



# Making Changes - Amending the Marine Mammal Regulations Consultation Workbook

## 1.0 Introduction

Fisheries and Oceans Canada (DFO) is responsible for the conservation and protection of Canada's marine resources, including marine mammals. Regulations, policies, management plans and education programs are the tools of protection.

Human interactions with marine mammals in their environment are increasing. Growing ecotourism industries, recreational boating activities, and other maritime industries have the potential to impact the survival and conservation of many marine mammal populations.

To protect Canada's marine mammals, regulations that provide protection from nonconsumptive human activities on the land, sea and in the air that may disturb or harm marine mammals are required.

DFO is proposing to amend the existing Marine Mammal Regulations (MMR) of the Fisheries Act. Amending the MMR will ensure that all Canadians clearly understand their responsibilities with regard to protecting marine mammals and that DFO has the tools to fulfil its mandate.

**Our goal is to set in place a contemporary management framework designed to address the non-consumptive use and protection of marine mammals in Canada.**

To develop regulations that are effective, well understood and accepted, DFO is soliciting input and advice from the public, First Nations and various industry groups, including the eco-tourism industry. Our aim is to ensure these consultations are transparent, accountable, inclusive and well-documented.

Your input, along with the best scientific advice, will be considered in the development of new regulations. DFO is committed to taking a precautionary approach to ensure the conservation and protection of Canada's marine mammals.

## 2.0 How to Use this Workbook

This workbook has been developed to give you an opportunity to personally provide DFO with your thoughts, advice, and input regarding the proposed regulations for

marine mammals. It will also be used to facilitate discussion at public meetings, being held around the province.

You are encouraged to complete any or all of the questions and provide any additional comments you feel relevant and mail it to the address listed on the last page or drop it off at any DFO office.

A website has been established where you may complete this workbook on line and submit it directly to DFO. You will also find additional background information, references and contact information at this website. You will find the Marine Mammal Regulatory Amendment consultation information on the DFO website at <http://www.dfo-mpo.gc.ca> under *Consultations* or go directly to the Marine Mammal Page at [http://www.dfo-mpo.gc.ca/mammals-mammiferes/index\\_e.htm](http://www.dfo-mpo.gc.ca/mammals-mammiferes/index_e.htm)

The questions presented here are based on preliminary discussion that have occurred to date on the types of regulations that may be appropriate and necessary. They are meant to stimulate discussion and input . Therefore you are encouraged to bring your ideas, knowledge and advice to this process.

### 3.0 Background

Marine Mammal viewing in Canada is becoming an increasingly popular activity. In some areas, well-meaning enthusiasts may be unintentionally disturbing wild marine mammals by keeping them away from their preferred habitats or interfering with their important normal daily activities such as nursing and feeding.

The existing *Marine Mammal Regulations* prohibit the disturbance of marine mammals (whales, seals and sea otters). However, they are too general and do not inform the public about behaviours that are unacceptable when viewing marine mammals in their natural environment. Other human non-consumptive activities may also impact marine mammals. For instance, acoustic harassment devices or excessive engine noise may interfere with the ability to locate prey or communicate with other members of the population. Marine mammals may also be at risk from ship strikes, entanglement in fishing gear and displacement from their preferred habitat.

DFO invited Dr. Jon Lien, a respected whale researcher from Memorial University in Newfoundland, to prepare a report that reviews the effects of whale watching activities on the important normal activities (life processes) of marine mammals. Dr. Lien concluded that there is evidence that the presence of whale watching vessels changes the behavior of targeted animals. These disruptions may interrupt or prevent the animals from completing important life process, threatening survival. Dr Lien concluded his report by offering several recommendations on how to manage whale watching in Canada, including the management and/or regulation of marine mammal viewing.

Dr. Lien's report is now published (*Lien, J. 2001. The Conservation Basis for the Regulation of Whale Watching in Canada by the Department of Fisheries and Oceans: A Precautionary Approach. Canadian Technical Report of Fisheries and Aquatic Sciences 2363*), and is available online at:  
<http://www.dfo-mpo.gc.ca/Library/259973.pdf>

Many of Canada's marine mammals are officially listed as threatened or endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). To ensure recovery, it is crucial that management strategies, regulations, public education and stewardship programs to protect these vulnerable populations are in place.

New research programs are underway around the world studying the effect that nonconsumptive human activities have on marine mammals. While specific evidence for each situation, species and location is not always available, it is clear that to protect marine mammals, more prescriptive laws are required.

DFO's goal is to develop, and present for public discussion, possible amendments to the *Marine Mammal Regulations* that will ensure that important life processes of marine mammals are protected and assure public safety. This would provide the public, researchers and businesses the opportunity to view and study marine mammals in their natural environment without negatively affecting these populations.

#### 4.0 Application & Definitions

Application: Unless specifically stated in the context of a regulation, regulations apply to any person engaged in the described activity whether from land, sea or air.  
Vehicle (Fisheries Act) means any conveyance that may be used for transportation, including aircraft.

Q1. Does this definition cover all the types of craft that may be expected to interact with marine mammals?

**This is far too vague. We suggest changing the words "described activity" to "specifically seeking or following marine mammals to observe, track, view, or study"**

Marine Mammals: Cetaceans, Pinnipeds, Sea Otter, Walrus, and Polar Bear

Q.2 Does this definition adequately describe Canada's marine mammals.

Yes

Normal Life Processes: means all activities of a marine mammal, including but not limited to, migration, movement, feeding, resting, socialising, breeding, communicating, calving and nursing.

Q3. Is this definition appropriate in describing the kinds of marine mammal life activities that need protecting?

**We have no comment here so long as our requested changes to Q1 are made. If the changes to Q1 are not made we are concerned that activities (such as seismic, or simple ship navigation) would be drawn into this and we do not agree as these do not intentionally seek marine mammals and would have a marginal, if any impact on normal life processes when compared to the primary impacts whale watching, over fishing of food stocks, water pollution (runoff, industrial & raw Canadian sewage), and shipping.**

## **Regulations Related to Marine Mammal Viewing**

### **Approach Distances**

The use of minimum approach distances has been used throughout many jurisdictions as a regulation or guideline to limit the impact that people/vehicles may have on the animals. Here in British Columbia, 100m has been generally adopted as the minimum distance to view all marine mammals.

Factors that must be considered in determining a appropriate distance(s) include; species, habitat, number of vehicles, frequency of approaches, manner of approach, sea condition, time of year, etc. Each species may have a different tolerance to approaches making species or location specific approach distances feasible. Some species, because of their conservation status, may need special protections to prohibit expiration or extinction. Gathering the scientific evidence to determine specific distances for all area and species is unlikely, but may be achievable in some specific cases.

Another significant factor to consider is public awareness, understanding and acceptance. Making sure that individuals understand the regulations may mean that one or few distance regulations may be better understood and enforced. To ensure that individuals understand the regulations, this may mean that one (or few) distance regulations may be better understood and enforced.

### ***Questions for Discussion***

Q4. Do you believe that regulating approach distances is an effective conservation measure for marine mammals? (if no, skip to next section)

**With respect to avoiding physical contact, herding, or crowding marine mammals a minimum approach distance is relevant. If ten vessels all approach to within some minimum distance from all sides this could have an impact on normal life processes.**

**Further, minimum approach distances would not address the wide variation of the differences in noise emissions put into the water by inboard or outboard motors commonly used for whale study/watching vessels. Since it is well understood that many marine mammals utilize sound to conduct normal life processes there should be some minimum hardware standards for any vessel intentionally seeking out and intentionally staying in close proximity of marine mammals for research or viewing. No standards are**

currently in place that would significantly mitigate potential impacts although the technology and costs are relatively cheap and well developed. Suggestions would be to utilize shrouded propellers, or jet drives to minimize potential propeller contact with animals, the use of well isolated (isolate from the hull with rubber) inboard engines that do not use the water as a muffler (i.e. exhaust is to the air with mufflers & catalytic converters). Requirements to switch to electric propulsion while in close proximity to and viewing of marine mammals is another “quiet”, inexpensive, and well developed technology that would mitigate noise pollution.

Q5. If so, should the distance restrictions be species and area specific, broad or some combination of both?

Distances logically would be species specific... although the use of broad categories would be more practical because identification of a particular species may be difficult for one of many reasons.

Q6. What distances do you consider are appropriate to view marine mammals on the land or by sea? Why?

We are not aware of or do not believe there exists sufficient scientific information to provide a comment.

Q7. What distances do you consider are appropriate to view marine from aircraft (plane, float plane, helicopter)? What about landing and taking off around marine mammals. Please explain.

It is well understood that noise and reactions due to aircraft is substantial in the water. It would not be difficult to determine distances offsetting and height that would be necessary for general types of aircraft to stand off with regard to noise measurements in the water under a range of conditions (i.e. for any given area, day, aircraft the sound will be different due to emission at the source, wind, surface conditions, salinity, temperature, bathymetry, location of animal receivers, ambient noise etc....) But these differences should not be an excuse to over kill and require a model, an Environmental Assessment, or a study to be conducted for every program. Common sense would dictate that there is a range within which this sound will propagate and then good judgment should be used to balance the cost of all this effort and the actual benefit to be derived by regulating

this one source of occasional noise to come up with a reasonable and workable solution/standards. Key is to avoid costly repetitive studies, Environmental Assessments, and sound models for repetitive activities that are similar in nature in each occurrence.

Q8. It has been suggested that when there are already a number of vehicles viewing marine mammals, that other vessels should stand off at a further distance. Do you support this approach? Why? If you support this, can you comment on the number of vessels and the stand off distance?

Clearly the cumulative impact of noise would be considerable if multiple vessels were viewing marine mammals in a small localized area at the same time. Further the potential to alter normal life processes due to the inability for a marine mammal that seeks to avoid the vessel(s), to actually avoid the vessels due to the number and dispersion, or the following associated with the activity, or both.

Clearly some reasonable standards of density need to be established. These standards would have to be based upon unbiased scientific information that may take into account (vessels with mitigations proposed in Q4 above may allow higher density and tighter spacing, vs. vessels with out mitigations would be required to have less density and wider spacing), size of vessel, sound output of vessel, training level achieved of operator, and other pertinent factors..... We do not believe sufficient unbiased scientific information exists to provide further comments and we do not advocate using opinions (usually from those that have an agenda which would bias the opinion)to form a basis for sound regulation.

Q9. Do you have other thoughts, comments or advice on approach distances?

No

#### Operation of a Vehicle round Marine Mammals

Many experts consider that how people operate their vehicle and behave around marine mammals are just as important as how close they approach. For example,

avoiding collisions with a swarm of vessels and cutting across the path of travelling whales can be very stressful. Like approach distances, many jurisdictions regulate or have developed guidelines to direct how vehicles are operated around marine mammals. The goal would be to prevent the disruption of the normal life processes of the marine mammal.

The *Be Whale Wise* guidelines recommends:

- Slowing down to less than 7 knots within 400 metres of marine mammals.
- If your vessel is unexpectedly close to a whale, stop immediately and allow the whales to pass.
- Avoiding approaching whales from the front or from behind. Approaches should be from the side, moving in a direction parallel to the direction of the whales.
- Keeping clear of the whale's path. Do not position your vessel within the 400 metre area in the path of the whales
- Staying on the offshore side of whales then they are travelling close to the shore.

### ***Questions for Discussion***

Q10. Do you believe that regulating vehicle operation, such as speed and direction of approach is an effective conservation measure for marine mammals? (if no, skip to next section)

**Yes this impacts the potential for strikes and engine speed is related to noise emission levels.**

Q11. If so, which of the above measures do you think are appropriate, if any?

**While we agree more with some than others this may be from our lack of knowledge and access to scientific study information to base a good decision upon so we would agree that there should be some standards with regard to speed and direction of approach but would suggest that unbiased study should be used to determine what if anything is actually helpful.**

Q12. Are there other measures that you think would be effective?

**Physical Equipment requirements proposed in Q4 above would have a big impact.**

Q13. In addition to having specific vessel operation regulations, do you think a general regulation that prohibits a person from operating a vessel in a manner that disrupts the life process of a marine mammal would be a useful broad based regulation?

**Yes if limited to vessels that specifically seek out and stay in close proximity of marine mammals... this should not be used to add regulatory complexity and hurdles to activities that allow marine mammals to avoid the transient activity such as commercial shipping, or the transient and intermittent seismic exploration, both of which do not seek and stay in close proximity of marine mammals for any period of time.**

Q14. Do you have other thoughts, comments or advice on vehicle operation?

**Depth Sounders, fish finders etc.. have acoustic emissions that may be harmful to marine mammals and this should be considered in the development of a policy related to any vessel that is involved in this activity.**

## **5.0 Regulation of Commercial Marine Mammal Viewing Businesses**

In many coastal communities, whale watching, marine mammal viewing and, eco-tourism businesses benefit from the presence of marine mammals in their waters. Tourists come from around the globe to experience marine mammals in their natural habitat, providing economic benefits for the community and surrounding areas. It is also believed that by giving people the experience of seeing marine mammals in their natural habitat, they will appreciate, respect and protect these animals and their habitat.

Regulation of a particular sector of society that has the opportunity to benefit from a common property resource usually involves some type of licensing. This allows for a more direct method of managing and monitoring the activity through the use of license conditions. In addition, by knowing who is actively and consistently exploiting a resource, DFO is able to develop management plans that ensure the long-term protection and conservation of the resource thereby providing for sustainable businesses.

Licences may be open access, whereby anyone wishing to participate may apply and receive a licence, or limited to a certain number of participants. An assessment of the history, the impact on the resource and the business environment is necessary to conclude the type of licence regime that would be used. This is done in consultation with the affected stakeholders. Licenses could be national in application or developed on an area by area basis.

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### **Questions for Discussion**

Q15. Do you believe that implementing specific regulatory measures for the commercial marine mammal viewing industry is an effective conservation measure? Why? (if no, skip to next section)

**Clearly the significant impacts of this activity have not been regulated and when you compare the costs, burdens, and time spent on a much more transient, infrequent, more distant, and less invasive activity such as Seismic Exploration it is a huge oversight not to regulate this activity. One would think that the interpretation of the laws regarding harassment of marine mammals would require this activity to be the first to be regulated and where the most effort, cost would be applied.**

**When one considers the regulatory burden of compliance for Seismic Operations and the potential impacts of that activity versus the potential impacts and current lack of regulation for whale watching it is a large oversight for the protection of marine mammals. For example when comparing ever increasing regulation for Seismic activities to the unregulation of whale watching and other activities this provides a clear example of a disproportionate amount of resources and effort being spent with little benefit (due to a minor if any impact) to the environment or marine mammals than if that same amount of resources and effort were directed to this whale watching activity. Much more benefit would be derived for the environment and the marine mammals. Other primary impacts (some of which are prohibited by the laws in place) that occur are:**

- 1. Over fishing and has depleted many of the food stocks for marine mammals.**
- 2. Fishing practices that alter and destroy fish habitat are allowed to continue.**
- 3. On shore chemical point and non point source pollution makes the impact of oil spills and all offshore oil and gas emissions pale in comparison. Further natural seeps contribute more to hydrocarbons offshore than all oil and gas spills due to exploration, production and transportation of hydrocarbons put together.**
- 4. Fishing not seismic kills fish.**
- 5. Shipping noise (constant and major contributor to ambient noise) is unregulated and no mitigations are employed unlike those imposed, in our view unfairly, on the occasional, transitory, and intermittent emissions of Seismic research. Further Seismic is required to mitigate (i.e. times of year, shut down procedures, areas to avoid, ramp up of sound, observers etc....)**

**We believe that regulatory protection/conservation should be even, fair and focused on the primary and largest contributors to degradation of the environment first . Huge costs and effort with little benefits (very inefficient) are being imposed on the oil and gas industry as a result of the sensationalism tactics utilized by some NGO's that find it most effective to point at a small industry as the villain while avoiding the substance of the more diverse problems that actually are the primary issues government and regulation should be focused on if a true concern for marine mammals was objectively approached.**

**A perfect example is the call for a moratorium on all Canadian offshore seismic work due the accidental spills of a very light hydrocarbon used in marine streamers that was designed to evaporate quickly and have a minimal impact on the environment. (see Halifax Herald Oct 2, 2003 "Offshore spills anger coalition" ...."Pollution from testing vessel shows need for moratorium group says")**

**In the context of natural seeps which in the most conservative estimate are about double that of all large spills world wide this request for a moratorium is nonsense. Further it is estimated that over 71% of oil pollution comes from runoff or illegal dumping onshore.**

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**So in the context of an NGO actually caring for the environment this issue is not worth spending any time or effort unless there is a fundraising motive.**

Q16. How would you define a commercial marine mammal operator or vehicle?

**Any vessel or operator that views a marine mammal for any form of research, compensation, or donation.**

Q17. If licensing were used as a regulatory measure, do you believe that the licensing of commercial operators would be a useful tool for managing this activity? Please explain your thoughts and/or concerns.

**Yes, requires certification, standards, and allows for control of the activity in the future.**

Q18. Do you believe that commercial operators should have the same/more/less restrictions for marine mammal viewing than the general public?

**Yes clearly these operators should have a higher standard as other industries are required to have and because they will have the most contact (frequency and duration) with the marine mammals making it all the more important.**

Q19. Do you have other thoughts, comments or advice on commercial licensing and regulation?

No

## **6.0 Regulations for General Protection & Conservation**

### **General Disruption Prohibition**

While there is considerable focus on marine mammal viewing for the regulatory amendments, other activities have the potential to disrupt the normal life process of marine mammals or their habitat. Usually, it is not possible to specifically regulate every activity with the potential to disrupt. In this case, general prohibitions are often useful in providing a tool to deal with individual situations.

The current Marine Mammal Regulations prohibit any person from disrupting a marine mammal unless authorized to do so (usually for scientific purposes). In practice, enforcement officers, judges and the public have questioned the definition of intent. It has been recommended that this prohibition be expanded to prohibit the disruption of the "normal life process", which would make application of the regulation more useful.

While a minimum distance restriction would cover activities like feeding, touching and swimming with marine mammals, some people have expressed the need for an explicit regulation prohibiting these activities.

### ***Questions for Discussion***

Q20. Do you believe that a general prohibition from disturbing the life processes of marine mammals is an effective conservation measure? Why?

**No, this is too broad and general and would facilitate potentially harmful regulation. We have observed various offices of DFO interpret the regulations and the context of how seismic activities fit into the larger scheme of other impacts very differently resulting in excessive regulation being exercised. This has added huge costs and delays to the exploration for needed energy with little if any relative benefit for the marine environment or the animals located there.**



Q21. Do you believe that a general prohibition on feeding, touching, and swimming with marine mammals is a necessary and effective conservation measure? Why?

**Yes because this may attract animals to vessels that may otherwise avoid them. Further, these activities if allowed on wild animals will have other unintended consequences that may be detrimental to the animals.**

Q22. Other than marine mammal viewing, what other human activities may impact marine mammals that you are concerned about?

**To the extent that Seismic noise emissions are regulated then general shipping should be regulated to the same extent. Shipping noise is much more prevalent, is a constant noise emission, occurs with more frequency, is at similar if not equal intensities and spectrum as Seismic, and currently is unregulated. Either shipping has to be regulated or the excessive regulatory burden on Seismic has to be eased to bring parity.**

**Over fishing food stocks for endangered marine mammals, 25% + bycatch, and incidental takes of marine mammals due to use of certain equipment/gear, and destruction of fish habitat due to certain fishing practices has to be regulated or stopped as this has a direct impact on fish and marine mammals.**

Q23. Do you have other thoughts, comments or advice on general prohibitions?

**DFO should promote the use of artificial reefs including the construction of oil platforms which are documented to provide cover for fish and create an oasis of sea life.**

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### **Reporting of Sick, Injured or Stranded Animals**

Knowing the threats facing marine mammals (disease, collisions, entanglements, etc.) is important in developing effective conservation strategies. Where it is possible to rescue or rehabilitate animals to meet conservation objectives, knowing the necessary information in a timely manner is essential. In this regard the public and mariners have both an opportunity and a responsibility to assist.

Q24. Do you support the mandatory reporting of any collisions or entanglements with marine mammals?

Yes

Q25. Do you support the mandatory reporting of stranded, injured or sick marine mammals?

Yes

Q26. Do you have other thoughts, comments or advice on mandatory reporting?

No

## **8.0 Regulations for Scientific Study, Rehabilitation, Filming, or Educational Purposes**

Marine mammal viewing is not the only disturbance that marine mammals face. Other activities such as research, rescue and rehabilitation programs have great potential to help us study and protect marine mammals; and, therefore, some disturbance is justified. DFO is responsible for ensuring that these activities are conducted in a manner that does not endanger the individual animals or the population. Careful review of proposals to ensure that the impacts are justified, and do not compromise conservation objectives, will allow for prudent permitting of these activities.

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**Questions for Discussion**

Q27. Do you believe that DFO should regulate researchers, filmmakers or persons gathering information for educational purposes if their work has the potential to disturb marine mammals?

**Any contact or intentional seeking or approach of Marine Mammals should be treated the same. Research can be just, often more, intrusive and harmful (duration, frequency, tagging, tissue/blood samples etc...) than other types of viewing and observation. After years of observation little information is provided to the public showing distribution, history of sightings by individual, etc...**

Q28. Do you believe that DFO should regulate rescue/rehabilitation groups to assist marine mammals?

**If significant government resources will be added to this activity it may allow government to play a role in this activity. Normally government should stay out of as much as possible because private groups and industry are usually much more efficient at getting things done. We do not agree that regulation is necessary, funding, guidelines, gear research, study equipment, facilities would be helpful.**

Q28. Are there other activities that you believe are important and justify some disturbance of marine mammals?

**Clearly Shipping and Oil and Gas exploration and production to the extent that they actually disturb marine mammals, which in our opinion is slight, are more important than the activity described herein.**

Q29. Do you have other thoughts, comments or advice on regulating research, rescue, rehabilitation and film making?

**Because these activities tend to be more intrusive (duration, frequency, contact, proximity etc..) they should be held to the same if not a higher standard (full**

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**Environmental Assessment should be required) than other types of whale watching/observation activities.**

