who can present the card while on an In-water Humpback Whale Interaction Tour.

Companion means a Passenger who is accompanying a Companion Card-holder.

DBCA means the Department of Biodiversity, Conservation and Attractions.

Delegate means a person employed by DBCA to whom a function of the Minister has been delegated under section 133(1) of the Act, or a person employed by DBCA to whom a function or functions of the CEO has or have been delegated under section 133(2) of the Act, as the case requires.

Director General means the chief executive officer (CEO*) of DBCA (the department assisting the Minister in the administration of the Act), or a delegate of the CEO.

District Manager means the DBCA Exmouth District Manager.

EMS means an electronic monitoring system approved by the Director General or Delegate.

FOC Passenger means a Free-of-Charge Passenger for whom a licence charge has been waived by the Director General, or his Delegate or the District Manager by means of a 'free-of-charge' application form.

FOC application form means a form approved by the Director General or Delegate, which is to be used by the Operator to validate each FOC Passenger's position on the tour.

Handbook means the Commercial Operator Handbook as varied from time to time by the Director General or Delegate.

In-water Humpback Whale Interaction Training Course means the training course provided by DBCA for which a Valid Certificate of completion is issued upon completion. The syllabus includes updates or changes to the course from time to time, which may invalidate otherwise Valid Certificates. Whether a certificate affected by a change in the course syllabus is deemed to be invalid or not will

be subject to the discretion of the District Manager, who will take into consideration, the significance of the change to the course syllabus and the remaining time the certificate has to run.

In-water Humpback Whale Interaction Tour means any tour where a Passenger enters the water whilst in the exclusive contact zone (contact zone meaning the same as specified in the Schedule 4 licence conditions).

In-water Humpback Whale Interaction Swimmer means any Passenger who undertakes or attempts to undertake an in-water interaction with a humpback whale during the operation.

Licence means a commercial operations licence granted by the Director General or Delegate under the Regulations and includes all conditions on and attached to the licence.

Logbook means the logbook provided by the DBCA entitled 'Swimming with Humpback Whales in Ningaloo Marine Park Interaction Log.'

Marine Park means the Ningaloo Marine Park and Muiron Islands Marine Management Area.

Minister means the Minister administering the Act, or a Delegate of the Minister.

Observer means those Passengers who are not In-water Humpback Whale Interaction Swimmers.

Operator means, for the purposes of these conditions, the Licensee listed on the Licence.

Operations means the commercial Operations which may be undertaken by an operator pursuant to the Licence in respect to In-water Humpback Whale Interaction Tours that are allowed only between 1 July for operators based in Coral Bay, 1 August for operators based in Exmouth ceasing 30 November of each year or until the end of the trial period as determined by the Director General.

Paying Passenger means all Passengers on the Operator's vessel who undertake in-water interactions with humpback whales except approved FOC Passengers, Observers, Companions and Passengers under the age of 6. Paying Passengers are subject to DBCA licence charges unless already paid pursuant to the Schedule 2 conditions.

Passenger means those persons who are provided Operations by the Operator.

Regulations means the *Conservation and Land Management Regulations 2002* made under the Act.

Substitute Vessel means any other vessel nominated by the Operator, to be used in place of the Approved Vessel, to carry out the Operations.

Tender means a vessel less than 12m long, with or without mechanical propulsion, used as a life boat or means of transportation between the parent vessel and the shore.

Valid Certificate means the In-water Humpback Whale Interaction Training course certificate that is relevant to the current In-water interaction program.

* **Note.** A reference to the 'CEO' in the Regulations is deemed to be a reference to the Director General of the department and any reference on any documents, brochures or signs referencing the Department of Conservation and Land Management, Department of Environment and Conservation or the Department of Parks and Wildlife is deemed to be a reference to the Department of Biodiversity, Conservation and Attractions.

INTERPRETATION

- a. A reference to anything that the Operator must or must not do includes, where the context permits, the Operator's employees, agents, contractors and Passengers.
- b. The singular includes the plural and vice versa.
- c. A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- d. If the Operator consists of a partnership or joint venture, then:
 - i. an obligation imposed on the Operator binds each person who comprises the Operator jointly and severally;
 - ii. the act of one person who comprises the Operator binds the other persons who comprise the Operator; and
 - iii. a breach by one person who comprises the Operator constitutes a breach by the Operator.
- e. A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- f. If a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning.
- g. If the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow.

LICENCE CONDITIONS

These conditions are subject to the *Conservation and Land Management Act 1984*, *Conservation and Land Management Regulations 2002*, *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulations 2018* which are to be read in conjunction with this licence.

STANDARD OPERATING CONDITIONS

1. The Operator shall comply with and not contravene the conditions and restrictions set out in the Handbook.
2. The Operator will comply with all Schedule 3 licence conditions where those conditions are applicable.
3. The Operator acknowledges and agrees the activities allowed pursuant to Schedule 3 and Schedule 4 conditions are pursuant to a trial program for in-water interaction with humpback whales and are subject to annual review and further acknowledges and agrees that the Director General, at his absolute discretion, may add to, cancel, suspend or otherwise vary these conditions to no longer permit this activity as he sees fit pursuant to Regulation 98(2)(b).
4. Irrespective of General Condition 5.11 (e) of the Handbook, if requested by the District Manager, the operator shall make available free of charge a position on the tour and the Approved or Substitute Vessel for an Authorised Officer, any relevant DBCA staff, or independent researchers that could be reasonably considered by the District Manager to be involved in the research, management and monitoring of In-water Humpback Whale Interaction Tour operations, for the purpose of observing the conduct of operations. For the purpose of clarification, the person so nominated by the District Manager who joins a tour to observe operations is not a Paying Passenger or an Observer.

USE OF VESSELS

5. The Operator shall nominate one vessel to be the Approved Vessel for the operation of the In-water Humpback Whale Interaction Tour and this vessel shall be approved by the Director General or the District Manager before use.
6. The Operator shall ensure that the Approved Vessel (or Substitute Vessel if in use) is under the command of an appropriately qualified skipper for the period of the Licence. The Director General or the District Manager may request evidence of this from time to time and the Operator shall supply this on demand.
7. The Operator may nominate a Substitute Vessel to be used during the operation of the Licence in the event that the Approved Vessel is unavailable. The Operator shall apply in writing to the District Manager and shall include the length of time the Substitute Vessel is planned to be used, the length and draft of the Substitute Vessel and the Substitute Vessel's SPV number. If approved by the District Manager this vessel shall be the Substitute Vessel and shall be subject to the same conditions as the Approved Vessel.
8. The Operator shall notify the District Manager in writing immediately when the Approved Vessel resumes Operations. Should the Substitute Vessel be required for a period exceeding the dates referred to in condition 7, the Operator shall re-apply for permission to extend.
9. The Operator shall ensure that the Approved Vessel is wholly or partially owned or leased by the Operator. Should the Director General or the District Manager require verification of this, the Operator shall provide the relevant documentation within two weeks of the request.
10. The Operator shall not use any vessel as the Approved Vessel or Substitute Vessel if the vessel is to be used by another In-water Humpback Whale Interaction Tour operator at that time.

RECORDS OF OPERATION

11. The Operator shall allow an EMS unit to be installed in and operated on the Operator's Approved Vessel or Substitute Vessel (if in use) for all In-water Humpback Whale Interaction Tours conducted throughout the year.
12. The Operator shall notify the DBCA Exmouth District office within two calendar days of In-water Humpback Whale Interaction Tours commencing and when concluding in any calendar year.
13. The Operator shall ensure that accurate data is entered into the EMS or Logbook during the daily operation for each Passenger on, and for each In-water Humpback Whale interaction occurring during, every In-water Humpback Whale Interaction Tour conducted.
14. The Operator shall not interfere with or disconnect any EMS equipment provided and installed on the Operator's Approved Vessel or Substitute Vessel without the permission of the Director General, or the District Manager, except in an emergency.
15. The Operator shall notify the DBCA Exmouth District office within 24 hours of any fault or condition occurring that has caused or may cause a malfunction or damage to the EMS equipment, or of any emergency or incident that has necessitated interference with or the disconnection of the EMS equipment, or which has interfered with the communication of data from the EMS.

16. In the event of:
 - a. any failure or damage to or absence of the EMS equipment;
 - b. failure of transmission of data;
 - c. seasonal disconnection or routine maintenance of the EMS unit; or
 - d. a Substitute Vessel being used that does not have an EMS fitted, the Operator shall manually make and preserve in a Logbook an accurate record of Operations on a daily basis during the period when an EMS cannot be used, such record including:
 - i. GPS location and start and finish times of in-water interactions with humpback whales;
 - ii. the number of whales in the pod;
 - iii. the initial and final pod behaviour using the key provided in the logbook;
 - iv. how the interaction ended; and
 - v. the number of adults, children and FOC Passengers who are In-water Humpback Whale Interaction Swimmers on board for all In-water Humpback Whale trips, plus the total number of people on board during that period.
17. The Operator shall make the record of Operations referred to in condition 16 available to the Director General or the District Manager on request and shall supply a copy of the record of Operations to the DBCA Exmouth office within ten working days of the Operation occurring.
18. The Operator shall make the Approved Vessel (or Substitute Vessel if in use) available at the earliest opportunity for EMS installation, repairs, maintenance and reinstallation upon request of the Director General or the District Manager.

FEES AND CHARGES

19. The Operator is responsible for the cost of all damage, maintenance or replacement of the EMS that is caused by the Operator's negligence or action including failure to appropriately protect the EMS from weather, water or other factors that may cause damage to the EMS. The Operator shall not be responsible for the repairs, maintenance or replacement due to manufacturer faults or general wear and tear of the EMS.
20. Should the Operator choose to install the EMS itself at the commencement of each season, the Operator shall make the EMS available to DBCA to undertake the annual reinstallation service and shall be responsible for the cost of service or repairs caused by faulty self-installation or installation not in accord with the manufacturer's instructions as well as any labour costs incurred in repairing or rectifying a faulty installation by an Operator.
21. In consideration for the Licence, the Operator shall pay to the Director General a licence charge (unless a licence charge has already been applied pursuant to the Schedule 2 conditions) that may be reviewed and amended on an annual basis (all charges in relation to the Licence are GST exempt). The Operator shall pay to the Director General:
 - a. a daily licence charge of \$18.00 per person aged 17 years or over and \$9.00 per person aged from 6 to 16 years for all Paying Passengers carried during the operation of the Licence during any In-water Humpback Whale Interaction Tour, until the expiry of the Licence. Such charges are payable on the date specified by the Director General.

22. At DBCA's expense, and subject to it providing the Operator with seven (7) days written notice, DBCA may at any reasonable time arrange for a complete audit to be made of all returns and information that the Operator has provided pursuant to condition 21 against the Operator's business records. However, if such audit discloses that the appropriate licence charges have been understated by the Operator by more than two per cent (2%) against the returns tendered, then the Operator shall pay to DBCA the full cost of the audit along with the balance of any shortfall, within 30 days of the notification of the shortfall by the Director General or Delegate.

MANAGEMENT OF FOC PASSENGERS & PASSENGERS UNDER THE AGE OF 6

23. The Operator shall complete an FOC application form for all FOC Passengers on an In-water Humpback Whale Interaction Tour. The FOC request must be approved by the Director General or the District Manager prior to the In-water Humpback Whale Interaction Tour being conducted. The Operator shall use the FOC form to validate each FOC Passenger's position on the tour, shall hold the form on board the vessel and shall present this form to an authorised officer upon request. If the Operator fails to produce the form when requested to do so by an authorised officer, or fails to complete the form in respect of each FOC Passenger, then they shall be deemed to be Paying Passengers for the purpose of licence charges.
24. Passengers under the age of 6 who are In-water Humpback Whale interaction Swimmers shall be recorded in the EMS or Logbook under number of Passengers.

WILDLIFE INTERACTIONS

25. The Operator shall ensure that the Operator and every boat-based employee have successfully completed the In-water Humpback Whale Interaction Training Course prior to the commencement of tours and the Operator shall ensure that the Operator and all boat-based employees continue to hold a Valid Certificate for the term of the licence and of the boat-based employees employment with the Operator respectively.
26. The Operator shall display the in-water humpback whale interaction protocol poster on the Approved Vessel (or Substitute Vessel if in use) at all times when conducting In-water Humpback Whale Interaction Tours.

FILMING AND PHOTOGRAPHY

27. The Operator shall only use or allow on-board a videographer, who is not an employee, agent or contractor of the Operator, if they have lawful authority by way of a commercial operations licence to conduct this activity in the park.
28. The Operator may conduct filming and photography in the Ningaloo Marine Park in relation to activities allowed under this Licence with copyright privileges of all images being retained by the copyright owner.
29. If requested by the District Manager, the Operator shall attend an information session with the Exmouth District prior to undertaking any humpback whale filming or photographic activity or shall ensure that any individually licensed videographer allowed by the Operator to operate on the Operator's vessel attend an information session if so requested by the District Manager.

30. The Operator shall ensure the following messages are conveyed in the narrative of any film containing humpback whale images and footage produced under this Licence:
 - a. Ningaloo Marine Park managed by DBCA, provides for the protection of humpback whales and their habitats during their annual occurrence at Ningaloo Marine Park.
 - b. Ningaloo Marine Park is a World Heritage listed area
 - c. DBCA manage the in-water humpback whale tourism industry through a licensing program that primarily protects humpback whales from inappropriate tourism interactions whilst providing opportunities for visitors to have a sustainable humpback whale experience.
31. The Operator shall provide a copy of the film product or any unedited sequence to DBCA if requested to do so by the District Manager. The cost of copying or transferring film product, film footage or images in accordance with such request will be met by DBCA.
32. The Operator shall comply with any request by the District Manager to preview the final film product to ensure that the DBCA policies, objectives and regulations have been met, prior to the distribution or public release of the final film product.
33. Where in DBCA's opinion, any photographs or film product produced under this Licence are likely to increase public appreciation of the cultural or natural environment, the Director General or Delegate, or the District Manager may require that the Operator acknowledges the contribution of DBCA in any credits attached to the photograph or film product by the inclusion of the statement "Produced with the assistance of the Department of Biodiversity, Conservation and Attractions".

PROPOSED SCHEDULE 4 WILDLIFE INTERACTION CONDITIONS (IN-WATER HUMPBACK WHALE INTERACTION TOURS)

DEFINITIONS

In this schedule of licence conditions, unless the context otherwise requires, the definitions in Schedule 3 apply and the following words and terms have the meanings ascribed:

Approach Zone means the area between 100 metres and 300 metres from the side of the humpback whale extending in a direction parallel to each side of the humpback whale for a distance of 300 metres to the front and the rear of the whale as indicated in Figure 3.

Exclusive Contact Zone (ECZ) means the area between 75 and 100 metres from the side of a humpback whale extending in a direction parallel to each side of the humpback whale for a distance of 300 metres to the front and rear as indicated in Figure 3.

Exclusive Contact Zone A (ECZ A): means the area directly in front of the humpback whale's direction of travel between 150 metres and 300 metres directly in front of a humpback whale extending out to the Exclusive Contact Zone as indicated in Figure 3.

Free-dive means underwater diving or swimming without the use of any artificial breathing device, in which a swimmer must hold their breath under water until re-surfacing for air.

Humpback Whale (HW) flag means a specific flag approved by the Director General or District Manager to be displayed at specified times during Operations.

In-water Humpback Whale Training Tour means a non-commercial tour, during which only staff

employed by the Operator can enter the water within the Exclusive Contact Zone.

Leap-frogging means the act of manoeuvring a vessel past another vessel or vessels that are engaged in In-water Humpback Whale Interaction Tour activities, in order to place the overtaking vessel or swimmers in the path of the same whale or whales for the purpose of interacting with them.

Marine Mammal Lookout means a crew member who must remain on the vessel at all times during licensed activities for the purpose of observing marine mammal presence and movements and advising the person controlling the vessel of such.

Mother and Calf Protection Zone means the waters of the Ningaloo Marine Park extending from the coast, encompassing all waters landward of the outer reef including Batemans Bay, to 1 kilometre westward from the west side of the Ningaloo Reef, commencing at Amherst Point in the south and extending northwards to the northernmost tip of northwest Cape (114° 10' 27.146"E, -21° 46' 10.712"S) then following ENE to the southern boundary of the Muiron Islands Marine Management Area (114° 17' 17.617"E, -21° 44' 48.618"S) incorporating all waters of the marine park south of this, as indicated Map 3 and Map 4.

No Approach Zone means a box-shaped exclusion zone extending 150 metres in front of a humpback whale and 300 metres behind the whale to a width of 75 metres either side of the whale as indicated in Figure 3.

Pod means one or more humpback whales.

Special Interest Whale means a whale with attributes (natural or otherwise) that differ to typical whales of that species, that attracts specific or increased attention from people. Examples include but are not limited to predominantly white whales, whales with obvious physical abnormalities and entangled whales.

INTERPRETATION

- a. A reference to anything that the Operator must or must not do includes, where the context permits, the Operator's employees, agents, contractors and Passengers.
- b. The singular includes the plural and vice versa.
- c. A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- d. If the Operator consists of a partnership or joint venture, then:
 - i. an obligation imposed on the Operator binds each person who comprises the Operator jointly and severally;
 - ii. the act of one person who comprises the Operator binds the other persons who comprise the Operator; and
 - iii. a breach by one person who comprises the Operator constitutes a breach by the Operator.
- e. A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- f. If a word or phrase is defined, other grammatical forms of that word or phrase have a

corresponding meaning.

- g. If the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow.
- h. A reference to a distance, including defining the Approach Zone, the Exclusive Contact Zone (ECZ), the Exclusive Contact Zone A (ECZ A) and the No Approach Zone, is measured from the outermost whale in a pod.
- i. Terms in this schedule may be defined above, or in the Definitions listed in Schedule 3.

LICENCE CONDITIONS

These conditions are subject to the *Conservation and Land Management Act 1984*, *Conservation and Land Management Regulations 2002*, *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulations 2018* which are to be read in conjunction with this licence.

These conditions give the licence holder Lawful Authority to conduct In-water Humpback Whale Interaction Tours for the purposes of Part 1, Section 7 of the *Biodiversity Conservation Act 2016*.

AREA OF OPERATIONS

1. This Schedule applies to In-water Humpback Whale Interaction Tours conducted within Ningaloo Marine Park and Muiron Islands Marine Management Area only.

GENERAL

2. The Operator shall undertake In-water Humpback Whale Interaction Tours from the Approved Vessel only in accordance with Schedule 4 licence conditions.
3. The Operator shall dedicate a crew member on the Approved Vessel to be a Marine Mammal Lookout.
4. The Operator shall not conduct In-water Humpback Whale Interaction Tour activities between sunset and sunrise.
5. The Operator shall provide a detailed pre-interaction briefing to Passengers advising that humpback whales can cause serious injury or death if they strike an In-water Humpback Whale Interaction Swimmer.
6. The Operator shall ensure that no food or other items are thrown into the water from the Approved Vessel near or around any whale or other marine mammal.
7. The Operator shall not conduct In-water Humpback Whale Interaction Tours with Special Interest Whales, injured, sick or deceased whales, or whales demonstrating disturbance behaviours, including aggression.
8. The Operator shall immediately cease interaction with any whale at the first sign of the animal becoming disturbed, alarmed, distressed or aggressive.
9. The Operator shall ensure that any aircraft, including fixed wing planes, gliders, hang-gliders, hot air balloons, airships or remotely piloted aircraft (RPA) that are being operated under their direction in the vicinity of whales in relation to In-water Humpback Whale Interaction Tours must:
 - a. not land on the water to observe whales; and

- b. cease flying in the vicinity of the whales if they show any sign of disturbance.
10. The Operator shall ensure that any helicopter or gyrocopter being operated under their direction in the vicinity of whales in relation to In-water Humpback Whale Interaction Tours must:
 - a. not hover over the “no fly” zone (shown in Figure 2); and
 - b. cease flying in the vicinity of the whales if they show sign of disturbance.
11. The Operator may fly a RPA in accordance with Civil Aviation Safety Authority regulations to within a 50 metre radius of the outermost whale in a pod, and to a height not exceeding 120 metres for the purpose of calf size verification only.
12. Except as provided for in condition 13, the Operator shall not conduct In-water Humpback Whale Interaction Tour activities within that area of the Ningaloo Marine Park described as the Mother and Calf Protection Zone (Map 3 and Map 4).
13. Further to condition 12, where the whales are within the Mother and Calf Protection Zone the Operator can conduct In-water Humpback Whale Interaction Tour activities only where:
 - a. verification has been obtained from either a spotter plane pilot or RPA that no calves less than half the length of any accompanying adult(s) are present; and
 - b. the Licensee has notified the Parks and Wildlife Exmouth District Manager or the Exmouth District Wildlife Officer by mobile phone, text message or email of their intention to enter the Mother and Calf Protection Zone to conduct In-water Humpback Whale Interaction Tour activities.
14. The Operator shall display a Humpback Whale (HW) flag when the Approved Vessel is in the Exclusive Contact Zone (ECZ) or Exclusive Contact Zone A (ECZ A) and/or In-water Humpback Whale Interaction Swimmers are in the water.
15. The Operator shall not permit any person to enter the water from the Approved Vessel for the purpose of In-water Humpback Whale Interaction Tours if the Operator has been made aware that orcas or killer whales (*Orcinus orca*) have been observed within the previous two hours within five (5) nautical miles of the Operator’s vessel. For the purposes of this condition, the Operator has “been made aware” of the presence of orcas if the Operator has observed orcas in the vicinity within the previous two hours, has been notified of reported sightings of orcas in the vicinity by means of radio or other communication devices or has been told of such reports or sightings by other operators or members of the public.
16. The Operator shall not use sound recordings of whale vocalisations played underwater or in the hull of a vessel during Operations.

USE OF VESSELS FOR IN-WATER HUMPBACK WHALE INTERACTION TOURS

17. The Operator shall not permit the Approved Vessel to:
 - a. approach a whale "head on" when under power; or
 - b. separate a group of whales or other marine mammals, or come between a mother and calf; or
 - c. box whales in or cut off their path.
18. The Operator shall not, in circumstances where an identified (displaying banners/logos and licensed) marine mammal research vessel is within 200 metres of a marine mammal, allow the Approved Vessel to approach the marine mammal(s) closer than 200 metres unless such an approach is agreed to by the skipper of the research vessel.

19. When conducting Operations in the Approach Zone, the Operator shall ensure that the vessel approaches humpback whales with caution.
20. The Operator shall not allow the Approved Vessel to approach any closer than 100 metres from a calf that is less than half the length of adult whale(s) it is accompanying or a pod of whales containing a calf of this description.
21. The Operator shall not allow trailing rope to be placed in or dragged through the water or shall not tow any device that is capable of towing or carrying a person from behind the Approved Vessel while conducting In-water Humpback Whale Interaction Tour activities. Lines known as “mermaid lines” are prohibited.
22. The Operator shall only allow the Approved Vessel to enter the ECZ when conducting an In-water Humpback Whale Interaction Tour with humpback whales (Figure 3).
23. When within the ECZ, the Operator may allow the Approved Vessel to approach from the side to within 75 metres of a humpback whale but no closer (Figure 3).
24. The Operator shall only enter the ECZ A in the Approved Vessel when placing In-water Humpback Whale Interaction Swimmers in the water, after which the vessel must immediately exit the ECZ A (Figure 3).
25. When operating in the ECZ or the ECZ A, the Operator shall ensure the Approved Vessel or the tender vessel does not travel any faster than eight (8) knots.
26. The Operator shall ensure that the Approved Vessel spends no more than 60 minutes at any one time in the ECZ and/or ECZ A for any one pod of humpback whales.
27. The Operator shall not permit the Approved Vessel to enter the ECZ or the ECZ A around any whale or pod of whales while there is another vessel in either of those zones. Only one (1) licensed Approved Vessel is permitted to be within the ECZ and/or the ECZ A at any one time.
28. If a humpback whale approaches a vessel thereby causing the vessel to be in the No Approach Zone, the Operator shall immediately disengage from interaction with that whale or other whales in the vicinity, or switch off the vessel’s engines, or move away slowly at a speed of no more than five (5) knots or at a speed that does not cause any boat wake.
29. The Operator can engage in leap-frogging while undertaking In-water Humpback Whale Interaction Tour activities, provided the cumulative time spent with a whale or pod (taken to mean from when the first vessel enters the ECZ or ECZ A to the final vessel leaving it at the completion of interaction attempts) by the all of the Approved Vessels involved does not exceed 60 minutes.

IN-WATER HUMPBACK WHALE INTERACTION SWIMMERS

30. The Operator shall not allow employees, agents, contractors or In-water Humpback Whale Interaction Swimmers to swim with a humpback whale calf that is less than half the length of adult(s) it is accompanying or with a pod(s) containing a calf of this description.
31. The Operator shall ensure that In-water Humpback Whale Interaction Swimmers (including staff and videographer) do not enter the water from the Approved Vessel any closer than 75 metres from a humpback whale.

32. Except as provided for in condition 33 **Error! Reference source not found.**, whilst engaged in In-water Humpback Whale Interaction Tour activities with humpback whales, the Operator shall ensure that the number of persons in a swimmer group in the water at any one time shall not exceed nine (9); no more than seven (7) passengers, which shall include companion card holder(s) and their companion(s), one (1) allowed crew spotter and one (1) allowed crew videographer.
33. Whilst engaged in In-water Humpback Whale Interaction Tour activities with resting humpback whales, the Operator may allow two swimmer groups in the water at one time, provided only one group is within 30 metres of the whale/s.
34. The Operator shall ensure that swimmers (including staff and videographer) do not approach closer than 30 metres from any humpback whale as indicated in Figure 4.
35. If an In-water Humpback Whale Interaction Swimmer is approached by a whale to within the 30 metre limit, that swimmer shall take all reasonable steps to avoid contact with the whale and maintain a separation distance of no less than 15 metres by back-paddling or swimming away from or to the side of the whale.
36. The Operator shall ensure that no person undertaking In-water Humpback Whale Interaction Tour activities free-dives with whales.
37. The Operator shall ensure that no person undertaking In-water Humpback Whale Interaction Tour activities uses motorised swimming aids, including scooters.
38. The Operator shall ensure Humpback Whale Interaction Swimmers and crew (including a permitted videographer/photographer associated with a licensed operator) do not undertake flash photography or use any artificial light sources (stobes or continuous lights), or cameras on extension poles for underwater photography during In-water Humpback Whale Interaction Tour activities.

REPORTS AND PROVISION OF INFORMATION

39. The Operator shall co-operate with DBCA by making available to the Department any data regarding interactions with marine mammals that the Operator may reasonably be required to gather for research and management purposes.

ADDITIONAL INFORMATION

40. The Operator should exercise due care when in the vicinity of marine mammals in recognition that they are wild animals and, while normally not aggressive to vessels or people, are capable of inflicting damage or injury, particularly if harassed or distressed.
41. This Licence constitutes lawful authority to undertake In-water Humpback Whale Interaction Tours only within the scope of the *Biodiversity Conservation Act 2016*, the *Biodiversity Conservation Regulations 2018*, and the Schedule 3 conditions specific to the CALM Act land specified, as they apply to the conservation and protection of wildlife and related matters.
42. The Operator is responsible for ensuring that any other necessary legal authorities and approvals to undertake all activities associated with the interactions with marine mammals are obtained.
43. For reference to the regulations pertaining to marine fauna interaction activities, see the Biodiversity Conservation Regulations 2018, Part 5 Division 2 – Interactions with marine fauna.

Unless where otherwise authorised under the terms and conditions of this licence, the separation distances to be maintained between a whale and vessel as prescribed in Schedule 5 of the Biodiversity Conservation Regulation 2018, are diagrammatically shown in Figure 1.

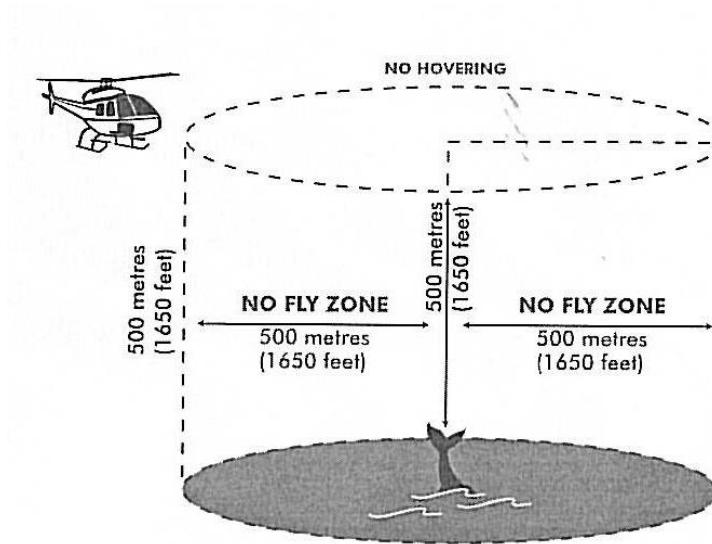


Figure 2: Separation distances for helicopters and gyrocopters from humpback whales.

Appendix 4: 2019 Interaction Protocols

2019 Interaction protocols are shown in Figure 3 and Figure 4, and are current at publication but are subject to change.

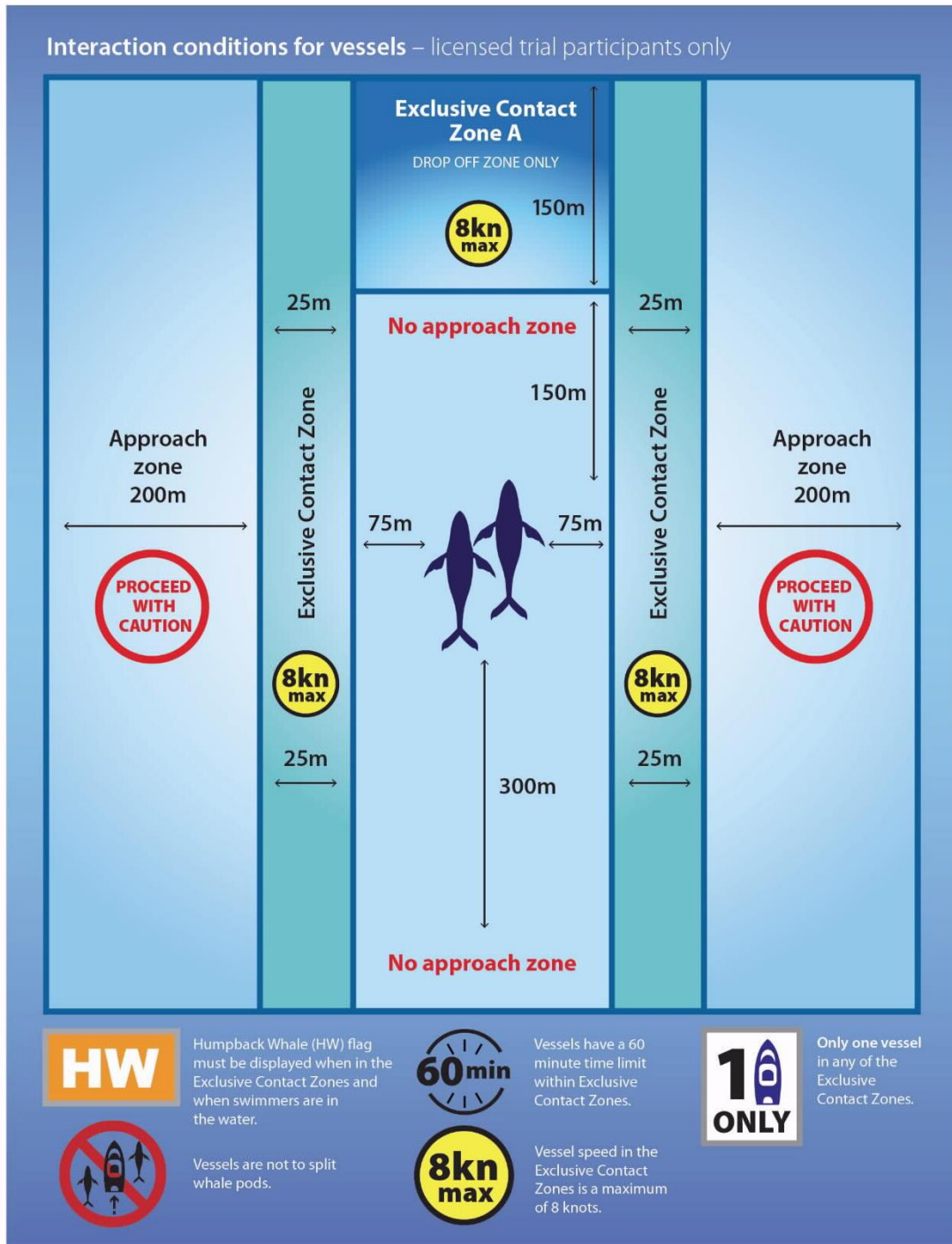


Figure 3: 2019 Interaction protocol for licensed commercial in-water humpback whale interaction vessels.

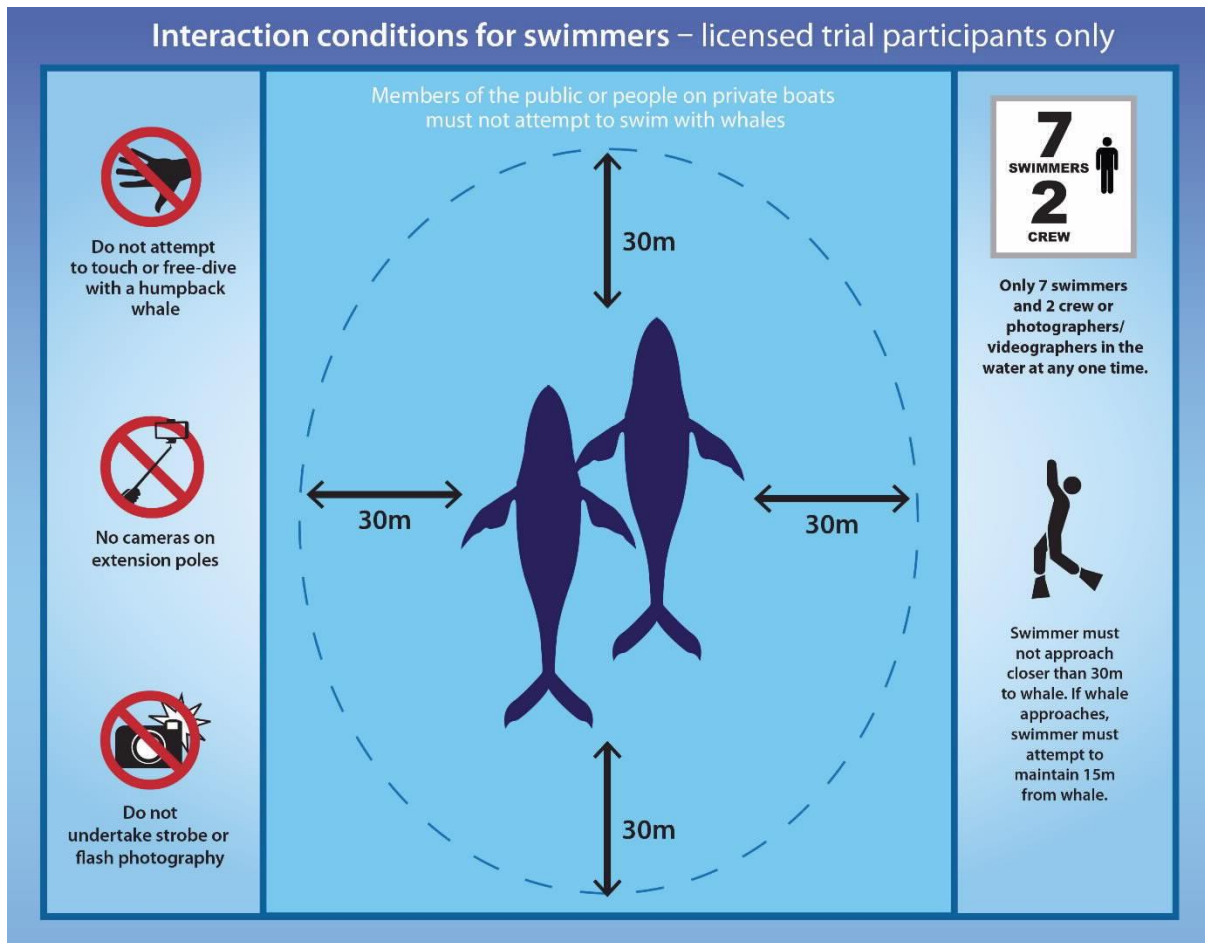


Figure 4: 2019 Interaction protocol for swimmers on a licensed commercial in-water humpback whale interaction tour.

