







CONSULTATION WORKBOOK

AMENDING THE MARINE MAMMAL REGULATIONS

A. PURPOSE

Fisheries & Oceans Canada (DFO) is conducting consultations on proposed changes to the *Marine Mammal Regulations (MMR)* of the *Fisheries Act*. The purpose of this guide is to provide information on the proposed regulatory amendments, facilitate dialogue and to solicit opinion and comment from the public, First Nations and stakeholders.

Specifically, in this guide you will find:

-  Information on the rationale for amending the MMR
-  Text of the proposed new and amended regulations
-  Narrative boxes that provide interpretation, context or application of the proposed regulations
-  Information on options for you to provide your opinions and comments.



B. INTRODUCTION

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 important normal daily activities such as nursing and feeding. In some cases, there is an increased risk of injury through contact with vessel propellers.

The existing *Marine Mammal Regulations* prohibit the disturbance of marine mammals (whales, seals and sea otters). However, the regulations are general and do not inform the public about behaviours that is unacceptable when viewing marine mammals in their natural environment.

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Other human non-consumptive activities may also impact marine mammals. For instance, acoustic harassment devices, seismic and sonar activities or excessive engine noise may interfere with the mammals' 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.

In 2000, 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 behaviour of targeted animals. These disruptions may interrupt or prevent the animals from completing important life process, thereby threatening their 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. A copy of this report is available on the DFO Marine Mammal website at <http://www.dfo-mpo.gc.ca/Library/259973.pdf>

In 2003 and 2004 DFO conducted extensive, Canada-wide consultations asking Canadians what kind of protection measures are necessary for marine mammals. We heard that there are concerns about activities that have the potential to disturb or disrupt the life processes of marine mammals. In light of growing non-consumptive activities, like marine mammal viewing, there was support for the need to enhance the MMR to ensure that marine mammals are protected through adequate, enforceable and explicit laws. A copy of the summary report on these consultations is available at http://www-comm.pac.dfo-mpo.gc.ca/pages/consultations/marinemammals/default_e.htm

Proposed regulatory amendments have been drafted based on what DFO heard from the public, stakeholders and First Nations. Further consultations, to solicit feedback on the current proposals, will be conducted within each DFO Region across Canada. You are encouraged to review the draft regulations presented in this document and provide your opinions and feedback on these amendments.

Please see Section **D: Providing Feedback** of this document to determine the most suitable way in which you can make your opinions known.

Thank your for taking an interest in this important initiative.



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C. PROPOSED AMENDMENTS

The following material is an abbreviated version of the *Marine Mammal Regulations* with the proposed new or amended material incorporated. Comments and explanations have been included in separate narrative boxes to assist you in understanding the intent, application or context. In some cases the text from the existing regulations is necessary to understand how the proposed new or amended regulations must be considered. Therefore, proposed new or amended material is presented in italics, while text that currently exists in the MMR is presented in a normal print.

FISHERIES ACT REGULATIONS RESPECTING MARINE MAMMALS

SHORT TITLE

1. These Regulations may be cited as the Marine Mammal Regulations.

INTERPRETATION

2. (1) In these Regulations,

“haul out” is an aggregation of seals or sea lions on the land.

“juvenile” includes calf or pup of any species of marine mammal and may be treated as a separate species from the adult stage of development.

Comment
Treating juvenile as a separate species is for the purpose of Schedule V whereby a species specific approach distance can be established.

“normal life processes” means all activities of a marine mammal, including but not limited to, migration, movement, feeding, resting, socializing, mating, calving, and nursing.

“raft” is an aggregation of sea lions or sea otters in the water.

“rookery” is an aggregation of seals or sea lions on the land for the purpose of breeding.

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APPLICATION

3. These Regulations apply in respect of the management and control of

- (a) fishing for marine mammals and related activities in Canada or in Canadian fisheries waters;
- (b) fishing for marine mammals from Canadian fishing vessels in the Antarctic;
- (c) *watching of marine mammals; and*
- (d) *activities that may involve the disturbance of a marine mammal.*

Comment

Section 3c & 3d apply to activities that are conducted in Canada including all Canadian waters

PART I GENERAL

4. (1) Subject to subsections (2) and 36(1), the Minister may, on application and payment of the fee set out in column II of an item of the table to this subsection, issue a licence referred to in column I of that item.

	<i>Column I</i>	<i>Column II</i>
<i>Item</i>	<i>Licence</i>	<i>Fee</i>
5.	<i>Marine Mammal Watching Licence</i>	<i>to be determined</i>
6.	<i>Marine Mammal Research Licence</i>	<i>No Charge</i>
7.	<i>Marine Mammal Disturbance Licence</i>	<i>No Charge</i>

Prohibitions

7. *Sections 8 and 9 do not apply to*

- (a) employees of the Department engaged in carrying out their duties related to the proper management, conservation and protection of fish; and*
- (b) persons otherwise authorized under the Fisheries Act.*

8. (1) *Notwithstanding any provision of these regulations, subject to Part VI, no person shall disturb a marine mammal or disrupt the normal life processes of a marine mammal.*

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Comment

This prohibition would replace the existing S7. “No person shall disturb...” and is intended to recognize that various life process are critical to the survival of individual marine mammals and the long term viability of marine mammal populations.

(2) For greater certainty disturb includes but is not limited to,

(a) no person shall feed a marine mammal; and

(b) no person shall touch a marine mammal

(c) no person shall enter the water with the intention of swimming or otherwise interacting with marine mammals.

Comment

S2(a) – (c) The interactions between marine mammals and humans can have immediate and long-term negative consequences for marine mammals and may pose a safety risk for the human. While swim-with programs do occur in other countries and other regions of Canada, the growing potential for risks arising from this activity has prompted the call for this activity to be prohibited.

(3) for greater certainty, in Canadian Fisheries waters of the Central and Arctic Region;

(4) for greater certainty, in Canadian Fisheries waters of the Maritimes Region;

(5) for greater certainty, in Canadian Fisheries waters of the Gulf Region;

(6) for greater certainty, in Canadian Fisheries waters of the Newfoundland and Labrador Region.

(7) for greater certainty, in Canadian Fisheries waters of the Quebec Region

(8) for greater certainty, in Canadian Fisheries waters of the Pacific Ocean and the Province of British Columbia:

Comment

Sections 8(3-8) allow for the various regions across Canada to set regulations that recognize regional differences in the kinds of activities of concern, the local geography and the species needs in different areas.

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Approaches to Marine Mammals

9. (1) Subject to subsections 9(3), 9(4) and 9(5) no person shall approach within 100 metres of any cetacean or walrus.

(2) Subject to subsections 9(3), 9(4) and 9(5) no person shall approach to within a distance or in a manner to a seal or sea lion haul out or raft of sea lions or sea otters **that** disperses the aggregation. (see comment box)

Comment

S9(1) applies a minimum distance by which an individual may approach cetaceans and walrus; whether on the land or water and by whatever means (on foot, boat, snowmobile, etc).

Seals, sea lions and otters pose a unique difficulty in defining an approach distance as a protection measure as they are land and water based and are commonly found in areas where human activity occurs and where these animals may have become habituated to our presence. Section 9 (2) strives to balance the practicality of defining how these species could be disturbed and a protection measure to prohibit the disturbances that is practicable and enforceable for most situations where intentional disturbance may take place. Sea otters and some seal and sea lion populations may be disturbed at distances greater than 100m therefore it may be more important to emphasize what is to be avoided. Alternatively, your input on the efficacy and practicality of establishing a fixed distance is sought.

(3) Subject to subsection 9(4), no person shall approach a species of marine mammal set out in column I of an item of Schedule V, with a type of vehicle set out in column II of that item, within a distance set out in column III of that item, in the area set out in column IV of that item.

Comment

S9(3) allows for a variation of the 100m distance for specific species, locations or methods of approach. This would customarily be done to allow for special protection for species in which there exists a conservation concern or other unique requirement.

At this time, DFO is not proposing any variations from the distances specified in 9(1) and 9(2) and seeks public input.

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Schedule V

Column I (species)	Column II (vehicle)	Column III (approach distance)	Column IV (area)

(4) (a) For the purposes of protection of marine mammals or the safety of the public and notwithstanding subsections 9(1) and 9(2), where a minimum approach distance has been set in these regulations, a Fishery Officer may stipulate a different minimum approach distance for a species, by type of vehicle, in a specified area.

(b) Where a fishery officer stipulates a minimum approach distance pursuant to subsection 4(a), notification will be made in accordance with the requirements set out in section 7 of the Fishery (General) Regulations.

Comment

S9(4a & b) allow for a Fishery Officer to address a unique circumstance by setting an alternative approach distance only for the period of time which would be necessary to protect the marine mammal or the public. An example of this situation may be if a whale became confined in an area and management of the public by land or sea was necessary to prevent a stranding. Another example might be where a group of transient killer whales were actively involved in a predation event. In these circumstances, there is an increased requirement for the public to be notified verbally, radio or newspaper notices, marine broadcast and/or DFO Public Notice. The circumstances will dictate the most effective manner of notification.

(5) (a) No one shall operate an aircraft for purposes of aerial marine mammal observation at an altitude of less than 1000 feet."

(b) For purposes of subsection (a) "aerial marine mammal observation" means any alteration of course of an aircraft in flight which is designed to bring the aircraft closer to the marine mammals.

Comment

Aircraft (fixed wing & helicopter) are handled separately because of the demonstrated disturbance of aircraft when flying over marine mammals and the risk associated for the marine mammals and the aircraft when landing on the water. This proposed regulation is currently being reviewed by Transport Canada to ensure consistency with existing aviation regulations.

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Physical Contact with Marine Mammals

10. *The operator, or his agent, of a vehicle or fishing gear, shall report the following information to the Department forthwith following a collision or other physical contact between the vehicle or fishing gear and a marine mammal:*

- (a) date and time;*
- (b) location of incident;*
- (c) species;*
- (d) nature of the incident;*
- (e) state of animal before and after the incident;*
- (f) animal's direction of travel;*
- (g) weather and sea conditions; and*
- (h) any other relevant information.*

Comment

S(10) would require anyone who has contact with a marine mammal to report the incident. This would include contact with the vessel or vehicle, lines, fishing gear or other apparatus associated with the vessel or vehicle.

Knowing this type of information will allow DFO to assess and address the kinds of threat that may be affecting marine mammal populations and in some cases, where appropriate, individual animals.

14. *No person, unless otherwise authorized under the Fisheries Act, shall*

- (a) move a live marine mammal from the immediate vicinity in which it is found;*
- or*
- (b) tag or mark, or attempt to tag or mark, a live marine mammal in any manner.*

Comment

S14 currently exists in the Marine Mammal Regulations but is specific to Scientific Licences. This amendment would allow others authorized under the Fisheries Act (for example; under a disturbance licence (Part VI)) to move or tag animals as directed in their licence.

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PART V *COMMERCIAL WATCHING OF MARINE MAMMALS*

Application

44. *This Part applies to the watching of marine mammals for pecuniary gain or profit or other commercial interest.*

Comment

PART I covers activities that may impact on marine mammals in the form of general prohibitions that would apply to all persons. PART V deals specifically with activities that relate to the commercial watching of marine mammals whether from land, from the air or on the sea.

DFO would like to engage in a dialogue with commercial ecotourism operators, communities and the public on the merits and limitations of licensing this activity. While this section of the MMR would provide for the authority to licence marine mammal viewing, there are various options regarding the kind of licensing regime and the manner in which it could be implemented to be considered. To be effective a licensing regime supports conservation, economic and social objectives.

Prohibitions

45. *No person shall use a vehicle, and no owner or lessee of a vehicle shall permit the use of that vehicle in carrying passengers for the purpose of watching marine mammals for pecuniary gain or profit, unless they are licensed for that purpose under these Regulations.*

Licensing of Marine Mammal Watching

45. *The Minister may issue a licence authorizing a person to operate a vehicle for the purpose of watching marine mammals for pecuniary gain or profit upon application therefore and payment of the annual fee.*

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46. For the proper management and control of fisheries and the conservation and protection of marine mammals, the Minister may specify in a licence any condition respecting any of the matters set out in paragraphs 22(1)(b) to (z.1) of the Fishery (General) Regulations and any condition respecting any of the following matters, without restricting the generality of the foregoing:

(a) the waters in which marine mammal watching may take place;

(b) the species for which watching is permitted

(c) the period during which marine mammal watching may be carried out;

(d) the type, size and number of vehicles that are permitted to be used;

(e) the vehicle that is permitted to be used and the persons who are permitted to operate it;

Comment:

S46 allows for specific measures or requirement of the licensed operation to be established as a condition of the licence issued.

The development of a management structure, in consultation with stakeholders, is an important aspect of developing appropriate licence conditions.

(f) the marking and identification of the vehicle(s) permitted to be used;

(g) the manner in which the vehicle may be operated including, but not limited to, proximity to the marine mammal(s), speed, direction of the vehicle or cutting off the path of a marine mammal;

(h) information that the licence holder shall report to the Department, including the method by which, the times at which and the person to whom the report is to be made;

(i) records that the licence holder shall keep of any activity carried out under the licence, including the manner and form in which the records are to be kept, the times at which and the person to whom the records are to be produced and the period for which the records are to be retained; and

(j) any other condition that the Minister may deem necessary for the conservation of marine mammals;

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PART VI
PROVISION FOR THE DISTURBANCE OF A MARINE MAMMAL

Application

47. *This Part applies to activities that may disturb a marine mammal or disrupt the normal life processes of a marine mammal.*

Comment

PART VI provides provisions to allow marine mammals to be disturbed, where the disturbance is other than a research or fishing activity which are provided for in other provisions. This section recognizes that authorizing a disturbance may be in the broader Canadian interest for matters such as health and safety, security, social and economic activities, etc.

However, in providing this provision, sections 48(a) and (b) require the judicious use of this provision, by requiring that the activity is scrutinized to determine whether alternatives are practical and that any appropriate and feasible mitigation is undertaken.

48. *The Minister may issue a licence authorizing the disturbance of a marine mammal or the disruption of the normal life processes of a marine mammal provided that:*

*(a) all reasonable alternatives to the activity that would reduce the impact on the marine mammal have been considered and the best solution has been adopted;
and*

(b) all feasible measures will be taken to minimize the impact of the activity on the marine mammal.

49. *For the proper management and control of fisheries and the conservation and protection of marine mammals, the Minister may specify in a licence any condition respecting any of the matters set out in paragraphs 22(1)(b) to (z.1) of the Fishery (General) Regulations and any condition respecting any of the following matters, without restricting the generality of the foregoing:*

(a) the waters in which the marine mammal disturbance may take place;

(b) the species or individual marine mammal for which disturbance is permitted

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- (c) the period during which the marine mammal disturbance may be carried out;*
- (d) the type, size and number of vehicles that are permitted to be used;*
- (e) the vehicle that is permitted to be used and the persons who are permitted to operate it;*
- (f) the marking and identification of the vehicle(s) permitted to be used;*
- (g) the manner in which the disturbance may be conducted and the measures required to mitigate or minimize the disturbance;*
- (h) notification, diagnostic assessment or other activities that must be carried out before, during and subsequent to the disturbance.*
- (i) information that the licence holder shall report to the Department, including the method by which, the times at which and the person to whom the report is to be made;*
- (j) records that the licence holder shall keep of any activity carried out under the licence, including the manner and form in which the records are to be kept, the times at which and the person to whom the records are to be produced and the period for which the records are to be retained; and*
- (k) any other condition that the Minister may deem necessary for the conservation of marine mammals.*



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D. Providing Feedback

Thank you for taking the time to review the proposed changes to the Marine Mammal Regulations of the *Fisheries Act*. It is Fisheries & Oceans Canada's objective to modernize the Marine Mammal Regulations in a way that will provide the tools to protect the important life process of these species to ensure their sustainability into the future.

You are encouraged to provide your comments on the proposed regulations presented in this document. Your comments would be appreciated by **July 31, 2005**.

There are several ways in which your opinion can be heard:

1. **In Writing:** Complete the following form or send a separate response to:

Brian Wong
Marine Mammal Program – Regulations Consultations
Fisheries & Oceans Canada
200 Kent, 13th Floor, Station 13S029
Ottawa, ON K1A 0E6

2. **By Email:** wongb@dfo-mpo.gc.ca
3. **Via the Internet:** http://www.dfo-mpo.gc.ca/mammals-mammiferes/consultations/response_e.htm

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