

Operator Feedback on the Proposed Amendments to Marine Mammal Viewing/Swimming Permits in Akaroa Harbour

TO: Jo Macpherson, Director Regional Operations
FROM: Andy Thompson, Operations Manager Mahaanui

Purpose

1. The purpose of this report is:
 - a. to summarise the feedback provided by affected Operators regarding the internal amendment process for all marine mammal viewing Permits based out of Akaroa Harbour, and
 - b. to identify which issues raised can be considered as relevant to the decision for the review of Marine Mammal Viewing within Akaroa Harbour.

Summary of matter raised and their relevance

2. The matters raised by operators are summarised below as to their relevance. A more detailed analysis is available further into this report.
3. Relevant concerns under this process are:
 - a. Equality of operators
 - i. The Department will proactively release the cumulative overview of the Amendments to trip allocations across all permitted marine mammal operations in Akaroa Harbour, to all affected operators, after a Decision is made.
 - b. Access to Pōhatu Marine Reserve
 - i. It is recommended to allow a small number of trips annually in the Reserve for specific educational visits for operators other than Pōhatu Penguins.
4. Concerns beyond the scope of this process are:
 - a. Quality of research
 - i. The research underpinning this process is peer-reviewed and published.
 - b. Impact on operator viability
 - i. The Department acknowledges concerns of the operators, and notes that it is not a relevant consideration under the Regulations.
 - c. Educational value of ecotourism
 - i. This value does not overtake the importance of the purpose of the Regulations, which includes preventing adverse effects on marine mammals.
 - d. Clarification of trip numbers
 - i. The Department notes this feedback. This matter is out of scope for this process.
 - e. Management of cruise ships

- i. The Department acknowledges that the reduction in cruise ship numbers due to Environment Canterbury Regional Council (ECan) management is part of wider management strategies for Hector's dolphins. This matter is out of scope for this process.
- f. Management of recreational vessels
 - i. The Department acknowledges that the management of recreational vessels must be part of wider management strategies for Hector's dolphins. This matter is out of scope for this process.
- g. Compliance with Regulations
 - i. The Department notes this feedback. This matter is out of scope for this process.

Process of seeking feedback

5. The process of seeking Operators' feedback is in the interest of natural justice, transparent decision making, and keeping operators informed of the likely up-coming changes.
6. The operators were involved in planning the research that has informed proposed permit amendments. There were regular updates throughout the research, and formal presentations to the operators were prioritised as soon as the results were known.
7. Operators were then introduced to the proposed amendment process through an in-person meeting in November 2023. Then in December 2024, each Operator was sent a letter (template: [DOC-7720360](#)) seeking their feedback and providing the following information:
 - a. Legislative and research context for this process;
 - b. Proposed changes to the operators' own Permit trip numbers;
 - c. Next steps in the process; and
 - d. An offer to meet to discuss the proposed changes.
 - e. The initial proposed changes were informed by:
 - f. The cumulative maximum and preferable daily trips recommended by the latest research
 - g. Addressing unused allocations of permitted trips;
 - h. Trip data collected from the onboard trackers (i.e. activity returns) for the pre-COVID 2019/2020 summer period when the research was completed, and from the most recent 2023/2024 year, as well as data directly from operators (when received);
 - i. Spatial distribution of trips; and
 - j. Balance of different trip types (e.g. swimming vs. viewing).
8. It was initially requested operators provide their feedback by 20 December 2024. At the request of operators, this was then extended to 31 January 2025.
9. Follow-up conversations were held with some operators in early 2025, to confirm the content of their feedback is well-understood.

Key themes raised by operators

10. The following themes were raised across operator feedback:

- Equality and equity across operators
- Quality of research
- Impact on operator viability
- Access to Pōhatu Marine Reserve
- Educational value of ecotourism
- Clarification of trip numbers
- Management of cruise ships
- Management of recreational vessels
- Compliance with the Regulations

11. These themes have been addressed in detail below.

Equality and equity across operators

12. Operators want to see all permits affected by the changes, not just their own. They want changes to be equitable but also have an interest in retaining their market share.
13. The intention is for all permitted operators to have reductions made to their permits (equality), but also to give individual circumstances consideration (equity).
14. This will include the proposed changes to all operators' Permitted viewing/swimming allocations.
15. It is acknowledged there are various types of ecotourism activities within the Harbour, and across all operators including viewing (from powered and unpowered vessels) and swimming with dolphins.
16. Various operators have commented that their own activities and vessels have less impacts than other operators.
17. Not all operators within the Harbour conduct tours for the primary purpose of viewing marine mammals. For example, one operator primarily offers a "fishing and cultural tour", which means marine mammal viewing may often be a secondary, incidental experience.
18. The general rule of thumb is that greater impacts are likely to be seen with higher intensity activities (swimming versus viewing), greater numbers of interactions, and use of powered vessels versus unpowered vessels.
19. However, even the lowest impact activities still have an individual and cumulative impact on dolphin behaviour.

Quality of research

20. Some operators expressed criticism towards the quality of the research that has informed the internal amendment process.
21. This research has been peer-reviewed, included in academic theses and dissertations, and published in scientific journals.
22. The operators were involved in planning the research questions, and it was funded by fees from operators. The research has been made available [on the DOC website](#). The research builds on previous projects describing impacts of tourism on dolphins in Akaroa Harbour.
23. Hector's dolphins in Akaroa Harbour are the most well-studied group of marine mammals in New Zealand, with over four decades of high-quality research undertaken. The most recent research has taken advantage of these data and is of a high standard.

24. Scientific findings contain uncertainty and can be open to different interpretations, but no peer-review process has identified any concerns with this research which would undermine its use in informing management decisions.
25. We are taking a precautionary approach as directed by the CMS, based on the best information that we have currently. We will continue carrying out monitoring/research while also implementing changes that are likely to have positive impacts. Our intention is to remain adaptive to changes in the dolphin population and of our understanding of them, as it continues to grow.
26. Operators have suggested that shifts in the distribution of dolphins in Akaroa Harbour and any decreases in dolphin numbers may be related to water temperature, food sources, and bycatch, rather than vessel traffic.
27. The possibility such factors have affected dolphin numbers and distribution cannot be ruled out, but the long-term data needed to undertake such analyses probably does not exist, e.g. fine-scale prey sampling in the Harbour. Future research should continue to build our collective knowledge in these areas.
28. In the meantime, there is ample evidence (locally, nationally and internationally) to demonstrate vessel activity and vessel-based dolphin tourism impacts dolphins, and that changes in distribution have occurred over decades alongside development of the local tourism industry. Moreover, the most recent research provides evidence that dolphins are displaced from a preferred location in Akaroa Harbour due to increased vessel activity, including commercial dolphin view/swim trips.
29. Other factors will undoubtedly affected dolphin numbers and distribution in the Harbour, but that does not mean operator activity has no impact. In addition, these other factors are not relevant under the Regulations.
30. Therefore, the main focus of this process is to reduce the direct impact of permitted operators on Hector's Dolphins.
31. While the Department is focused on what it can control under its legislative mandates, it acknowledges the likely impact of cumulative effects, and the need to work with other government agencies, Councils, Treaty partners, and non-Government Organisations to address other threats to dolphins.
32. For example, the Department is actively working with ECan on management of cruise ships, continue to educate recreational boaties about the Marine Mammals Protection Regulations 1992, and has active research projects to explore the role that speed restriction zones and emerging propellor technology can play in protecting Akaroa Harbour's Hector's dolphins.
33. Beyond management of marine mammals, the Department has been working with partners to better understand the harbour ecosystem through the habitat mapping project longair.
34. Any cumulative effects on Akaroa Harbour's Hector's dolphins will only be addressed if all agencies and stakeholders are motivated to make decisions that prioritise protection of the dolphins. Amending permit allocations in line with the best research is a chance for the Department and the operators to lead as necessary step in advocating for others to consider the dolphin protection in decision-making.

Impact on operator viability

35. All operators have raised concerns that trip reductions would impact their business financially.
36. We acknowledge their concerns, while also noting that these changes have been verbally discussed with operators since 2021.

37. The Regulations do not consider commercial interest. Therefore, this is not a matter to be considered in this decision-making process.
38. The exception may be considering the commercial interests of Ōnuku Incorporated Society (see Section 4 considerations below).
39. While not a formal consideration, DOC's approach has been to reduce the latency in the permits i.e. reduce the proportion of the permit that isn't currently used. This limits the impact on each operator's viability.
40. Nonetheless, the Department has modelled the impact of the proposed changes against real-world operator effort (trip numbers per day), which has shown minimal impact on either the operators' actual pre-COVID trip numbers at the busiest time of year (summer 2019/20) and less impact again on the more recent full year, 2023/24 trip numbers.
41. Modelling using real vessel track data shows all operators would retain considerable room for growth in trip numbers beyond 2023/24 trips that were utilised (estimated at 19-64% of the full Permit allocation, depending on the operator) under the proposal upon which the feedback was based.
42. The Department has now reflected on their feedback and spent considerable time modelling which operator requests could be incorporated while remaining proportionate and without jeopardising attainment of the scientific recommendations. That has resulted in small adjustments to the original change proposal for all operators.
43. It should also be noted that growth can be achieved by means other than trips per day. For example, operators may wish to consider growing their vessel size to increase the number of passengers carried, especially if such changes can be combined with other potential dolphin impact mitigations (e.g. propulsion/speed/sound) or adding value to their permitted trips.
44. Given the recent research findings, it's in everyone's best interests to explore new business models that can boost revenue while minimising impact on the dolphins.
45. The proposed amendments will not create a monopoly of swim trips, as suggested in some operator feedback.

Access to Pōhatu Marine Reserve

46. Related to commercial and educational interests, some operators have raised concerns about the exclusion of Pōhatu Marine Reserve as anti-competitive.
47. After discussion with two operators, in order for them to carry out tours with an educational focus (e.g. pre-booked school trips), it is proposed they retain restricted access to the Pōhatu Marine Reserve at the discretion of the Mahaanui Operations Manager.
48. It is proposed that one operator retains the majority of permitted trip capacity within the Pōhatu Marine Reserve.
49. While the proposal to limit operations in Pōhatu Marine Reserve may have some benefits to this operator, it also has benefits to the other operators, given that this operator would relinquish their permit to operate within Akaroa Harbour.
50. It is proposed to not limit commercial access to Akaroa Marine Reserve in the same way, as this area is less commercially contentious.

Educational value of ecotourism

51. Some operators raised that their activity provides educational value to the public about these animals.
52. This value has been assessed and acknowledged as part of issuing a Permit under the Marine Mammals Protection Regulations.
53. However, this value does not overtake the importance of the purpose of the Regulations, which includes preventing adverse effects on marine mammals.

Clarification of trip numbers

54. One operator sought further discussion that 'vessel passage with zero intent to view' should not be included as a trip under their Permit.
55. Although beyond the scope of this process, the Department acknowledges the need to increase its objective scrutiny of all operators, and how their trips may or may not differ. The Department anticipates the need for a more extensive education and compliance campaign after this amendment process.

Management of cruise ships

56. Some operators raised that cruise ships are impacting dolphin behaviour.
57. [Environment Canterbury Regional Council](#) (ECan) is responsible for managing the effects of cruise ships entering Akaroa Harbour.
58. ECan commissioned a [2019 report from the Cawthron Institute](#) regarding cruise ships disturbing the seabed and water quality degradation in Akaroa Harbour. It sought to establish what possible effects, if any, may be caused by the operation of cruise ships and their environmental risk to Akaroa Harbour.
59. This led to:
 - a. some anchorages being closed and from 1 November 2021
 - b. a size restriction under 260m in length for ships coming into Akaroa Harbour
 - c. larger ships needing consent to enter
 - d. a 2021 bathymetric survey of the harbour leading to the closure of a further anchorage and a limit on ship length of 200m, and
 - e. a repeat survey of the open and closed anchorages in Akaroa by Southern Hydrographic in 2023.
60. The findings of the recent research also showed cruise ships are impacting dolphin behaviour. Limiting cruise ship visits in Akaroa Harbour to pre-earthquake numbers was one of the researchers' management recommendations.
61. Management of cruise ships is beyond the scope of this process.
62. However, the Department has [formally written](#) to the Chair and CEO of ECan to draw their attention to the dolphin/cruise ship research. The letter asks that the research be considered as part of their ongoing cruise ship management in Akaroa Harbour.

Management of recreational vessels

63. Various operators raised concerns that they are being regulated more heavily than recreational vessels.
64. Recreational vessels are not within the scope of this process.

65. It is considered that Operator vessels are likely to have a greater impact than recreational vessels on a boat-per-boat basis. Commercial operators are intentionally seeking out and interacting with marine mammals daily-to-weekly, compared to recreational vessels that generally drive past them and do not actively seek them out.
66. Nonetheless, the recent research does suggest that vessel traffic of all types – including recreational vessels – can displace dolphins in Akaroa Harbour on busy days.
67. The researchers recommended consideration of speed restriction zones to limit the impact of recreational traffic. Similar restrictions on vessel traffic have been introduced in the Bay of Islands in 2021 via the Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary.
68. The operators will be aware that the Department has been collecting underwater sound data from around Akaroa Marine Reserve. The intention is to use these data to model the potential impact of a speed restriction zone in the marine reserve on underwater sound at frequencies considered important for the dolphins. This is the first step in considering the feasibility of a speed restriction zone.
69. Modifying the Banks Peninsula Marine Mammal Sanctuary or the Akaroa Marine Reserve gazettal to incorporate speed restriction zones is beyond the scope of the current process.

Compliance with the Regulations

70. It is acknowledged that better compliance with Part 3 of the Marine Mammal Protection Regulations 1992 for all vessels is needed within the Harbour.
71. This is a matter to consider outside of the amendment process.

Section 4 considerations - Ōnuku Incorporated Society

72. The Department is required to give effect to the principles of the Treaty of Waitangi and have particular regard to the views of affected iwi, hapū and whānau in this process.
73. Under the Ngāi Tai case, the Supreme Court has stated that preference and economic issues are relevant considerations, when giving effect to Section 4 of the Conservation Act.
74. The Holder of 86235-MAR is Te Runanga o Ngai Tahu - Ōnuku Incorporated Society (“Ōnuku”).
75. For this reason, when giving effect to Section 4 of the Conservation Act, preference and economic issues related to Ōnuku are relevant considerations for a Decision Maker.
76. Ōnuku is a fundamental contributor to the management of Akaroa Harbour and has been actively involved in understanding and considering the research alongside the operators.
77. The District Office has kept Ōnuku abreast of the amendment process and provided ongoing opportunities for incorporating the feedback of: a) the rūnanga directly, and b) the business operator for 86235-MAR.
78. Following that, it is considered that further engagement with the rūnanga about the amendment process is not necessary.

Appendix 1.

Proposed changes as sent to Operators on 5 December 2024

Permit	Permit holder	Current permit levels	Proposed new levels sent to operators
79879-MAR	Pōhatu Penguins	s9(2)(b)(ii) [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
84883-MAR	Akaroa Dolphins	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
84892-MAR	Hamilton, Gehrig and Ecoseaker	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

84934-MAR	Black Cat	s9(2)(b)(ii) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
84936-MAR	Fox 2 Sailing	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
86235-MAR	Onuku Inc Society	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]