

# Summary of issues from submissions

*Management program for humpback whale interactions along the Ningaloo Coast*

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# 1 Introduction

On 13 January 2020, the *Draft Management Program for managing interactions with humpback whales along the Ningaloo Coast* (the draft program) was released by the Department of Biodiversity, Conservation and Attractions (DBCA) for a public comment period that closed on 13 February 2020. In total, 31 submissions were received, representing 34 individuals, groups or entities. The submissions comprised over 200 comments which were analysed and considered in the preparation of the final *Management program for humpback whale interactions along the Ningaloo Coast 2020* (the management program). This document summarises the key matters raised in submissions and responses to them.

## 2 Draft program distribution

The development of the draft program was informed by consultation with Gnulli traditional owners through the Ningaloo Coast Joint Management Body, meetings with commercial tour operators involved in the trial on in-water humpback whale interactions, and interviews of humpback whale scientists. The draft program was approved for public release by the Minister for Environment and was referred to the Minister for Tourism. Digital copies of the draft program, a summary sheet, and the link to an online submission form were made available on DBCA's website. Notification letters were sent to the Conservation and Parks Commission, the Ningaloo Coast Joint Management Body and the Ningaloo Coast World Heritage Advisory Committee, updating them on the process and inviting input. Notifications of the release of the program were also distributed to key entities, who had been identified in a Stakeholder Engagement Plan, including those consulted during the preparation of the draft. A commercial tour operator alert was sent out and an announcement was included in the Touring WA newsletter and on social media pages. Flyers and posters were distributed and displayed around Coral Bay and Exmouth, on public noticeboards, in visitor centres, and in local businesses.

## 3 Submitters

Submissions were received from the following:

- representatives from ten commercial tour operators involved in the trial on in-water interactions with humpback whales;
- two commercial tour operators who were not involved in the trial;
- seven humpback whale tourism industry employees;
- five scientists;
- two organisations representing tourism interests;
- a cetacean conservation group;
- three members of the public;
- a Member of Parliament;
- the Ningaloo Coast World Heritage Advisory Committee; and
- four government organisations (local, State and Commonwealth).

The submissions raised over 200 comments that covered a range of issues and a spectrum of views, many contrasting. The focus of most comments was the proposed management arrangements for the in-water humpback whale interaction industry.

## 4 Key issues in comments

Many comments related to issues already noted in the draft program or considered in its preparation, were outside of the scope, or were general or neutral statements that did not suggest any changes to the management program.

Some submissions included suggestions that were too detailed for reference in the management program, which is a ten-year strategic framework; for example, specific topics for research or education. However, such comments have been considered and circulated to relevant sections within DBCA for action as required.

Generally, the management program was amended in response to comments to provide more clarity or context. No significant changes to the management objectives, desired outcomes or management actions were considered necessary to address public comments. A change was made to program regarding the number of licences to be made available for in-water interactions, discussed below.

### 4.1 General comments

The majority of submitters were generally supportive of the management program and made positive comments about it, albeit along with suggestions for change on specific aspects. Four submitters were generally not supportive of the management program or in-water interactions with humpback whales.

### 4.2 In-water humpback whale interactions

The majority of comments received (around 140) related to various aspects of the management of the in-water humpback whale interaction industry.

#### 4.2.1 Licensing arrangements

Around 55 comments on various aspects of the proposed licensing arrangements for in-water interactions were received, with key topics being:

- the proposed number of humpback whale interaction licences to be allocated;
- DBCA's policy to issue restricted licences for in-water humpback whale interaction operations through a competitive process;
- the fact that in-water humpback whale interactions will be a standalone licensed industry that is separate to whale shark interaction licences; and
- the proposed humpback whale interaction licence terms (duration).

The topic that received the most comments and with the most divergent views was the number of licences to be allocated for in-water humpback whale interactions. Whilst there was no consensus amongst operators, generally operators and tourism organisations expressed that 15 humpback whale interaction licences are too many to establish a viable industry but the proposed number of seven licences is too few.

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Some operators suggested there should be 11 humpback whale interaction licences granted; this reflects the current number of whale shark businesses (some businesses hold two licences). Submissions from conservation and science interests generally supported the allocation of fewer humpback whale interaction licences to minimise disturbance to whales.

Submissions from most commercial tour operators involved in the trial and the organisations representing tourism businesses suggested that the licences for in-water interactions with humpback whales should be linked to licences for whale shark interactions. They also suggested that DBCA should delay allocating humpback whale interaction licences and continue the trial for three more seasons in order to combine the allocation of licences with whale shark interaction licences, which are due to expire in 2023.

Conversely, the commercial tour operators who were not involved in the trial felt that they had been disadvantaged by not being able to participate in the trial and that the management program and trial favoured whale shark operators. Some comments suggested it would be appropriate to allow non-whale shark operators to offer tours to increase the diversity of tour options available along the Ningaloo Coast.

DBCA considered this feedback in the final management program.

Following the public comment period on the draft management program, the COVID-19 outbreak drastically changed the outlook for the economy and for the tourism industry. It was determined to delay the competitive process in this context in order to minimise costs and administration for operators at this time. The trial with the 15 existing licence-holders will continue until licences are allocated through a competitive process to be run in late 2022/ early 2023, with licences to commence for the 2024 season. The timing will coincide with the competitive process for whale shark interaction licences. DBCA considers that the licences for the two species should be assessed and allocated as separate licences but is supportive of applying one competitive process to allocate the two licence types. Changes to the draft program were made to reflect this revised approach.

Accordingly, the final management program was also revised in terms of the number of licences to be allocated. DBCA considers that there would be benefit in obtaining more data to inform the number of licences to be made available for in-water interactions with humpback whales. DBCA notes that the activity is unlikely to be viable as a stand-alone business and that it will be offered with other tour product/s such as whale shark or manta ray interactions, snorkelling, sailing or fishing. The management program has been amended to limit the number of licences for in-water interactions to a maximum of 15 licences, to be reviewed as part of an adaptive management approach as more information becomes available through research, monitoring and learnings from the industry.

Some submissions from tourism interests supported a longer licence term and pointed out that the proposed term of five years with two five-year options was not consistent with the Conservation and Land Management Regulations 2002 (CALM Regulations). DBCA considered that there is value in providing certainty for operators through a longer licence term that encourages investment in the industry. The management

program was amended to reflect that humpback whale interaction licences will be allocated for a ten-year term with a five-year renewal subject to performance assessment, consistent with the CALM Regulations.

#### **4.2.2 Licence conditions**

The details of proposed licence conditions for in-water humpback whale interactions (including the 2019 licence conditions) were included in the draft program to make the public aware of the conditions that applied under the trial and elicit feedback to inform management. Given that licence conditions will be reviewed regularly and amended as required in response to research and monitoring, operator feedback and/ or incidents, the 2020 licence conditions were not considered appropriate for inclusion in the final management program. However, comments on the conditions were analysed and have informed the review of humpback whale interaction licence conditions for the 2020 season. Key licence conditions and submitter comments included the following.

- **Area of operation:**

In-water humpback whale operations have only been licensed for State waters of Ningaloo Marine Park (NMP) and MIMMA, which is not to change.

- **Swimmer groups:**

Currently a limit of seven passengers and two crew is allowed under licence conditions and the draft management program did not propose to change this. Some submitters representing tourism interests favoured an increase in the number of swimmers allowed, but other submitters suggested an increase would not be in the interests of managing risks to visitors or pressure to whales. The final management program was amended to state that swimmer groups must contain trained industry personnel and are limited in size, but the management program does not stipulate the number of swimmers, as this will be set through licence conditions. No change to this limit is proposed for the 2020 season.

There were also comments received from tourism interests suggesting that there should be a cap on the overall number of swimming passengers to manage pressure to whales and 'limit' the size of vessels used for in-water interaction activities. Amendments were made to the final management program to enable swimmer groups to be limited in number. DBCA is considering amending licence conditions to limit tours to including a maximum of three swimmer groups, in consultation with the tourism industry.

- **Mother and Calf Protection Zone:**

This licence provision brings a higher level of management to areas of NMP that are frequented by mothers and calves. This provision was generally supported and no changes were made in the final management program.

- **Prohibited whales:**

In response to comments seeking clarity about how licence conditions are used to manage impacts on vulnerable whales such as young calves, the management program was amended to make it clear which whales are not permitted for interactions.

- **Interaction protocols:**

These were generally supported in submissions and remained unchanged. Some submitters suggested that separation distances should be increased and in-path approaches avoided.
- **Interaction limits:**

Under the trial, operators were able to attempt in-water interactions with a whale or pod for up to 60 minutes. Previously, it was prohibited for multiple operators to interact with a whale or pod consecutively (referred to in the industry as 'leap-frogging'). The draft program proposed to allow this based on feedback from trial operators, as long as the cumulative time spent with any whale or pod did not exceed 60 minutes. Comments on the draft suggested that further restrictions on the number of interaction attempts may be required to avoid whales from being disturbed multiple times during attempted interactions. Through licence conditions, DBCA is considering adding a limit of three unsuccessful interaction attempts per whale or pod, in addition to the 60-minute time limit. The management program was amended to enable this, stating that the permitted number of unsuccessful interaction attempts may be restricted. DBCA also determined to permit multiple operators to interact with the same whale or pod ('leap-frogging'), provided the total cumulative interaction limits (60 minutes and three unsuccessful attempts) are not breached.
- **Multiple groups:**

In the case of in-water interactions with resting whales, operators are permitted to put a second group in the water, permitted only one group comes within 30m of the whales. This is not proposed to be changed; however, wording was amended to improve clarity.
- **Electronic Monitoring System (EMS):**

EMS units are to be fitted onto approved vessels to record important information. Wording was added in the management program to clarify that operators are required to record data crucial to DBCA's management of humpback whales and in-water interaction activities.
- **Season dates:**

The draft program proposed the removal of set season dates for in-water humpback whale interaction activities. The three comments received on the issue were supportive of this. DBCA considers that a set season is not required to manage impacts on whales and that it unnecessarily constrains the industry. Reference to season dates was removed from final management program.

### 4.3 Management of other interactions

The management of other interactions, including commercial whale watching activities, recreational users, and other marine operations, received approximately 30 comments. Many submitters were generally supportive of the management arrangements. Some comments raised matters that were beyond the scope of the management program. DBCA made minor amendments to the wording of the program to provide clarity or rectify omissions in response to comments as appropriate.

Some submitters representing tourism interests suggested that whale watching activities in NMP and MIMMA should be managed under a restricted number of licences similar to in-water interaction licences (they are currently managed under unrestricted licences). DBCA considers that there is currently no justification to limit the number of operators conducting vessel-based whale watching tours along the Ningaloo Coast. This activity will continue to be monitored and managed under the *Management Plan for the Ningaloo Marine Park and Muiron Islands Marine Management Area 2005–2015* and consistent with the management program.

#### 4.4 Visitor Risk Management (VRM)

Some submitters (15 comments) raised concerns about risks to visitors, particularly in relation to in-water humpback whale interaction activities, including on swimmer group size, permitting swims with larger calves, recognising whale behaviours, and a comment recommending an age limit for swimmers.

While much of the responsibility for visitor risk management falls on the commercial tour operator, DBCA will continue to assess and manage visitor risk through licence conditions, as provided for in the management program. The wording in the program around VRM was amended to provide greater clarity.

#### 4.5 Research and monitoring

Several comments related to research and monitoring arrangements, mostly in support of the proposed arrangements, or suggesting additional or specific research and monitoring. No significant changes to the program were necessitated but minor amendments were made to improve clarity and comprehensiveness.

#### 4.6 Training and education

Various submissions raised topics for inclusion in DBCA's humpback whale training and education programs. Many comments referred to issues already considered by DBCA or topics that are already a component of the training and education program in place and these did not necessitate a change to the management program.

#### 4.7 Management

Submitters were generally supportive of the management objectives, desired outcomes and management actions outlined in the program. Minor amendments or clarifications were made.



## 4.8 Other

Comments also addressed a range of other issues, including compliance and consultation. Generally, these comments were considered in the drafting of the program or were detailed matters that would be addressed through DBCA's management actions rather than in the management program itself. Some restructuring and rewording of the program occurred to improve clarity but these comments did not require significant amendments to the program. Some submitters provided detail or clarification on their roles in the management of humpback whales and amendments to reflect these were made as appropriate.

## 5 Summary

In summary, the submissions on the draft management program represented a range of stakeholders and reflected a spectrum of opinions on issues relating to management of humpback whales on the Ningaloo Coast. The key focus of submissions was the management arrangements for the in-water humpback whale interaction industry. The comments made were considered in developing the final *Management program for humpback whale interactions along the Ningaloo Coast 2020*.