

# **A REVIEW OF WHALE WATCH GUIDELINES AND REGULATIONS AROUND THE WORLD VERSION 2007**

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## **GUIDELINES FOR COMMERCIAL CETACEAN-WATCHING ACTIVITIES IN THE ACCOBAMS AREA**

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### *Point 1*

#### **Scope of the Guidelines**

The ACCOBAMS Guidelines presented here address those cetacean-watching activities carried out for commercial purposes and subject to the jurisdiction of the Parties to ACCOBAMS. The Guidelines relate to all marine activities where funds are being generated from whale or dolphin watching and this may include research activities that have a commercial component<sup>1</sup>.

They are intended to serve as a framework for the development of more detailed guidelines by national and regional authorities<sup>2</sup> at a local level. The ACCOBAMS Guidelines should be used to identify what issues need to be addressed and how this may be appropriately done.

Variations on this framework will be required to cater for different species<sup>3</sup>, different geographical considerations and differences in other human activities within the area where whale watching is occurring or planned to occur.

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<sup>1</sup> This is one issue where the appropriate authorities should decide the scope of activities to be included within the guidelines. The options are

- All marine activities that include whale or dolphin watching as a means of raising funds, including all commercial and research activities; or
- All marine activities that include whale or dolphin watching as a means of raising funds, including all commercial activities but excluding primarily research activities, which should be separately licensed, perhaps by a special permit system.

The authorities should also pay special attention to those whale watching activities run by conservation organisations and which contribute to cetacean conservation by research or education or in some other fashion. In such cases, a special permit may again be appropriate.

<sup>2</sup> "Authorities" here is intended to primarily mean the relevant parts of the government (i.e. ministries or agencies) of ACCOBAMS Parties which have appropriate powers and interests. It may also include other bodies, including for example regional integration bodies, if such bodies have appropriate interests and powers.

<sup>3</sup> In fact it may be necessary to develop variations on these guidelines for different portions of populations (for example mothers and calves in breeding areas may be more sensitive to disturbance and displacement.)

Help in the interpretation and development of guidelines can be sought from ACCOBAMS and these framework guidelines will be subject to regular review and amendment by the ACCOBAMS scientific committee<sup>4</sup>.

The implementation of these guidelines is in accord with Article 2 of ACCOBAMS.

*Point 2*  
**Impact assessment**

Before allowing cetacean-watching activities to commence, the Parties should make a formal assessment of their potential impact on the favourable conservation status of cetaceans. Advice relating to how to conduct such an assessment may be sought from ACCOBAMS.

No new cetacean-watching activities should be authorised if there are threats of significant adverse impact on the behavioural patterns or physiological well-being of cetaceans<sup>5</sup>.

Based on the results of the impact assessment, the authorities should reestablish conditions under which cetacean watching may be established. The types of conditions are outlined below.

The impact assessment should be repeated at periodic intervals of between five and ten years.

*Point 3*  
**Permits**

**Commercial Operations**

Any commercial cetacean-watching activity should only be carried out under a permit granted by the appropriate authority. Permits for commercial operations should be issued by area, with a restricted number of commercial vessels operating in any given area on a given day.

**Special Permits**

On occasion, activities such as research or media work may require individuals or vessels to approach whales at a distance closer than that identified below. In such cases, it is suggested that special permits, issued by appropriate authorities, be required. Advice on the issuance of special permits can be sought from ACCOBAMS.

**Criteria**

Before issuing a permit or certification, the authorities should be satisfied that there is substantial compliance with the following criteria:

- a. That the commercial operation should not have any discernable adverse effect on the behavioural patterns of the cetacean to which the application refers;
- b. That it should not conflict with the conservation, management, or protection of the cetacean concerned;

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<sup>4</sup> Those intending to make use of this framework are recommended to verify that they are using the most-up-to-date version by checking with the ACCOBAMS Secretariat.

<sup>5</sup> The precautionary principle should be employed in every instance (meaning that the benefit of any doubt should be given to the animals).

- c. That the proposed operator, and the operator's staff who may come in contact with cetacean, should have sufficient experience with cetacean;
- d. That the proposed operator, and the operator's staff who may come into contact with cetacean, should have sufficient knowledge of the local area and of the sea and weather conditions;
- e. That the commercial operation should have sufficient educational value to participants or to the public;
- f. That the commercial operation, when possible, facilitate the collection of scientific data and ultimately the publication of these data in a useful form<sup>6</sup>;
- g. That the vessel used meets appropriate national safety standards;
- h. That the vessel used be insured for the passengers that it carries; and
- i. That the vessel be judged appropriate for whale watching.

#### Applications

To obtain such a permit, vessel or aircraft based cetacean-watching operations would be expected to submit to the competent authority an application in writing setting out relevant information that should include the following:

- a) the type<sup>7</sup>, number and speed of vessels or aircraft intended for use and the maximum number of vessels or aircraft the operator proposes to operate at any time;
- b) where possible, information relating to the noise level of each vessel or aircraft both above and below the sea;
- c) the area of operation;
- d) the base or bases of the operation;
- e) the duration and frequency of trips;
- f) the species of cetaceans with which the operation will be expected to have contact;
- g) the nature of the contact (e.g. viewing from a boat's decks, an underwater-viewing platform or whether passengers will be entering the water);
- h) the method of location of cetaceans;
- i) the maximum number of passengers to be taken on board;
- j) the persons in command of the vessel or aircraft, their qualifications and, where appropriate, those of their staff;
- k) the educational information and materials that will be provided to the passengers (e.g. will there be an onboard commentary provided by a naturalist);
- l) an outline of any research activities to be conducted in conjunction with the cetacean-watching;
- m) where relevant<sup>8</sup>, the minimum altitude that will be used in the presence of cetaceans; and
- n) a commitment to keeping a daily log of cetacean watching activities that can be provided to the authorities at the end of a year/season.

#### Refusals

No permit should be granted if the competent authority is not satisfied that:

- a) the operator and the staff who come into contact with cetaceans have sufficient experience with cetaceans;

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<sup>6</sup> To be useful data need to be collated, analysed and ultimately published. This may require consultation with appropriate scientists.

<sup>7</sup> The competent authority is also encouraged to consider whether the vessel is appropriate for use around cetaceans. Care should be taken to minimise the risk of injury and noise disturbance to cetaceans.

<sup>8</sup> For aircraft.

- b) the operator and the staff have sufficient knowledge of the local area and of sea and weather conditions;
- c) the operator and the staff who come into contact with cetaceans have no convictions for offences involving the mistreatment of animals;
- d) the operation proposed has sufficient educational value to the public; and
- e) the vessel meets appropriate safety standards, including carrying safety equipment, and is adequately insured for such purpose.

#### Changes in permit agreements

The competent national authority should be able at any time suspend, revoke or amend a permit, or restrict the operation authorised by a permit, where:

- a) the conservation status or welfare of the cetaceans is being threatened by the activity; and/or
- b) the holder contravenes or fails to comply with any statutory requirement relating to cetacean-watching or any condition specified in the permit;

#### *Point 4*

### **Behaviour around cetaceans**

#### **Basic Principles**

Noting that different conditions for conduct in the proximity of cetaceans may apply to different species and even for different sub-sections of a population (for example mothers and calves), the following recommendations for this aspect of codes of conduct will require specific development at the local level.

Ideally, the situation should be managed such that it allows cetaceans to control the nature and duration of the encounter.

Cetacean watch operators should have a "duty" to care for the animals that they exploit. Every effort should be made to minimise disturbance to cetaceans and avoid collisions between vessels.

The following basic principles should be established in codes of conduct and considered in the permitting process:

- vessels and aircraft should be operated so as not to disrupt the normal behaviour<sup>9</sup> of cetaceans;
- contact with cetaceans should be abandoned at any stage if they show signs of becoming disturbed or alarmed;
- there should be periods during the day when the animals are not subjected to whale watching activities by any vessel, including those in possession of a research or filming licence/permit. These "quiet periods" should be at least one third of the period of daylight;
- particular care should be taken when calves are present; and
- no rubbish, sewage or other polluting substances (including oil) or food should be disposed of in the proximity of the cetaceans.

#### **Managing Vessel<sup>10</sup> Activity in the proximity of cetaceans.**

Except in circumstances of human safety or other emergency:

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<sup>9</sup> Advice concerning what constitutes "normal behaviour", disturbance and alarm can be sought from ACCOBAMS.

<sup>10</sup> Vessels here include all motorized, paddle and sail craft. Personal motorized craft (jet skis and similar craft) are not suitable for watching whales and dolphins and permits should not be issued to such craft.

- operators should avoid having more than one vessel watching a marine mammal or a cohesive group of cetacean;
- if more than one vessel is in the approach zone<sup>11</sup>, they should be in radio communication to coordinate their movements around cetacean;
- a dedicated observer should be on duty wherever possible in addition to the captain of the vessel;
- care should be taken such that no cetacean should be separated from a group or a mother from her calf or that a group be dispersed;
- under no circumstances should cetaceans be driven or their movements blocked by vessels;
- sudden or repeated change in the speed or direction of vessels or aircraft should not be made except in the case of an emergency;
- vessels should not drift down towards cetaceans;
- if cetaceans approach the vessel or bowride, maintain a slow<sup>12</sup>, steady speed without changing course<sup>13</sup>;
- where a vessel stops to enable the passengers to watch a cetacean, the engines should be placed in neutral;
- when departing from watching cetaceans it is of importance to determine where the animals are relative to the vessel to avoid collisions or coming too close to the animals. In some circumstances it may be necessary to wait for animals to return to the surface from a dive to be certain as to their position<sup>14</sup>;
- cetaceans should never be approached head-on, but from the rear or the side, nor should they be closely paralleled by vessels or approached by vessels under sail; and
- isolated mother and calf pairs and isolated calves should also be left alone, as should animals that appear to be resting or avoiding vessels.

#### **Special Considerations for Sperm Whales<sup>15</sup>:**

- a. when a sperm whale abruptly changes its orientation or starts to make short dives of about 1 to 5 minute durations without showing its tail flukes, the vessel should leave the watching zone at a no wake speed until outside of the approach zone;
- b. do not stay with a sperm whale or group of sperm whales for more than 3 of the whales' dive sequences; and
- c. do not stay with a social group of sperm whales for more than 15 minutes.

#### **Swim-with**

- Because of the risks to cetaceans and humans there should be a presumption against commercial programmes that include entering the water with the animals. Only under exceptional circumstances should such "swim-with" programmes be licensed.

#### **Zones**

- Except in circumstances where the cetaceans themselves choose to approach, vessels should always maintain themselves at a particular distance from the animals being watched. In the case of large whales, 100m is recommended and, for dolphins, 50m. Vessels at this distance from the animals are at the edge of the "Watching Zone";

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<sup>11</sup> See note below concerning zones.

<sup>12</sup> For guidance 6 knots and below could be considered as slow.

<sup>13</sup> If unsure of their movements, operators should slow down gradually and put the engine into neutral.

<sup>14</sup> This may particularly apply to deep diving cetaceans.

<sup>15</sup> The particular biology of sperm whales makes it necessary to have specific guidelines for them and this section serves as a reminder that similar species-specific aspects of guidelines may need to be produced for other species.

- between the watching zone and a distance of 300m from the animals, vessels should maintain a slow and constant no-wake speed this should allow them to close with the animals but not chase them. The area between 300m and the watching zone is the "Approach Zone";
- a vessel departing from the vicinity of cetaceans should also proceed slowly (i.e. travelling at no more than 6 knots), until it is at least 300 metres from the nearest cetacean;
- only one vessel at any one time should be in the watch zone and no more than two in the approach zone;
- time in the watching zone should be limited; periods of twenty or thirty minutes may be appropriate<sup>16</sup>;

#### **Managing Aircraft Activity in the proximity of cetaceans.**

- Helicopters should not be used for cetacean watching;
- no aircraft should be flown below 150 metres above sea level within the watching zone (i.e. 50m for dolphins and 100m for whales); and
- only one aircraft (or one vessel) should be over (or in) the watching zone at any one time.

#### *Point 5*

#### **Training and special quality mark**

- The Parties should organise training courses for operators and their staff (preferably including on-board naturalists) and, where appropriate, relevant authorities should grant them a dated certificate of proficiency that can be displayed; and
- refresher courses should also be offered and further training for on-board naturalists also be considered.

#### *Point 6*

#### **Sanctions and remedies**

- The Parties should impose sanctions of sufficient gravity to deter violations of the conditions identified in the permits issued and in the local guidelines, including the suspension or revocation of permits; and
- those who are responsible for violations should be required to compensate the damage in the form of restitution or mitigation.

#### *Point 7*

#### **Other matters**

#### **Detection of cetaceans.**

The use by cetacean watching operations of sonar systems that emit noise to detect cetaceans or to bring them to the surface should not be permitted under any circumstances.

Consideration should be given to banning or limiting the use of passive whale detection systems (e.g. hydrophones) where it is believed that they may cause cetacean watching activities to become too concentrated.

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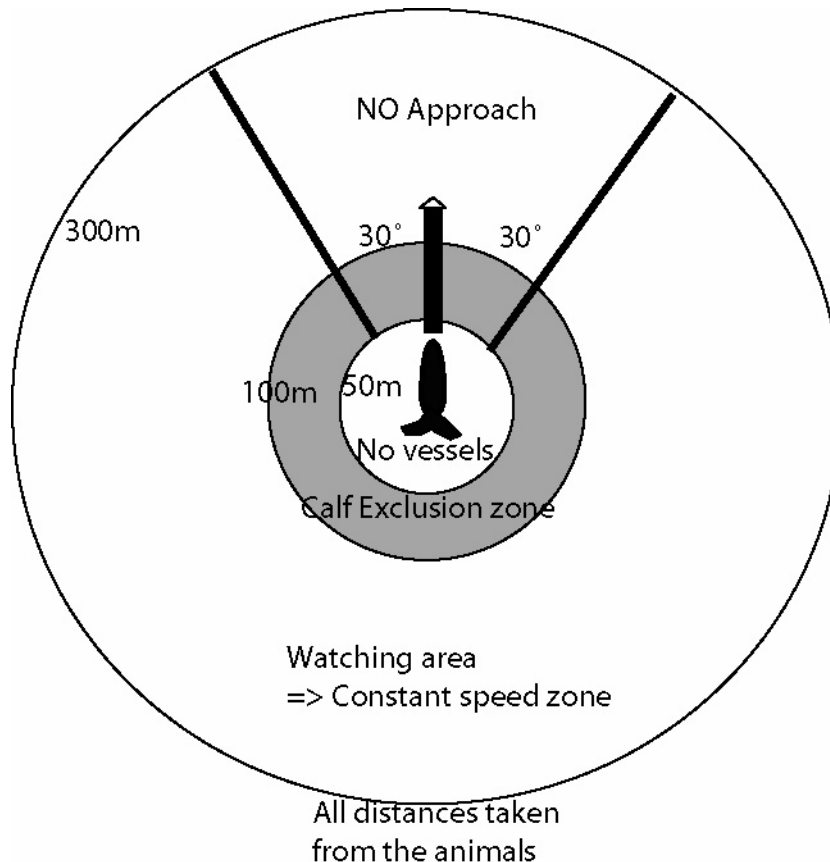
<sup>16</sup> This may vary in relation to local circumstances and the species involved. In circumstances where there are multiple whale watch operators working in one area, they will need to liaise with each other to manage access to the animals.

## Implementation

Arrangements should be made to allow independent inspection of cetacean watching activities to ensure compliance with guidelines. One consideration for continued licensing of an operator would be appropriate compliance.

## Whale Watching Associations

In order to encourage best practice and appropriate management of resources, consideration in any one area or region may be given to the development of an Association of whale watch operators.



## ANTARCTICA

### Guidelines

*Extract from IAATO's Marine Wildlife Watching Guidelines (Whales & Dolphins, Seals and Seabirds) For Vessel & Zodiac Operations (<http://www.iaato.org/wildlife.html>)*

### Approaching Marine Mammals and Recommended Distances

#### General Principles

The animal/s should dictate all encounters. Sometimes an animal will approach a vessel. If a marine mammal wants to interact, it may remain with the vessel. The vessel can then drift passively. If the animal is moving away from the vessel, it is choosing not to interact with or approach the vessel. Take all care to avoid collisions. This may include stopping, slowing down, and/or steering away from the animal/s. Do not chase or pursue animals.

The following principles address vessels in general:

*1a. Vessels, Officers, Crew, Expedition Staff:*

- Keep a good lookout forward (and ideally on the sides and from the stern) where cetaceans may be present.
  - Always give the animals the benefit of the doubt.
  - Avoid sudden change in speed and direction (including putting vessel in reverse).
  - Avoid loud noises, including conversation, whistling, etc.
  - Should a vessel get closer than the recommended minimum distance, withdraw at a constant, slow, no-wake speed, to at least the recommended minimum distance.
  - If animals approach the vessel, put engines in neutral and do not re-engage propulsion until they are observed well clear of your vessel. If the animals remain in a local area, and if it is safe to do so, you may shut off the vessel's engine. Some whales will approach a silent, stationary vessel.
- (Note: Allowing a vessel to drift within accepted recommended distances could constitute an approach.)

*1b. Recommended Minimum Approach Distances:*

- No intentional approach within 30 meters or 100 feet for Zodiacs, 100 meters or 300 feet for ships (150m/500 ft. if ship over 20,000 tons. 200m/600 ft. if 2 ships present).

*1c. Awareness of the Animal/s' Behavioural Patterns:*

- Be aware of changes in behaviour of the animal/s.
- If the cetacean is agitated or no longer interested in staying near the vessel, the following behavioural changes may be observed:
  - The animal starts to leave the area.
  - Regular changes in direction or speed of swimming.
  - Hasty dives.
  - Changes in respiration patterns.
  - Increased time spent diving compared to time spent at the surface.
  - Changes in acoustic behaviour.
  - Certain surface behaviours such as tail slapping or trumpet blows.
  - Changes in travelling direction.
  - Repetitive diving.
  - General agitation.
- Do not stay with the animal/s too long. Suggested 15 min - 1 hr. If disturbance or change in behaviour occurs, retreat slowly and quietly.
- Never herd (circle), separate, scatter, or pursue a group of marine mammals, particularly mothers and young.
- If a cetacean approaches a vessel to bow-ride, vessels should not change course or speed suddenly. Do not enter a group of dolphins to encourage them to bow-ride.
- If a cetacean surfaces in the vicinity of your vessel, take all necessary precautions to avoid collisions.
- Do not feed any wild animals.
- Avoid touching or sudden movements that might startle the cetacean.
- If a cetacean comes close to shore or your boat, remain quiet.
- Playback of underwater sound of any kind should not occur.

*1e. Close Approach Procedure for Vessels and/or Zodiacs:*

Approximately 200 meters/600 feet or closer:

- Approach at no faster than 'no-wake' speed or at idle, whichever is slower.
- Approach the animal/s from parallel to and slightly to the rear, e.g. from behind and to one side at 4 or 8 o'clock to the whales heading 12 o'clock
- Never attempt an approach head-on or from directly behind.
- Stay well clear of feeding baleen whales.
- Try to position your vessel downwind of the animals to avoid engine fumes drifting over them.
- Communication between vessels and Zodiacs in multivessel approaches should be established, to coordinate viewing and to ensure that you do not disturb or harass the animals.
- Do not 'box-in' cetaceans or cut off their travel or exit routes. This is particularly important when more than one vessel is present.



- Vessels should position themselves adjacent to each other to ensure the cetaceans have large open avenues to depart through if desired.
- Beware of local geography – never trap animals between the vessel and shore. Assess the presence of obstacles such as other vessels, structures, natural features, rocks and shoreline.
- Remember: Avoid sudden or repeated changes in direction, speed or changing gears when close to marine mammals.

*1f. In Close Approach Zone: (Note: Ideally this should be no more than one vessel at a time). Approximately 30 meters/100 feet for Zodiacs/100 meters/300 feet for ships.*

- When stopping to watch cetaceans, put your engines in neutral and allow the motor to idle without turning off; or allow the motor to idle for a minute or two before turning off. This prevents abrupt changes in noise that can startle the animals.
- Avoid excess engine use, gear changes, manoeuvring or backing up to the animals.
- Avoid the use of bow or stern lateral thrusters to maintain position. Thrusters can produce intensive cavitations (air bubble implosion) underwater.
- Be aware that whales may surface in unexpected locations.
- Breaching, tail-lobbing or flipper slapping whales may be socialising and may not be aware of boats. Keep your distance.
- Feeding humpback whales often emit sub-surface bubbles before rising to feed at the surface. Avoid these light green bubble patches.
- Emitting periodic noise may help whales know your location and avoid whale and boat collisions. For example, if your Zodiac engine is not running, occasionally tap on the engine casing with a hard object.
- If cetaceans approach within 30 meters or 100 feet of your vessel, put engines in neutral and do not re-engage propulsion until they are observed clear of harm's way from your vessel. On rare occasions, whales have been seen to use ships as 'backscratchers', remain drifting.
- Stay quiet and restrict passenger movement in Zodiacs during close encounters.
- Enjoy the experience.

*1g. Departure Procedures:*

- Move off at a slow 'no-wake' speed to the minimum distance of the close approach zone. Avoid engaging propellers within the minimum approach distance, if possible.
- Always move away from the animals to their rear, i.e., not in front of them.
- Do not chase or pursue 'departing' animals.

## **ARGENTINA REGULATIONS**

### **Peninsula Valdes, Province of Chabut**

PROVINCIAL LAW No 2381/84 (modified by PROVINCIAL LAW No 2618/85)

Forbids approach and/or harassment, sail, swim and diving with any marine mammal species and their calves, inshore and offshore, in provincial waters during the whole year. (This item was modified by Provincial Law 2618/85 and it states "...within provincial waters during the entire year without a provincial Department permit").

The regulations for permitted operations include:

1. a minimum distance of 100m between whale watchers and whale while engines are on; not less than 50 m with engines off;
2. stopping the engines near the animal;
3. only one boat per individual whale;
4. avoid harassing or chasing the animals;
5. avoid sudden changes in boat speed;
6. do not drive the boat in circles around the animals;
7. avoid flying lower than 150m over whales;
8. do not approach mothers with calves;
9. avoid any activity that would alter the behavior of the whales;
10. avoid entering the water in the vicinity of whales.

Other items related to:

....a. Two Golfo Nuevo areas were established by this Provincial law:

1. **Intangible Zone:** It is forbidden to sail in a parallel or imaginary line to the shore between Punta Piramides and Beliza 25 de Mayo, considering 500m from low tide zone to open ocean.
2. **Restricted Zone:** It is forbidden to sail private boats, with the exception of authorized whale watching boats, in a parallel and imaginary line to the shore between Punta Pirimades and Baliza 25 de Mayo, but out of the imaginary zone.

....b. Journalistic Activities

....c. Scientific Activities

....d. Fines: breaking the law can result in fines up between 250 entry fees in the provincial Nature reserve and 2000 entry fees for non-authorized operators. The same fine is applied to authorized operators plus a suspension of a minimum of 5 days from their permits up to the definite revocation of the permit.

....e. Establishment of Application Authorities.

2) PROVINCIAL REGULATION DECREE No916/86 (modified by PROVINCIAL DECREE No 1127/91): Designates the application authorities named in Law No 2381.

Creates the provincial Whale Watching Tour Operators Register and establishes the minimum requirements for their inscription. No more than two boats are allowed per permitted operator.

Creates the Provincial Field Naturalist register and establishes the minimum requirement for their inscription.

Regulates the tour operator' qualifications for carrying out whale watching activities.

Provincial Wardens will supervise all whale watching activities.

Provincial Decree No 1127/91 derogates the number of licenses for Golfo Nuevo (5 maximum) and the valid time for each license.

3). PROVINCIAL LAW No 3258/90

regulates the activity of film crews, photographers and research projects within the Chabut Province Territory.

4). PROVINCIAL TERMINATION No 111 OPT/97

Forbids particular boats within the Pardelas Beach Zone during the whale season.

Authorized dive operators are the only ones allowed to give this service in the area. Diving with marine mammals however, is forbidden.

## **AUSTRALIA**

The guidelines have now been incorporated into Federal legislation *under the Environment Protection and Biodiversity Conservation Act Regulations 2000*.

### **AUSTRALIAN NATIONAL GUIDELINES FOR WHALE AND DOLPHIN WATCHING 2005**

*Australia is privileged to have 45 species of whales and dolphins that live in or migrate through our waters. Such an abundance of species provides a fabulous opportunity for people to have high quality whale and dolphin watching experiences. These opportunities also enable Australia to have and promote a sustainable industry that allows the public to view and learn about these animals in their natural habitat.*

Associated with this is the responsibility to ensure that potential impacts from watching whales and dolphins (either commercially or recreationally) are managed appropriately. The intent of these guidelines is to provide a framework that allows people to observe and interact with the whales and dolphins that does not cause harm to the animals.

The Australian national Guidelines for Whale and Dolphin Watching were developed cooperatively by all Australian state and territory governments through the National Resource Management Ministerial Council, and represents a consistent national policy for the management of whale and dolphin watching. They build upon and replace the Australian National Guidelines for Cetacean Observation, published in 2000.

### **AIMS OF THE GUIDELINES**

The guidelines set a national standard and aim to:

- Minimize the impacts of whale and dolphin watching on individuals and populations of whales and dolphins; and
- Ensure that people know how to act appropriately when watching whales and dolphins.

### **ROLE OF THE GUIDELINES**

*The guidelines set a national standard and help to inform governments to make consistent decisions when designing policy or legislation for whale and dolphin watching.*

The guidelines provide advice on watching whales and dolphins in the wild, including observations from the land, water, or air, as well as activities such as swimming and diving, feeding, touching, and making noise. They are relevant to all Australian waters (commonwealth, State and Territory) and cover all people watching whales and dolphins including both commercial operators and the general public.

### **STRUCTURE OF THE GUIDELINES**

The guidelines are organized into two categories- Tier 1 (national standards) and Tier 2 (additional management considerations).

#### **Tier 1- National Standards**

Tier 1 applies to all people watching whales and dolphins and outlines the general requirements for protecting animals.

#### **Tier 2- Additional Management Considerations**

Tier 2 provides advice for the areas or activities that may require alternative levels of management and will apply primarily to the commercial whale and dolphin watching industry. Tier 2 provisions may be appropriate for:

- Special authorized whale and dolphin watching operations where scientific evidence supports different management arrangements;

- Regions with specific site characteristics (e.g. geography, sensitive species, important populations, marine parks etc); or
- Areas with intense whale and dolphin watching effort.

#### **ALLOWING ANIMALS TO INTERACT WITH PEOPLE**

***For the protection of animals and for the long-term sustainability of the whale and dolphin watchin industry, it is important that whale and dolphin watching be conducted in a manner that allows the animals to choose the nature and extent of any contact with people.***

It is essential that everyone wishing to watch whales and dolphins understands the important distinction between moving towards an animal, and an animal moving towards them. The guidelines refer to active approaches by people and stipulate the distances that people are allowed to move towards whales and dolphins. When those distances are reached, people must stand off and wait.

Sometimes whales and dolphins will move towards people to distances much closer than outlined in the guidelines. This situation is not in conflict with the guidelines.

#### **ANIMALS IN DISTRESS**

***For the safety of both people and animals, these guidelines do not apply in situations where whales and dolphins are in distress - e.g. when stranded, entangled, sick or injured.***

In these cases all people must only interact with animals under the guidance and approval of the relevant Australian Government, state or territory management authority. All jurisdictions have laws that prohibit people without approval from interfering (kill, injure, take, trade, keep, move or touch) with whales or dolphins.

It is important to note that each government in Australia applies these guidelines through various laws and regulations as best suits the situation of the particular jurisdiction. In some cases the laws of a jurisdiction may differ from the guidelines and it is the responsibility of the whale and dolphin watching industry and the public to be aware of the laws that apply.

The relevant laws within each jurisdiction, information about areas of special interest for whale and dolphin watching, and more detailed information about the biology, population status, distribution and habitat of whales and dolphins can be accessed from the following government websites:

- Australian Government Department of the Environment and Heritage  
[www.deh.gov.au/whales](http://www.deh.gov.au/whales)
- Great Barrier Reef Marine Park Authority [www.gbrmpa.gov.au](http://www.gbrmpa.gov.au)
- New South Wales Department of Environment and Conservation  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)
- Northern Territory Department of Infrastructure Planning and Environment  
[www.ipe.nt.gov.au](http://www.ipe.nt.gov.au)
- Queensland Environmental Protection Agency [www.epa.qld.gov.au](http://www.epa.qld.gov.au)
- South Australian Department for Environment and Heritage  
[www.environment.sa.gov.au](http://www.environment.sa.gov.au)
- Tasmanian Department of Primary Industries, Water and Environment  
[www.dpiwe.tas.gov.au](http://www.dpiwe.tas.gov.au)
- Victorian Department of Sustainability and Environment  
[www.dse.vic.gov.au](http://www.dse.vic.gov.au)
- Western Australian Department of Conservation and Land Management  
[www.naturebase.net](http://www.naturebase.net)

## **DISTURBANCE**

***Whales and dolphins may be disturbed by the presence of people, vessels or aircraft. Disturbance to animals, particularly from cumulative effects, may lead to long-term negative impacts.***

Although not well understood, the following are some of the potential problems that may be caused by disturbance:

- disruption of behaviour (e.g. feeding, nursing, mating, migrating and other behaviours);
- displacement from or avoidance of important habitat areas (e.g. resting, feeding, breeding and calving areas);
- stress;
- injury;
- increased mortality; and
- reduced breeding success.

## **EDUCATION**

***The whale and dolphin watching industry provides an opportunity to educate the public about the habitat and behaviour of these animals.***

It is important that people recognise signs of disturbance and immediately move away from animals that are disturbed. The following reactions may indicate that a whale or dolphin is disturbed:

- attempts to leave the area or moves away from the vessel quickly or slowly;
- regular changes in direction or speed of swimming;
- hasty dives;
- changes in breathing patterns;
- increased time spent diving compared to time spent at the surface;
- changes in acoustic behaviour; and • aggressive behaviours such as Tail slashes, and trumpet blows.

To be considered 'best practice', operators should provide an educational component to their tours. It is recommended that operators educate their customers about the rules and guidelines that exist at state and national levels to guide operators and protect whales and dolphins.

Australian Government, state or territory management authorities also have a responsibility to work with the whale and dolphin watching industry to develop and improve the content and quality of educational material provided to clients. The training and where appropriate accreditation of all people involved in the industry – owners, operators and their staff – is strongly encouraged.

***For the purposes of these guidelines, 'dolphins' are those species that are part of the taxonomic Family Delphinidae. All other species should be considered 'whales'.***

***More information about whales and dolphins can be found on the Australian Government Department of the Environment and Heritage website - [www.deh.gov.au/whales](http://www.deh.gov.au/whales)***

## **ANIMALS OF SPECIAL INTEREST**

In some circumstances, greater levels of protection than stipulated in these guidelines may be required for individual or groups of whales or dolphins. Jurisdictions may choose to apply additional management measures for these 'animals of special interest' in order to ensure the safety of both people and animals.

While there are 45 species of whales and dolphins found in our waters, a much smaller number of species are commonly encountered when whale and dolphin watching. These include:

## WHALES

- Blue whale
- Bryde's whale
- Humpback whale
- Minke whale
- Southern right whale
- Sperm whale

## DOLPHINS

- Bottlenose dolphin
- Common dolphin
- False killer whale
- Indo-Pacific humpback dolphin
- Killer whale
- Pilot whale
- Australian snubfin dolphin (Irrawaddy)
- Spinner dolphin

## VESSELS

***One of the most common ways of watching a whale or dolphin in their natural habitat is through the use of a vessel. However, inappropriate vessel use may lead to a range of negative impacts.***

Although the full effects are unknown, some of the possible impacts of vessel presence on whales and dolphins include: disruption of important behaviors; displacement from or avoidance of important habitat areas; stress; injury; increased mortality; and reduced breeding success.

If vessels are managed appropriately, the impacts of whale and dolphin watching can be minimized. Vessels should be manoeuvred with care around whales and dolphins, and erratic vessel behaviour around animals should not occur. Responsible vessel operation, for example, by allowing animals the choice to interact, will not only minimize impacts but also provide people with a more enjoyable experience.

## PROHIBITED VESSELS

Certain vessels are prohibited for use in whale and dolphin watching. These include all personal motorized watercraft (e.g. jetskis and underwater scooters), parasails, remotely operated craft, wing-in-ground effect craft, and hovercraft.

Prohibited vessels should not approach closer than 300m to any whale or dolphin. If a prohibited vessel incidentally moves to within this distance it should slow down and avoid the whale or dolphin, moving away from the animal at a no-wake speed to at least 300m.

## ALLOWABLE VESSELS

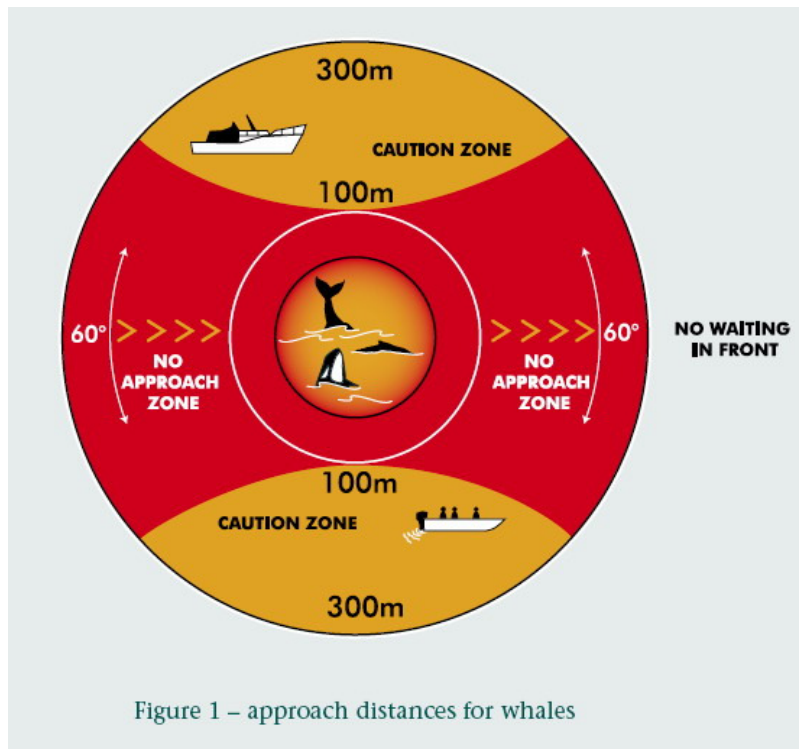
Vessels to which the national standards apply include all other motorized, paddle and/or sail craft (e.g. motorboats, kayaks, canoes, surfskis, inflatable craft).

## NATIONAL STANDARDS FOR VESSELS (TIER 1)

***In order to minimise potential impacts on whales and dolphins, vessels should comply with the approach distances and operating procedures outlined in these guidelines and summarised in Table 1.***

Note, if a whale or dolphin surfaces in the vicinity of your vessel when you are travelling for a purpose other than whale and dolphin watching, take all

care necessary to avoid collisions. This may include stopping, slowing down and/or steering away from the animal.

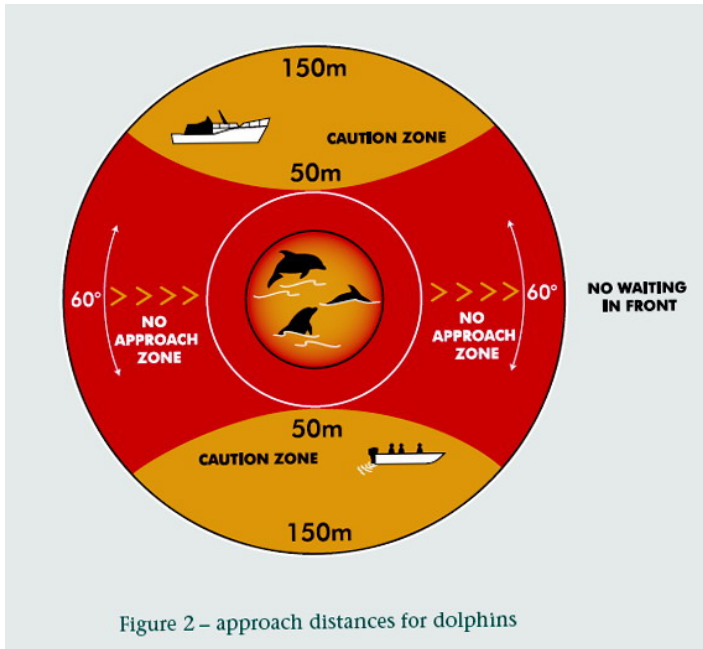


#### WHALES

Figure 1 illustrates the allowable approach distances for whales. The caution zone (shown in yellow) is the area within 300m either side of a whale. No more than three vessels are allowed within the caution zone at any one time and vessels should operate at no wake speeds within this zone. The no approach zone is within 100m of a whale, and also includes the area directly in front of or behind a whale out to 300m. Vessels should not enter the no approach zone and should not wait in front of the direction of travel of an animal or pod of animals. Vessels should also avoid repeated attempts to interact with whales if they show signs of disturbance.

#### DOLPHINS

Figure 2 illustrates the allowable approach distances for dolphins. The caution zone (shown in yellow) is the area within 150m either side of a dolphin. No more than three vessels are allowed within the caution zone at any one time and vessels should operate at no wake speeds within this zone. The no approach zone is within 50m of a dolphin, and also includes the area directly in front of or behind a dolphin out to 150m. Vessels should not enter the no approach zone and should not wait in front of the direction of travel of a to interact with dolphins if they show signs of disturbance.



#### **REQUIREMENTS:**

##### **Caution Zone**

- no wake speed
- maximum of 3 vessels
- do not enter caution zone if animals are stranded, entangled or Distressed

##### **No Approach Zone**

- do not enter
- no waiting in front of direction of travel
- do not approach from the rear

#### **DISTANCE TO A WHALE**

##### **Caution Zone**

BETWEEN 300 and 100 metres

##### **No Approach Zone**

WITHIN 100 metres

#### **DISTANCE TO A DOLPHIN**

##### **Caution Zone**

BETWEEN 150 and 50 metres

##### **No Approach Zone**

WITHIN 50 metres

#### **BOW RIDING**

- do not deliberately encourage bow riding
- when animals are bow riding – do not change course or speed suddenly
- if there is a need to stop – reduce speed gradually

#### **CONFINED WATERWAYS**

In confined or crowded waterways such as bays, estuaries, channels and rivers it may not be possible for vessels to maintain approach distances or the appropriate number of boats within the caution zone. In these instances take all necessary caution to avoid whales



and dolphins.

***Along with complying with the caution zone and no approach zone surrounding whales and dolphins, vessels must be operated around animals in an appropriate manner.***

The recommended and most effective method of approaching a whale or dolphin is from the side and slightly to the rear of the animal. Do not intercept the path of travel or approach headon, and do not pursue whales and dolphins.

#### **ENTERING AND WITHIN THE CAUTION ZONE**

When entering and within the caution zone vessels should be operated with caution to avoid disturbing whales and dolphins. Vessels should:

- be limited to no more than three vessels within the caution zone at any one time;
- not be deliberately placed to drift into the no approach zone;
- move at slow speed and avoid making sudden or repeated changes in direction;
- avoid making sudden or excessive noise (including from the people on board);
- not restrict the movement of animals in against the shore; and
- not approach calves or pods containing calves. For the purposes of these guidelines, a calf is defined as an animal which is less than half the length of the mother to which it usually remains in close proximity.

***If a whale or dolphin shows signs of avoidance or disturbance, vessels should cease attempting to watch the animals and move at once outside the caution zone at a no wake speed.***

#### **DISTURBANCE**

The following reactions may indicate that a whale or dolphin is disturbed:

- attempts to leave the area or vessel (quickly or slowly);
- regular changes in direction or speed of swimming;
- hasty dives;
- changes in breathing patterns;
- increased time spent diving compared to time spent at the surface;
- changes in acoustic behaviour; and
- aggressive behaviours such as tail slashes, and trumpet blows.

#### **LEAVING THE CAUTION ZONE**

When leaving whales and dolphins, vessels should move off at a slow no wake speed gradually increasing speed when reaching the limit of the caution zone from the closest animal.

#### **BOW RIDING**

Vessels should not seek to deliberately encourage animals to bow ride. However, in the event that dolphins or small whales bow ride, vessels should maintain course and speed. In cases where vessels need to stop, this should be done through a gradual reduction in speed.

#### **ADDITIONAL MANAGEMENT CONSIDERATIONS FOR VESSELS (TIER 2)**

***Many species of whale and dolphin are resident in or dependent upon specific areas for their survival. In these areas there is a greater potential for vessels to have a detrimental impact.***

Impacts can include disruption of important behaviour, displacement from or avoidance of important habitat areas, stress, injury, increased mortality and reduced breeding success. In these areas, or areas where there is a substantial whale and dolphin watching industry there may be a need to establish additional management measures. These measures (Tier 2) may be

applied through various administrative means including regulations, permits, licenses and management plans. Additional management measures may lead to a range of different outcomes to those outlined in the national standards, including the potential to allow closer interactions than specified in Tier 1. Closer interactions may be appropriate in some situations because of the geography of the local area (e.g. due to the shape and nature of inlets) and/or due to more stringent restrictions on other elements of vessel operation (e.g. limits on the time spent with animals, number of trips per day etc). In some instances, such as for scientific or educational purposes, or commercial filming it may be necessary for vessels to approach closer to a whale or dolphin than outlined in the national standards (Tier 1). This may only occur under the authorisation of the relevant state, territory or Australian Government agency.

***In these cases all vessels must operate within the conditions of authorisation.***

Given that for many whale and dolphin species, the time and intensity of watching may also have a significant impact on a population it is recommended that the following issues be considered when developing additional management measures for vessels:

- maximum watching time with a pod;
- maximum cumulative watching time from all vessels with a pod/population per day;
- time required between successive watching attempts;
- establishment of no approach times (e.g. when the animals are likely to be feeding, resting etc);
- the need for temporal or spatial exclusion zones;
- the need to restrict the numbers of vessels; and
- conducting research on the species biology and behaviour, seasonal Requirements and habitat requirements.

#### **ADDITIONAL MANAGEMENT CONSIDERATIONS FOR AIRCRAFT (TIER 2)**

In some instances such as for scientific or educational purposes, or commercial filming it may be necessary for aircraft to approach closer to a whale or dolphin than outlined in the national standards.

***This may only occur under the authorisation of the relevant state, territory or Australian Government agency. In these cases all aircraft must operate within the conditions of authorisation.***

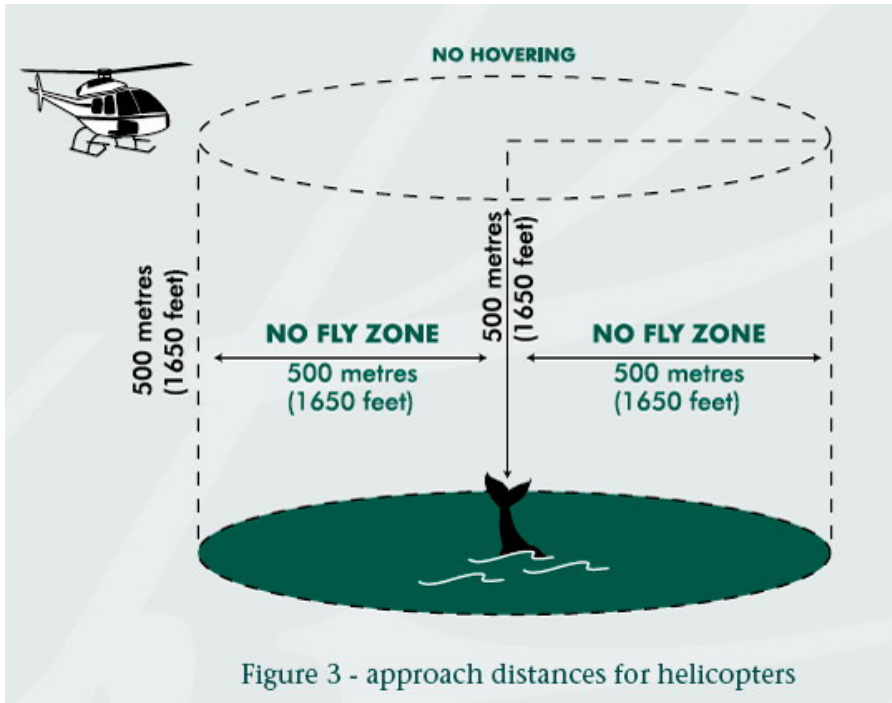


Figure 3 - approach distances for helicopters

#### **DISTURBANCE**

The following reactions may indicate that a whale or dolphin is disturbed:

- attempts to leave the area or vessel (quickly or slowly);
- regular changes in direction or speed of swimming;
- hasty dives;
- changes in breathing patterns;
- increased time spent diving compared to time spent at the surface;
- changes in acoustic behaviour; and
- aggressive behaviours such as tail slashes, and trumpet blows.

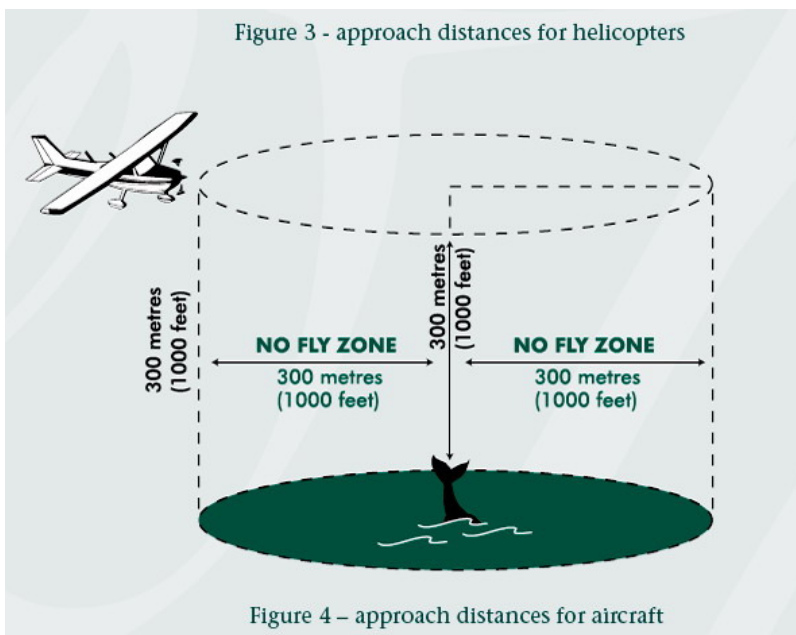


Figure 4 – approach distances for aircraft

**SWIMMING** (which includes snorkelling) or diving with a whale or dolphin may place both people and animals at risk. Risks to humans include injury and possible death from forceful interactions, and transmission of diseases. The greatest risk to whales and dolphins may be from the misuse of vessels and the inappropriate placement of people in the water, forcing animals to actively avoid interaction.

In Australia these impacts and risks are minimised by ensuring that swim programs are conducted by people who are authorised by the relevant state, territory or Australian Government agency to operate swimming programs or for scientific or educational purposes, and limiting diving to those people who are authorised for scientific or educational purposes.

***Only people operating under authorisation should deliberately swim or dive in the vicinity of a whale or dolphin.***

#### **NATIONAL STANDARDS FOR SWIMMING AND DIVING (TIER 1)**

Deliberately swimming or diving (including the use of SCUBA or hookah gear) with whales and dolphins is prohibited unless under the authorisation of the relevant state, territory or Australian Government agency. If incidentally in the vicinity of a whale or dolphin:

- Swimmers (including snorkellers) and divers should not enter the water closer than 100m to a whale or 50m to a dolphin, and should not approach closer than 30m to any animal.
- Sometimes whales or dolphins will approach or pass close to swimmers or divers. In this situation you are not in contravention of the guidelines.

#### **AUTHORISED SWIMMING PROGRAMS**

In order to ensure the long-term sustainability of swimming operations, commercial swim programs should be accompanied by ongoing research to monitor whale and dolphin responses to swimmers, and to help track any changes in animal behaviour that may have implications for animals or people. Consideration should also be given to undertaking research prior to the development or expansion of operations. Research should focus on the biology and behaviour, seasonal requirements, and habitat requirements of the target population of whales or dolphins. Authorised swim programs may in some cases allow for closer interactions than those specified in Tier 1 because of more stringent restrictions on swimmer behaviour and due to increased management oversight from the relevant Australian Government, state or territory management authority.

Specific issues to be considered when developing or reviewing swimming operations include: limits on the number of vessels and/or swimmers; maximum watching time with a pod/population per day (including: *maximum time for each interaction; time required between successive swim attempts; and maximum cumulative watching time from all vessels/swimmers*); establishment of no approach times (e.g. when the animals are likely to be feeding, resting etc); • the need for temporal or spatial exclusion zones; distance of swimmers to animals; and • the use of mermaid lines or boom nets.

#### **ADDITIONAL MANAGEMENT CONSIDERATIONS FOR SWIMMING AND DIVING (TIER 2)**

Vessels should be operated in accordance with applicable parts of these guidelines and any other regulations, codes of practice or restrictions applicable to the area and species. Vessels should not actively tow swimmers and no other vessel should be closer than 100m to a vessel conducting swims.

Operators should not place swimmers directly in the path of an animal or

group of animals. Swimming should not occur with whale or dolphin calves, or pods containing calves. For the purposes of these guidelines, a calf is defined as an animal which is less than half the length of the mother to which it usually remains in close proximity.

***Attempts at swimming with whales or dolphins should stop if the animals show signs of disturbance.***

#### **DISTURBANCE**

The following reactions may indicate that a whale or dolphin is disturbed:

- attempts to leave the area or vessel (quickly or slowly);
- regular changes in direction or speed of swimming;
- hasty dives;
- changes in breathing patterns;
- increased time spent diving compared to time spent at the surface;
- changes in acoustic behaviour; and
- aggressive behaviours such as tail slashes, and trumpet blows.

#### **SCIENTIFIC OR EDUCATIONAL PURPOSES**

In some instances, such as for scientific or educational purposes, it may be necessary for swimmers or divers to deliberately interact with whales or dolphins. This may only be carried out under the authorisation of the relevant state, territory or Australian Government agency. In these cases swimmers or divers must operate within the conditions of authorisation. Cases of feeding by humans has been shown to have adverse effects, sometimes severe, on the whales.

#### **LAND**

Watching from land causes the least disturbance to whales and dolphins. Cliffs and headlands can provide excellent vantage points for viewing many different species of whales and dolphins.

***It is important to be aware of the impact you may have on the environment and remember coastal dunes and headlands can be sensitive areas.***

#### **STRANDED ANIMALS**

For the safety of both people and animals, people must avoid interacting with stranded animals unless under the guidance and approval of the relevant Australian Government, state or territory management authority.

***All jurisdictions have laws that prohibit people without approval from interfering (kill, injure, take, trade, keep, move or touch) with whales or dolphins.***

#### **FEEDING**

There are environmental, health and safety concerns associated with deliberate feeding of whales and dolphins. In most cases, feeding by humans has been shown to have adverse effects, sometimes severe, on the whales and dolphins concerned.

***Only people operating within a specially authorized feeding program should deliberately feed a whale or dolphin.***

#### **NATIONAL STANDARDS FOR FEEDING (TIER 1)**

A person should not deliberately feed or attempt to feed a wild whale or dolphin.

This includes throwing food or rubbish in the water in the vicinity of whales and dolphins, and feeding from boats.

## **ADDITIONAL MANAGEMENT CONSIDERATIONS FOR FEEDING (TIER 2)**

### **Feeding programs**

Feeding is permitted only under programs authorised by the relevant Australian Government, state or territory agency. In these cases, feeding programs must operate within the conditions of authorization. There should be no further establishment or expansion of feeding programs.

*All existing feeding programs should be accompanied by ongoing research to monitor whale and dolphin responses to help track any changes in animal behavior that may have implications for animals and people.*

### **TOUCHING**

*Touching whales and dolphins is not permitted unless under the guidance and approval of the relevant Australian Government, state or territory agency.*

If you are approached by a whale or dolphin, avoid touching or sudden movements that might startle it.

### **NOISE**

*Whales and dolphins have sensitive hearing and sound plays an important role in their communication, navigation and prey location.*

Noise that humans introduce into the environment can mask important sounds or damage animal's hearing. It is very difficult to determine how whales and dolphins may react to a particular sound or how severe the effects may be, so production of noise should be minimized.

- Vessels and aircraft should be maintained in good condition to minimize the transfer of noise into the water.
- Avoid making loud or sudden noises near whales or dolphins. If a whale or dolphin comes close to shore or to your boat, remain quiet.
- Do not intentionally make any noise to attract whales or dolphins. This includes playback of underwater sound of recorded whale or dolphin sounds or song.

## **AZORES REGULATIONS**

*The Government of the Azores has proposed the second section of its intended regulations.*

An official translation of the new regulations for whale watching in the Azores is not yet available. Following is a summary of the approved regulations.

On January 28, the Regional Government of the Azores approved a new legislation to regulate the whale watching activities and any other involving the observation of cetaceans.

The general rules took in account the results of the Montecastelo-di-Vibio and Martinique Workshops (see bibliography below), and a long discussion phase with whale watching operators, scientific specialists, the population and Government.

The law now approved covers several aspects of the licensing of activities, observation, filming and photographing, research and other cases.

In summary, the approach of cetaceans must obey some rules, either regarding the distance as well as the direction, speed and time spent near the animals. The distances vary with situation but, as a general rule, it must not be less than 50 m in any case. The approach must be done from behind, leaving a free zone in front of the animals of at least 180°, by only one boat at time. Other boats may be in the vicinity, but not closer than 200m. Each boat must stay no longer than 30 min. with the same animal/group. Aircrafts must not fly under 300 m above the cetaceans for observation.

Whales with calves and calves alone must not be approached closer than 100 m.

Boats must not exceed 30 minutes with the cetaceans.

No scuba diving is allowed with any cetacean, and snorkelling is allowed only with a list of delphinids. Observation with submersibles, sub aquatic-scooters, kayaks, boards, Jet-skis and similar platforms is not permitted, as well as during the night.

Companies dedicating to whale watching must apply for a permit stating, amongst other things, the characteristics of the boats to be used. Recreational observation has to give priority to commercial tour operators, researchers and licensed photo/filming crews.

The natural photographers and researchers must apply for a special permit if their work needs exceptions to the rules. No harassing, behavioural manipulation or feeding is allowed in any case, except under special license, only for research purposes.

These are only a few highlights on the new law, and are not intended to serve as guide for any research/commercial application.

One should also bear in mind that there are other legislation concerning marine mammals in Portugal, that should not to be disregarded when planning any work in the Portuguese waters. These are the cases of Berna and Washington (CITES) conventions and Habitats Directive, of which Portugal is signatory.

#### References:

#IFAW, 1995. Report of the Workshop on the Scientific Aspects of Managing Whale-Watching, Montecastelo di Vibio, Italy. 40 pages.

#IFAW, 1996. Report of the Workshop on the Special Aspects of Watching Sperm Whales, Roseau, Commonwealth of Dominica. 36 pages.

### **BAHAMAS GUIDELINES Dolphin Guidelines**

These guidelines are developed and supported by: Wild Dolphin Project, Bahamas National Trust, Bahamas Dept. of Fisheries, Bottomtime Adventures, Jennifer Marie, Crown Diving Corporation, Dream Team, Sea Fever, Wren of Aln, Shearwater Excursions, Gulfstream Eagle, and Island Chaser, with special thanks to the Whale and Dolphin Conservation Society.

While you are traveling in the Bahamas you may encounter dolphins or other marine mammals. Marine mammals are protected in Bahamian waters by Department of Fisheries regulations. These include rules against harassment, capture, molesting and feeding dolphins.

If you happen to encounter dolphins with your vessel or while you are in the water, there are a few simple things you can do to help protect these animals.

Q. WHAT IF THE DOLPHINS APPROACH OUR VESSEL AND BOW RIDE?

A. Most operators allow the dolphins to bow ride both large and small vessels at times. Care should be taken during approaches and vessels are encouraged to let the dolphins leave, without pursuit, if they appear uninterested in such activities.

Q. CAN WE SAFELY DISPOSE OF OUR WASTE PRODUCTS NEAR DOLPHINS?

A: Dumping holding tanks, especially untreated ones, near any marine life, are discouraged. If you must dump tanks it is recommended that you do so off the shallow sand banks, in deeper water with better current flow. At no time should trash, other than biodegradable food waste, be dumped overboard. U.S. registered vessels are subject to fines by USCG and Bahamian Defense Force.

Q. WHAT DO I DO IF A DOLPHIN APPROACHES ME IN THE WATER?

A. LET THE DOLPHINS VOLUNTARILY APPROACH YOU. Touching, riding, or feeding the dolphins is highly discouraged. Capturing dolphins is illegal. Aggressive activities include rapid swimming or grabbing at the dolphins will frighten the dolphins away. Scratching with fingernails or touching the dolphins may cause them skin infections and they could possibly contract human diseases. Keeping your arms along side your body or behind your back increases your chances for a close and successful encounter.

Q. HOW LONG DO THE DOLPHINS STAY WITH SWIMMERS AND DO I HAVE TO KEEP UP WITH THEM?

A. You can never keep up with a dolphin. If the dolphins want to interact with you they will stay nearby. Stay near the boat for safety reasons and if you do find yourself away from the boat, return to the vessel and the dolphins will often return with you.

Q. IS IT BETTER TO SNORKEL OR SCUBA WITH THE DOLPHINS?

A. Most boats familiar with dolphin encounters encourage snorkeling. Scuba can be encumbering and will limit your movement with the dolphins. The use of scooters is discouraged because they allow the diver to stray too far from the vessel.

Q. DO THE NUMBERS OF PEOPLE IN THE WATER AFFECT THE DOLPHINS?

A. It is not known whether a high ration of people to dolphins in the water has adverse affects. Dolphin etiquette IN THE WATER is probably more important. Initially, a low ratio of people to dolphins in the water is recommended. Low rations make the encounter more enjoyable for people.

Q. DOES MUSIC ATTRACT THE DOLPHINS?

A. Since dolphins are acoustic animals it is important that this acoustic channel remain open for their communication. Excluding the use of listening devices, putting sounds into the water should be used judiciously. For example, the use of killer, false killer, and pilot whale sounds, continuous music, or sounds from species not normally in the area are discouraged. Bahamian research permits are encouraged for such activities.

Q. WHAT DO I DO IF I FIND MYSELF IN AN AREA WITH OTHER BOATS TRYING TO INTERACT WITH DOLPHINS?

A. If you find yourself around other boats interacting with dolphins the most important things to do are 1) communicate with the vessel to make sure you know the location of any swimmers they may have in the water, 2) honor at least a 1/2 nautical mile distance so as not to interfere with the other boats.



Q. SHOULD I TRY TO KEEP UP WITH THE DOLPHINS OR ANCHOR THE BOAT?

A. Many boats that have experience with wild dolphins prefer to anchor the boat and minimize movement. This is both to insure the least invasive behavior with the dolphins and to allow the dolphins to choose to come over to the boat when THEY want to. Secondary boat movement, such as the use of a zodiac or skiff on a regular basis, is discouraged to not harass the dolphins every time they are sighted. Behaviorally, when you see large groups of slow moving dolphins at the surface they are often at rest. Approaching the dolphins during this time is discouraged.

Q. WHAT DO I DO IF I SEE ANOTHER BOAT WHO DOESN'T APPEAR TO FOLLOW THESE GUIDELINES?

A. These guidelines have been developed to share and distribute as needed to minimize dolphin harassment and increase positive encounters between people and dolphins. Often questionable behavior is just a problem with open communication lines between vessels or lack of information. Feel free to share this information and discuss it with boats in the area for further feedback and guidance.

## **BRAZIL REGULATION**

### **Environmental Protection Area of Anhatomirim**

*The federal government has established this as a protection area to protect tucuxi dolphins and assure proper regulation of tourism and fishing activities. Information incomplete.*

### **Brazilian Institute Of The Environment And Renewable Natural Resources-Ibama**

#### **EDICT 117 OF DECEMBER 26, 1996**

THE PRESIDENT OF THE BRAZILIAN INSTITUTE OF THE ENVIRONMENT AND RENEWABLE NATURAL RESOURCES - IBAMA, in the use of his authority as provided in Article 24 of the Regimental Structure annexed to decree 78 of April 5, 1991, and in Article 83, item xiv of its Internal Rules, approved by EDICT GM/MINTER no. 445 of August 16, 1989, and what is contained in Process no. 02001.4424/90-23;

Considering the need to reform Edict no. 2306 of November 22, 1990, which defined rules to avoid intentional harassment of cetaceans in Brazilian jurisdictional waters, in order to allow its application to every cetacean species;

Considering the existence of several cetacean species, which regularly occur inside Conservation Units<sup>17</sup> where public access is allowed and the need to ensure their adequate protection against intentional harassment;

Considering the growing development of tourism aimed at the observation of cetaceans in Brazilian waters and the need to regulate it, in order to provide for its adequacy to the conservation needs of these animals;

Resolves:

Article 1 - It is hereby defined a regulation to prevent and suppress the intentional harassment of cetaceans found in Brazilian jurisdictional waters, in accordance with Law 7.643 of December 18, 1987.

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<sup>17</sup> Conservation Units in Brazilian law are any legally established protected areas such as National Parks, Reserves, and Environmental Protection Areas.

Article 2 - it is forbidden to all vessels operating in Brazilian jurisdictional waters:

- a) approach any whale species (cetaceans of the order Mysticeti; sperm whale *Physeter macrocephalus*; and orca, *Orcinus orca*) to less than 100 metres of the closest animal, with engines operating;
- b) resume engine operation before clearly sighting the whale(s) at the surface, or in a distance of at least 50 metres from the vessel;
- c) chase any whale, with engine operating, for more than 30 minutes, even when respecting the above mentioned distances;
- d) interrupt the path of any cetacean of any species, or try to direct or alter its movement;
- e) intentionally penetrate in a group of cetaceans of any species, dividing or dispersing it;
- f) make excessive noises, such as music, any kind of percussion, or others beyond those generated by the normal operation of the vessel, when less than 300m from any cetacean;
- g) dump overboard any sort of detritus, substance or materials when less than 500m of any cetaceans, in addition to all other pollutant dumping prohibitions contained in the laws.

Article 3 - It is forbidden to swim within a distance of 50m from any whale.

Article 4 - During operation of commercial tour vessels inside Conservation Units where cetaceans regularly occur, such Unit will determine:

- a) the registration of vessels regularly engaged in operation inside the Conservation Unit, including its Navy registration number, name, size, propulsion type and passenger capacity, as well as qualifications and address of its responsible person(s);
- b) the maximum number of vessels which are allowed to simultaneously operate inside the Conservation Unit;
- c) in the case of units with known areas of regular cetacean use, the route(s) and speed(s) for vessel traffic inside such areas;

Article 5 - It is mandatory, for commercial tour vessels operating inside Conservation Units where cetaceans regularly occur, the provision for passengers, on a permanent basis, of interpretive information on these animals and their conservation needs.

Article 6 - For the effect of enforcing this Edict, commercial tour vessel is any vessel transporting paying tourists.

Article 7 - It is forbidden to approach any cetacean with aircraft in altitudes less than 100 meters.

Article 8 - Infractions to this Edict and its norms will be punished according to Law 7.643 of December 18, 1987.

Article 9 - This Edict is valid from its publication date, all depositions in contrary to it being hereby revoked.

## **BRITISH VIRGIN ISLANDS GUIDELINES**

Special rules exist for anyone seeing whales in the BVI because this is a breeding ground and the young calves and mothers are particularly sensitive to disturbance. The rules are designed to protect this endangered species and to ensure that people watch whales in safety. Vessels should observe the following restrictions<sup>18</sup>:

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<sup>18</sup>\_\_\_\_1990. The humpback whale. Distributed by the National Parks Trust, Ministry of Natural Resources, Tortola, British Virgin Islands.

1. Boats should not approach nearer than 100 yards of a whale- this also applies to swimmers and divers who should not get into the water with whales (being so close can disturb whales and may be dangerous).
2. If whales approach within 100 yards of your vessel, put engine in neutral until whales are observed at the surface, clear of the vessel. (This avoids the risk of injury to the whale or of damage to the vessel by a frightened whale).
3. Avoid speeds over 10 knots or sudden changes in speed or direction within 1500 feet of a whales; do not travel faster than the slowest whale when paralleling or following them. (Whales are easily startled by unfamiliar objects, many have come from areas where contact with boats is rare and some may even have been hunted).
4. Do not allow your vessel to cause the whale to change direction. (Disturbance has driven whales away from critical habitats).
5. Do not call other boats to a whale and if more than one boat is present ensure that the whale is free to move in any direction. (Too many boats confuse whales; an arc of 180 degrees should always remain open in front of the whales).
6. Never allow a boat or person to come between a mother and a calf. (Disruption of parental care may reduce a calf's chance of survival and mothers may be aggressive).

In all cases, do not change the normal behavior or movement of whales and always avoid physical contact.

## **CANADA**

### **GUIDELINES FOR WHALE WATCHING**

Under the Fisheries Act, the Department of Fisheries and Oceans is responsible for the management and protection of marine mammals.

Although permits are not required to operate a whale watching vessel, the Department strongly recommends that operators follow the guidelines for whale watching described below.

#### **General Rules:**

1. Do not hunt, chase, follow, disperse, drive or herd pods or individual whales.
2. Do not disturb whales for example while they are resting, feeding and traveling.

#### **General Guidelines for Whale Watching**

You can satisfy your curiosity in a safe manner and at the same time avoid injuring or disturbing the whales **by following these general guidelines:**

1. If one or several whales are sighted in the vicinity of your vessel, avoid any sudden speed or course changes;
2. If you are less than 300 metres (1,000 feet) from an animal, reduce speed and advance slowly, using an oblique line of approach;
3. Avoid heading directly toward the whale;
4. Do not go closer than 100 metres (300 feet) of a whale dolphin or porpoise. The animal may choose to come much closer to you; if it does, do not chase it and be wary of any individual that appears to be tame. Keep clear of the flukes;
5. When you are at a distance of 100 metres (300 feet), shift your motor into neutral or idle. If you must use your motor to hold your position, keep your speed down. If you have a sailboat with an auxiliary motor, leave it in idle to signal your presence or turn on your echo sounder;
6. When leaving the location, start out slowly and wait until you are 300 metres (1,000 feet) from the animal before accelerating;
7. Travel parallel to whales.

Even if whale-watching is not the primary purpose of your excursion, be on the lookout to avoid collisions, especially in waters where whales have been sighted or reported.

If it is impossible to detour around a whale or a pod of whales, slow down immediately and wait until you are more than 300 metres (1,000 feet) away before resuming speed.

**General Guidelines for Aircraft:**

The droning of an airplane engine and especially the beating of a helicopter rotor will be detected by whales near the surface.

1. Do not descend lower than 450 metres (1,000 feet) from the water.

**GUIDELINES FOR PARTICULAR SPECIES AND AREAS  
Barkley Sound to Clayoquot Sound**

To minimize whale disturbance the following guidelines have

been recommended for Barkley Sound to Clayoquot Sound<sup>19</sup>:

1. Approach the whale from its side or rear, not the front.
2. Parallel the whale, match its speed and gradually move closer.
3. Use dead slow speed (no wake) when within 100m of the whale.
4. When viewing a whale, maintain a distance of 100m from it.
5. A single boat may approach up to 50m of the whale, but not for more than 15 minutes.
6. If the whale avoids your boat, increase your distance from it.
7. If the whale closely approaches your boat, stop until it moves at least 50m away.
8. Do not suddenly alter boat direction or speed.
9. All boats should remain on one side of the whale and in radio contact with each other.
10. Depart slowly until at least 100m from the whale.

**BAY OF FUNDY<sup>20</sup>**

**Marine Tour Operator's Code of Ethics**

In the Bay of Fundy, marine tour operators have created a Code of Ethics which further governs their actions. The purpose of the Code is to foster environment of cooperation and trust among marine tour operators for the safety and protection of the whales and other marine life.

Adherence to the following behaviours agreed to by the operators in the Code is voluntary and demonstrates their care and concern for whale conservation. A copy of the complete text of the Code is available from your operator.

No more than two vessels will view a whale or group of whales within 100 metres of the whale.

Boats will maintain a respectable distance to avoid herding the animals.

A maximum of 30 minutes will be spent viewing the animals.

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<sup>19</sup> \_\_\_\_\_ 1990. Whale watching guidelines for Barkley Sound and Clayoquot Sound. Fisheries and Oceans and Marine Mammal Research, British Columbia, Canada.

<sup>20</sup> Visiting the Home of the Whale, WHALE watching in the Bay of Fundy, A Consumers Guide to responsible Viewing.

Vessels will move away from whales demonstrating avoidance behavior such as turning away or increasing speed.

Vessels will not chase the whales.

Vessels will cover different areas as much as possible so that not all vessels will be converging on the same location.

Vessels will practice caution in the vicinity of fixed fishing gear to avoid steering or herding whales in the direction of the gear.

### **JOHNSTONE STRAIT**

The following guidelines apply from June to November, when resident whales are in the Special Management Zone (see map)<sup>21</sup>. The Special management Zone is an area where northern resident killer whales are found on virtually a daily basis each summer. Because of its importance as killer whale habitat, warden and monitoring programs have been implemented to educate visitors and determine levels of activity by whales and vessels. Be conscious of the effect of your actions on the whales. Be familiar with the distances required and the activities which will disturb or interfere with orcas. Whale watching activities should not take place in Robson Bight (Michael Bigg) Ecological Reserve.

Although permits are not required to operate a whale watching vessel, the Department of Fisheries and Oceans strongly recommends that operators follow the guidelines for whale watching described below.

#### **Guidelines for a Single Vessel Watching Whales**

1. Diving or swimming with whales constitutes a type of approach to killer whales and falls under the same guidelines and regulation.
2. It is illegal to hunt, chase, disperse, drive or herd pods of individual whales.
3. Approach no closer than 100 **metres** (under review) and shift your motor into neutral or idle. Keep noise levels down -no horns, whistles, or racing of motors. Start your motor only after the whales are more than 100 metres from your vessel. Leave the area slowly, gradually accelerating when more than 300 metres from the whale(s).
4. Approach whales from the side, not the front or the rear. Approach and depart slowly, avoiding sudden changes in speed or direction. Do not "leapfrog". Avoid disturbing groups of resting whales.
5. Maintain low speeds and constant direction if traveling parallel to whales. When whales are traveling close to shore, avoid crowding them near shore or coming between the whales and shore.
6. Limit the time spent with any group of whales to less than 30 minutes at a time when within **200-300 metres** of whales.

#### **Guidelines for More than One Vessel at the Same Observation Site**

1. Avoid any boat position that would result in encircling the whale(s).
2. Minimize the time spent and the number of vessels with any one group of whales. Limit the time to 30 minutes within 100-200 metres and then move out to allow other vessels access to good viewing positions. Coordinate activities by maintaining contact with other charted operators and ensure that all operators are aware of the whale watching guidelines.

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<sup>21</sup>\_\_\_\_1994. Johnstone Strait Whale Watching Guideline. Published by Johnstone Strait Killer Whale Joint Management Committee.

3. Respect the same guidelines that apply when only one vessel is watching whales.

#### **Guidelines for Aircraft**

1. Limit approaches to 450 **metres** above the water over whales. Do not hover over, circle around, or "buzz" the whales.
2. Ensure that you are more than 300 metres from whales before attempting landings or take-offs.

#### **Guidelines for Cruise ships**

The large vessel and engine size of cruise-ships are potentially disturbing to killer whales, particularly when whales are between vessels and the shore. Therefore, cruise ships should observe the following guidelines:

1. Observe the same guidelines that apply to single vessels or multiple vessels watching whales, but maintain a minimum distance of **300 metres** from whales.
2. Avoid turning or the use of bowthrusters for the purposes of whale watching, when in Johnstone Strait or Blackfish Sound.
3. Do not enter the Robson Bight (Michael Bigg) Ecological Reserve.

### **PACIFIC RIM NATIONAL PARK RESERVE**

#### **British Columbia**

Pacific Rim National Park Reserve has developed a set of marine wildlife viewing guidelines in consultation with local whale watch operators, researchers, and both provincial and federal government agencies. The result was a comprehensive set of guidelines that are both species and site-specific for use within and around the national park. The general guidelines are applicable to whales as well as pinnipeds and shorebirds.

### **GENERAL VIEWING GUIDELINES**

#### **Approach Guidelines**

- Slow down to 5 knots (no-wake speed) at 250 m
- Vessel behaviour should be based on the most sensitive or easily disturbed species on site (which may not be the species that is sought for viewing)
- Be aware that the "no go zone" is a minimum distance: a greater distance may be required earlier in the season and/or year round at certain sites
- Use radio communication with others on-scene to assess the situation
- Approach at an indirect angle that provides the maximum visibility for the animals or birds
- Move closer gradually
- Monitor animal behaviour on approach. Watch for signs of agitation and increase your angle away from the animals or birds if they become visibly agitated.
- Do not approach animals head on
- Avoid sneaking up to animals
- Use binoculars instead of your vessel to bring animals into closer view
- Fixed-wing aircraft must maintain a minimum height of 1000 feet
- Helicopters are not appropriate for viewing animals or sea birds. Helicopters should maintain a minimum of 1000 feet.
- Personal watercraft are not appropriate for viewing animals or sea birds. Personal watercraft should maintain a minimum distance of 500 m from flocks, colonies, haul out sites, nesting sites or shorelines.

#### **Viewing Guidelines**

- Leaving engine running is up to the discretion of the driver
- Do not go ashore

- Vessels should view animals and shorebirds in rotation with other vessels
- Use radio communication to co-ordinate rotation into and out of the *"close viewing zone"*
- Limit time in the *"close viewing zone"* to 10-15 minutes
- If an animal approaches the vessel, it is appropriate to observe it at whatever distance the animal chooses
- Avoid loud noises
- Avoid sudden alteration of vessel speed
- Avoid sudden alteration of vessel direction
- Avoid sudden alteration of vessel angle
- Avoid rapid vessel movements
- Do not feed the animals or birds
- To avoid startling animals, paddlers should make some sort of regular, repetitive, low volume noise (like tapping floor of vessel)
- Kayakers should avoid hugging the shore

#### **Departure Guidelines**

- Move slowly away from the animals or birds when leaving the area
- Depart at *"no-wake speed"* until beyond 250 m and then increase speed gradually

#### **Research Guidelines**

- With a research permit, researchers may be allowed to approach animals at a distance less than the *close viewing zone*
- Researchers must display a *"research flag"* or *"research markings"* on their vessel indicating they are engaged in research
- Researchers must be contactable by VHF radio

### **WHALE VIEWING GUIDELINES**

#### **Approach Guidelines**

- Establish layout and movement of vessels before approaching whales
- Slow down to 7-8 knots 800 m away
- Reduce speed to *"no wake speed"* at 250 m away
- Approach travelling whales from behind or from the side with speed and direction consistent with the behaviour of the whales
- Do not approach whales head on
- If whales appear to be avoiding the vessel, increase distance between the vessel and whale
- Don't chase whales
- Vessels should be positioned only on one side of the whales
- Positioning vessels ahead of whales and waiting for the whales to pass is not to be used
- Avoid crossing ahead of travelling whales
- If crossing ahead of whales is unavoidable, there should be 800 m clearance

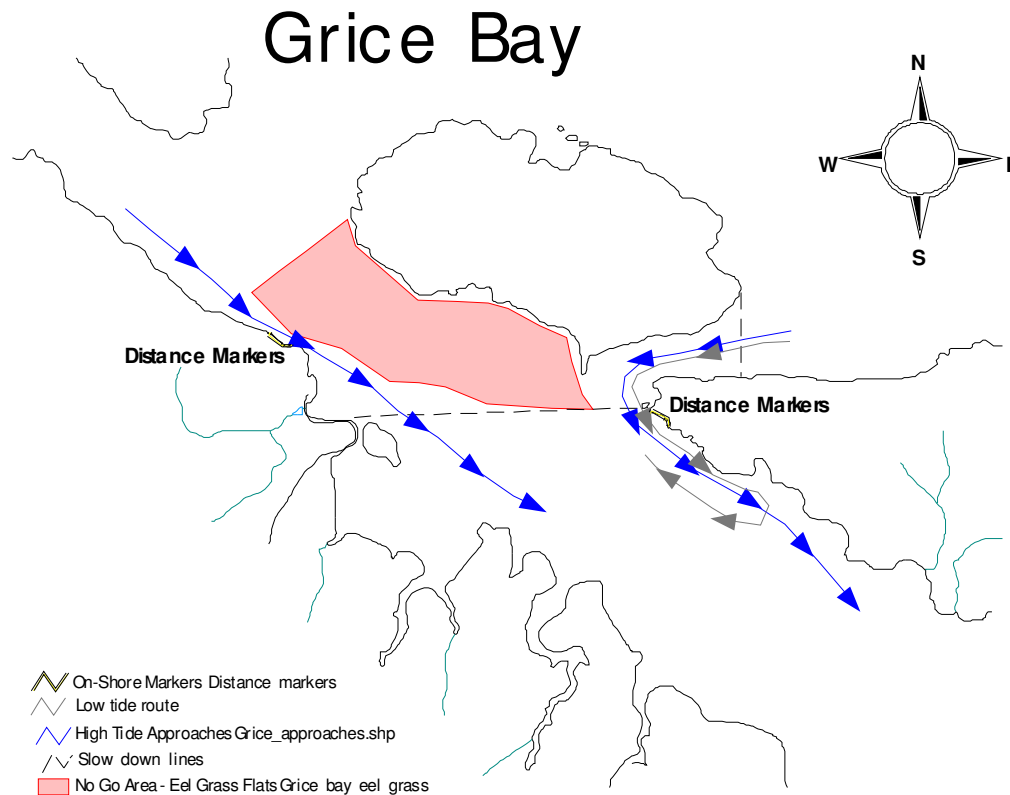
#### **Viewing Guidelines**

- Do not approach closer than 50 m *"no go zone"*
- Vessels should work with other whale watching vessels in rotation
- When the *"close viewing zone"* (50-100 m) is occupied, other vessels should wait beyond 100 m
- Up to 3 vessels *"under 5 tons"* or 1 vessel *"over 5 tons"* inside the *"close viewing zone"*

- All vessels should be on one side of the whale(s)
- Do not get between a mother and calf
- No circling whales
- If a whale approaches the vessel, stop until it moves away at least 50-100 m

#### Killer Whale Guidelines

- Do not approach killer whales closer than 100 m “no go zone”
- Response and needs may be different for transient and resident killer whales
- There is a greater potential to impact transients with noise: keep noise low.



#### GRICE BAY GUIDELINES

- During high tide (>6 feet), whale watching vessels should only enter and exit Grice Bay by means of the specified high tide route (see map)
- During low tide (<6 feet), whale watching vessels should only enter and exit Grice Bay by means of the specified low tide route (see map)
- Slow down to 7-8 knots at 800 m or upon entering designated slow areas
- Boats should travel single file in a slow one-way loop, staying in the deep water channel
- Boats should keep on the deep side of whales
- During high tide, general gray whale viewing guidelines apply

#### Departure Guidelines

- Move slowly away from the animals or birds when leaving the area
  - Depart slowly until beyond “no wake zone” (250 m) and then increase speed gradually



### **ROBSON BIGHT (MICHAEL BIGG) ECOLOGICAL RESERVE<sup>22</sup>**

BC Parks is responsible for the protection of killer whale habitat in Robson Bight (Michael Bigg) Ecological Reserve. The reserve was established in 1982 as a sanctuary for killer whales and to protect important killer whale habitat.

Recreational activities such as whale watching should not take place in the Reserve, and landing is prohibited. Do not follow the whales into the ecological reserve.

Boats requiring sheltered waters such as canoes and kayaks should cross over to West Cracroft Island, where there are good anchorages and camping is permitted.

Discharge of firearms is prohibited in ecological reserves and from moving vessels.

Commercial fishing vessels in the ecological reserve should avoid using powered skiffs. Whale watching activities should not take place in the reserve. Land access is closed in the reserve, except for the purposes of mooring or for tie-ups (under review).

### **GUIDELINES FOR THREATENED OR ENDANGERED SPECIES**

Special guidelines applying to threatened or endangered species and populations are recommended and for the right whale include<sup>23</sup>:

1. Be very careful while observing right whales as they are relatively slow moving.
2. Avoid doing anything that might interfere with their activities or injure them.
3. Never approach animals at a speed exceeding 4 knots.

### **RIGHT WHALE CONSERVATION AREAS**

Mariners are requested to avoid the Conservation areas from July-November. If passage through the Right Whale Conservation areas is mandatory, mariners are requested to<sup>24</sup>:

1. Decrease vessel speed, post a lookout, and maneuver around any marine mammal activity
2. Report all sightings or collisions with whales in the Conservation Area to the Department of Fisheries and Oceans via any Canadian Coast Guard radio station with relevant details or fax at (902) 426-8003 or via Fundy Traffic Control (VHF channel 14).

### **BOTTLENOSE WHALE CONSERVATION AREA**

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<sup>22</sup>\_\_\_\_1994. Johnstone Strait Whale Watching Guideline. Published by Johnstone Strait Killer Whale Joint Management Committee.

<sup>23</sup>\_\_\_\_1993. Watching whales without harassment. Communications Branch, Fisheries and Oceans, Scotia-Fundy and Quebec, Canada.

<sup>24</sup>\_\_\_\_1993. CAUTION MARINERS; avoid right whale collisions. Published by Communications Directorate, Department of Fisheries and Oceans, Ottawa, Ontario, Canada.

Mariners are requested to avoid the Conservation area from July-November. If passage through the Bottlenose Whale Conservation areas is mandatory, mariners are requested to:

1. Decrease vessel speed, post a lookout, and maneuver around any marine mammal activity
2. Report all sightings or collisions with whales in the Conservation Area to the Department of Fisheries and Oceans via any Canadian Coast Guard radio station with relevant details or fax at (902) 426-8003 or via Fundy Traffic Control (VHF channel 14).

#### **ST. LAWRENCE BELUGA WHALES**

Special measures are necessary to ensure the conservation of the beluga whale:

1. St. Lawrence beluga whales must be excluded from the species sought for whale watching from a boat. It is imperative to avoid any active or passive (drifting towards the animals) approach of the beluga.
2. In the presence of belugas, gradually reduce speed (5 knots) without stopping and maintain your direction at reduced speed until the animals are at a distance of **400** meters or more.
3. Avoid sailing in critical habitats.

#### **SAGUENAY-ST. LAWRENCE MARINE PARK ACT SOR/2002-76 20 February, 2002**

Marine Activities in the Saguenay-St. Lawrence Marine Park Regulations

P.C. 2002-201 20 February, 2002

Her Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to section 17 of the Saguenay-St. Lawrence Marine Park Act (<Reference a> S.C. 1997, c. 37), hereby makes the annexed Marine Activities in the Saguenay-St. Lawrence Marine Park Regulations.

#### **MARINE ACTIVITIES IN THE SAGUENAY-ST. LAWRENCE MARINE PARK REGULATIONS**

##### **INTERPRETATION**

1. The definitions in this section apply in these Regulations.

"Act" means the Saguenay-St. Lawrence Marine Park Act. (Loi)

"cargo ship" has the same meaning as in section 2 of the Canada Shipping Act. (navire de charge)

"commercial vessel" means a vessel, other than a kayak, used by a marine tour business or shuttle service to carry passengers or to provide services for compensation. (bateau commercial)

"disturbance of a marine mammal" means any undue interruption, alteration or disruption of the normal behaviour of a marine mammal, in particular its social, swimming, breathing, diving, resting, feeding, nursing or reproductive behaviour, and includes separating a marine mammal from a group or passing between an adult marine mammal and a young marine mammal. (dérangement d'un mammifère marin)

"endangered marine mammal" means a marine mammal of a species or population of marine mammals that is designated as endangered or threatened in the List of Canadian Species at Risk, November, 2000, published by the Committee on the Status of Endangered Wildlife in Canada, as amended from time to time. (mammifère marin en voie de disparition)

"Fjord" means the Saguenay Fjord described in the schedule. (fjord)

"marine mammal" means any cetacean or pinniped. (mammifère marin)

"marine tour business" means any trade, industry, employment or service, whether or not for profit, relating to the observation from the water or air of plants, animals or the landscape or seabed of the park or cultural resources in the park, other than such trade, industry, employment or service when carried out by a person on behalf of the superintendent for the purposes of the management of the park, and includes excursions, cruises, fishing, diving, kayaking and flights over the park in the course of that trade, industry, employment or service. (entreprise d'excursions en mer)

"observation area" means an area consisting of two or more overlapping or contiguous observation zones. (secteur d'observation)

"observation mode" means, in respect of a vessel, the mode that describes the state of the vessel when the operator, for the purpose of observing a cetacean, permits the vessel to approach the cetacean within a distance of less than 400 m. (mode d'observation)

"observation zone" means a moving circular zone that exists around a vessel while it is in observation mode in the park, other than in the Fjord, and has a radius of one nautical mile measured from the vessel to the perimeter of the zone. (zone d'observation)

"operator", in respect of a vessel, means the person who has the command or control of the vessel. (pilote)

"permit" means a marine tour business permit, shuttle service permit, scientific research permit or special activity permit issued by the Minister under subsection 10(1) of the Act. (permis)

"shuttle service" means a shuttle service that is operated for the purpose of carrying passengers by water for compensation. (service de navette)

"special activity" means a planned, temporary activity or event held in the park, including a parade, regatta, show, film production or promotion and sports event. (activité spéciale)

"vessel" means a watercraft of any description that is used or capable of being used for navigation, without regard to its method of propulsion or whether it lacks a means of propulsion, and includes air cushion vehicles. (bateau)

"year" means a period of 12 consecutive months beginning on April 1. (année)

#### APPLICATION

2. (1) Sections 3 and 14 to 23 do not apply to the superintendent, a park warden, an enforcement officer or a peace officer while engaged in the discharge of their duties.

(2) Subsection 3(2) and sections 14 to 23 do not apply to any person acting under an agreement with or instructions from the Minister for the purpose of protecting marine mammals or the environment or for the purpose of public safety or park management.

(3) These Regulations

(a) other than subsection 14(2) and sections 19 and 20, do not apply to the holder of any of the following licences issued by the Department of Fisheries

and Oceans when the holder is engaged in fishing for the species for which or in any other activity in respect of which the licence is issued, namely,

(i) a licence issued for the purpose of commercial fishing, or

(ii) an aboriginal communal fishing licence;

(b) other than subsection 14(2) and sections 15 and 19 to 22, do not apply to the holder of a licence to fish for seal issued by the Department of Fisheries and Oceans when the holder is engaged in fishing for the species for which or in any other activity in respect of which the licence is issued; and

(c) other than sections 14 and 19, do not apply to the operator of a cargo ship.

## PERMITS

### General

3. (1) No person shall operate a marine tour business or shuttle service in the park unless the person is the holder of a permit in respect of that business or service, as the case may be, or is authorized by the holder of such a permit to do so on their behalf, and does so in accordance with the conditions, if any, specified in the permit.

(2) No person shall conduct scientific research or hold a special activity in the park unless the person is the holder of a permit in respect of that research or activity, as the case may be, or is authorized by the holder of such a permit to do so on their behalf, and does so in accordance with the conditions, if any, specified in the permit.

4. The holder of a permit shall ensure that every vessel authorized to operate under the permit is operated in a manner that does not contravene these Regulations.

### Limitations

5. (1) Not more than one commercial vessel shall be authorized to operate under a marine tour business permit or a shuttle service permit.

(2) A marine tour business permit and a shuttle service permit shall not be issued to a person other than the owner of the business or service in respect of which the permit is sought.

### Application for Permit

6. (1) An application to the Minister for a permit shall be in writing and include

(a) the name, address and telephone number of the applicant and, if they differ, the applicant's business name, address and telephone number;

(b) information respecting the equipment that the applicant uses or intends to use, including

(i) in the case of an application for a marine tour business permit or a shuttle service permit, the registration or listing number of the vessel, and

(ii) in the case of an application for any other permit, the number of vessels and their registration or listing numbers;

- (c) a description of any area of the park in which the applicant operates or intends to operate;
  - (d) a copy of any documentation relevant to the applicant's ability to carry out the activity for which the permit is sought;
  - (e) a list of the names of the operators and guides that the applicant intends to employ, if any, and a summary of their training or qualifications;
  - (f) in the case of an application for a marine tour business permit or a shuttle service permit, the types of goods or services that the applicant intends to offer;
  - (g) in the case of an application for a scientific research permit, a description of the proposed scientific research, its expected duration, the objectives to be attained and the dates on which and the times and places at which it is to be conducted;
  - (h) in the case of an application for a special activity permit, a description of the proposed special activity, its expected duration, the objectives to be attained and the dates on which and the times and places at which it is to be held; and
  - (i) in the case of a marine tour business permit having a duration of 10 days or less, the dates for which the permit is required.
- (2) An application for a permit shall be accompanied by the applicable fee fixed by the Minister under section 9 of the Department of Canadian Heritage Act.
- (3) A permit holder shall immediately notify the Minister of any change in the information that was provided in the application for the permit.

#### Inspection

7. The holder of a permit shall allow a park warden or enforcement officer to inspect any vessel authorized to operate under the permit, at any reasonable time, for the purpose of monitoring compliance with the conditions specified in the permit.

#### Suspension and Cancellation of Permits

8. (1) The grounds for the suspension of a permit by the Minister under section 10 of the Act are the following:

- (a) the holder of the permit has failed to comply with a condition specified in the permit;
- (b) there are reasonable grounds to believe that the holder of the permit has contravened these Regulations; or
- (c) the holder of the permit has failed to inform the Minister of any change in the information provided in the application for the permit.

(2) The grounds for the reinstatement of a permit by the Minister under section 10 of the Act are the following:

- (a) the breach that led to the suspension has been corrected;

(b) a period of 30 days has elapsed since the date of the suspension and proceedings in respect of the alleged contravention were not instituted before the end of that period; or

(c) the permit holder has been found not guilty of contravening these Regulations.

(3) The grounds for the cancellation of a permit by the Minister under section 10 of the Act are the following:

(a) the permit holder has been found guilty of contravening these Regulations; or

(b) except where the permit was reinstated under paragraph (2)(b) or (c), the permit has been suspended three times during the period for which it was issued.

(4) The holder of a permit that has been suspended is not eligible to be issued any permit during the suspension period.

(5) The holder of a permit that has been cancelled is not eligible to be issued any permit during the 12-month period following the date of the cancellation.

#### Transfer and Expiry of Permits

9. No person shall transfer a permit except in accordance with section 11.

10. A permit expires on the earliest of

(a) the expiry date stated in the permit, including any instance when the ownership of a marine tour business or a shuttle service is sold or otherwise transferred to another person, if the permit in respect of that business or service, as the case may be, is transferred in accordance with section 11,

(b) the date of cancellation, if any, of the permit, or

(c) where the ownership of a marine tour business or shuttle service is sold or otherwise transferred to another person, the date of that transfer, if the permit in respect of that business or service, as the case may be, is not transferred to that other person in accordance with section 11.

11. (1) When the ownership of a marine tour business or shuttle service is transferred to another person, any permit in respect of the business or service may be transferred to that other person if the permit holder

(a) notifies the Minister, in writing, of

(i) the name, address and telephone number of the person to whom the permit is to be transferred,

(ii) the proposed date of the transfer,

(iii) any change in the name of the business or the name and registration or listing number of the commercial vessel to be operated by the new permit holder under the permit after the transfer, and

(iv) any changes in any other information that was provided under subsection 6(1) in the application for the permit; and

(b) obtains the Minister's approval.

(2) The Minister shall approve the transfer of the permit if the proposed changes will not affect the conditions of the permit.

#### Identification Flags

12. The operator of a vessel operating under a marine tour business permit, a shuttle service permit or a scientific research permit shall ensure that the vessel flies the appropriate identification flag issued with that permit in such a manner that the type of authorized activity that the vessel is engaged in is clearly identified.

#### Commercial Vessels under Marine Tour Business Permits

13. Not more than 59 commercial vessels may be authorized to operate all year long in the park under marine tour business permits having a duration of more than 10 days and not more than five additional commercial vessels may be authorized to operate on any one day in the park under marine tour business permits having a duration of 10 days or less.

#### PROHIBITED CONDUCT AND CONTROLLED ACTIVITIES

##### Disturbance of Marine Mammals

14. (1) No person shall engage in behaviour in the park that may kill or injure a marine mammal or cause the disturbance of a marine mammal.

(2) The operator of a vessel that is involved in an accident in which a marine mammal is killed or injured or that collides with a marine mammal shall report the incident immediately to a park warden or an enforcement officer.

##### Distance Requirements

15. (1) Subject to subsection (4), the operator of a vessel shall not, by means of the vessel's motors or under the force of the winds, waves or currents or by any other means, permit the vessel to approach a cetacean within a distance of less than 100 m, if the vessel is a commercial vessel operating under a marine tour business permit, or within a distance of less than 200 m, in the case of any other vessel.

(2) Subject to subsection (4), the operator of a vessel shall not place the vessel within the path of a cetacean in such a manner that the cetacean will pass within a distance of less than 100 m from the vessel, if the vessel is a commercial vessel operating under a marine tour business permit, or within a distance of less than 200 m from the vessel, in the case of any other vessel.

(3) If a cetacean approaches within a distance of less than 100 m from a commercial vessel that is operating under a marine tour business permit, or less than 200 m from any other vessel, the operator of that commercial vessel or that other vessel shall maintain it in a stationary position until the cetacean has dived towards the seabed or moved more than 100 m from that commercial vessel or more than 200 m from that other vessel, as the case may be.

(4) The operator of a vessel shall maintain a minimum distance of 400 m between the vessel and any endangered marine mammal.

16. Notwithstanding subsection 15(1), the operator of a commercial vessel operating under a marine tour business permit shall not permit the vessel to approach within a distance of less than 200 m from a cetacean at any time when there are more than four vessels within a radius of 400 m from that vessel.

17. No person shall dive or swim within a distance of less than 200 m from a cetacean or less than 400 m from an endangered marine mammal.

18. No person shall fly an aircraft over the park at an altitude of less than 2,000 feet (609.6 m) from the surface of the water or take off or land in the park unless authorized to do so by the Minister under subsection 10(1) of the Act.

#### Speed Limits

19. Subject to section 20, no person shall operate a vessel in the park at a speed greater than 25 knots.

20. The operator of a vessel, other than a cargo ship, shall not operate the vessel at a speed greater than 10 knots when it is in the observation zone of another vessel or in an observation area.

21. Notwithstanding section 20, the operator of a vessel that is between 100 and 400 m from a cetacean, in the case of a commercial vessel operating under a marine tour business permit, and between 200 and 400 m from a cetacean, in the case of any other vessel, shall not

(a) operate the vessel at a speed greater than the minimum speed required to manoeuvre the vessel; or

(b) stop or start the vessel, or change its direction, in a repetitive manner.

22. If a vessel unexpectedly encounters an endangered marine mammal at a distance of less than 400 m from the vessel, the operator of the vessel shall reduce the speed of the vessel to a speed not greater than the minimum speed required to manoeuvre the vessel.

#### Observation Zones and Observation Areas

23. (1) The operator of a commercial vessel operating under a marine tour business permit shall not permit the vessel to approach a cetacean within a distance of between 100 and 200 m

(a) for more than two periods of 30 minutes each during each excursion; or

(b) more than once in the same observation zone or observation area.

(2) The operator of a commercial vessel operating under a marine tour business permit shall, when the vessel assumes observation mode, indicate by radio or by the means, if any, indicated in the permit under which the vessel is operating that it is in observation mode to all other commercial vessels nearby.

(3) The operator of a vessel shall not keep the vessel in observation mode for more than one hour or operate the vessel in the observation zone of another vessel or in an observation area for more than one hour.

(4) The operator of a vessel shall not permit the vessel to re-enter the observation zone of another vessel or an observation area until one hour has elapsed after leaving that observation zone or observation area, as the case may be.

#### COMING INTO FORCE

24. These Regulations come into force on the day on which they are registered.



## SCHEDULE (Section 1)

### DESCRIPTION OF THE SAGUENAY FJORD

The area of the park bounded on the south side by a line approximately 4.38 nautical miles in length and described as follows:

Starting from point 1, near Pointe-aux-Vaches, having the geographical coordinates 48 degrees 08.870 N latitude and 69 degrees 39.961 W longitude, following a direction of 160 degrees true over a distance of approximately 1.37 nautical miles to point 2, having the geographical coordinates 48 degrees 07.586 N latitude and 69 degrees 39.256 W longitude;

From point 2 following a direction of 180 degrees true, over a distance of approximately 0.59 nautical miles to point 3, having the geographical coordinates 48 degrees 06.997 N latitude and 69 degrees 39.256 W longitude;

From point 3 following a direction of 245 degrees true, over a distance of approximately 1.31 nautical miles to point 4, having the geographical coordinates 48 degrees 06.455 N latitude and 69 degrees 41.037 W longitude; and

From point 4 following a direction of 238 degrees true, over a distance of approximately 1.11 nautical miles to point 5, situated near Pointe-aux-Alouettes and having the geographical coordinates 48 degrees 05.872 N latitude and 69 degrees 42.441 W longitude.

REGULATORY IMPACT ANALYSIS STATEMENT(This statement is not part of the Regulations.)

#### Description

The Saguenay-St. Lawrence Marine Park is the result of the concerted efforts of the Government of Canada and the Government of Quebec that led to the creation of two complementary statutes: the Saguenay-St. Lawrence Marine Park Act, at the federal level, and the Saguenay-St. Lawrence Marine Park Act, at the provincial level. The marine park, which covers an area of 1138 square kilometres, encompasses much of the Saguenay Fjord and the northern section of the St. Lawrence estuary located between Gros-Cap-à-l'Aigle and Les Escoumins. The main objective of the Park is to enhance, for purposes of conservation, the level of protection of the ecosystems of a representative portion of the Saguenay Fjord and the St. Lawrence estuary, while encouraging, for present and future generations, its use for educational, recreational and scientific purposes.

The region is one of the best sites in Canada for whale-watching due to the presence of the great whales, the diversity of species, the predictability of their presence and the proximity of ports. Consequently, this activity is pursued by a very large number of users within the marine park area. There is concern on the part of the Committee on the Status of Endangered Wildlife in Canada over some species, including the St. Lawrence beluga, designated as endangered.

In 2001, maritime traffic services recorded approximately 9,000 excursions in the Park by fifty or more watercraft engaging in commercial marine observation activities. In addition, recreational boats, kayaks, personal watercraft, aircraft and cruise ships are all drawn by the presence of whales and the scenic beauty of the Saguenay Fjord. The main concern linked to whale-watching activity in the marine park is the number of boats of all types that are present on a daily basis in the vicinity of the whales.

Management of marine observation activities in the Park is currently conducted without an adequate regulatory framework. The protection of the whales is now a major concern shared by Park officials and numerous interest groups, including the Department of Fisheries and Oceans, local conservation groups, the regional marine observation industry and the public in general.

The Marine Activities in the Saguenay-St. Lawrence Marine Park Regulations are being established under the federal legislation, the Saguenay-St. Lawrence Marine Park Act. The Regulations will provide a mechanism permitting the control of these activities to ensure adequate protection of the whales.

The regulations are made up of two parts. The first provides controls for the issuance of permits for commercial marine observation activities, scientific research, shuttle services and for holding special activities in the Park. The second sets out the rules governing the behaviour of boat operators engaged in whale-watching activities, such as distances to be maintained between boats and whales.

#### Alternatives

Without these Regulations, there would be no means of control for the various activities that have an impact on the marine ecosystems and mammals within the Park. Therefore, the only solution is to establish regulations.

#### Benefits and Costs

The regulations will:

- contribute to the achievement of marine park objectives through the management of activities occurring in the Saguenay-St. Lawrence Marine Park;
- enhance the level of protection of ecosystems by ensuring that rare or endangered species receive increased protection;
- increase the safety of Park users; and
- develop and maintain a positive image for marine observation activities within the Park.

Costs related to issuing permits will be minimal. Fees payable to obtain a permit will be used to recover administrative costs related to their issuance. Administration of the regulations will be assured by assured by park management and a team of park wardens or enforcement officers currently on strength in the Park.

#### Consultation

In 1993, public hearings were held regarding development of the marine park. Sixty-three written briefs were filed in which the public expressed the need to take the necessary measures to ensure protection of the unique marine heritage of the marine park ecosystems.

In 1997, with the co-operation of all parties concerned, Park officials initiated a process to ensure whale protection and long-term management of marine observation activities. A lengthy consultation period followed with marine excursion businesses and a number of interest groups. One of the main conclusions of the consultations, and a 1998 workshop, was that there was a strong consensus to establish management measures to ensure the protection of the whales and the control of observation activities.

In September 1999, a committee on marine observation activities comprising various concerned parties was created. Four subsequent meetings laid the foundations to reach a consensus within the committee on various elements of the proposed regulations.

On October 28, 2000, the regulations were published in the Canada Gazette, Part I, and further public consultations followed. The public submitted more than twenty documents on the proposed regulations and, during the winter of 2001, the committee on marine observation activities studied the comments received. Generally, there was no question of the need to introduce the regulations.

A number of the provisions of the proposed regulations were debated, primarily those concerning the transfer of permits, the maximum number of boats, speed limits, approach distances and zoning. As a result of the exercise, a number of the provisions of the regulations were modified.

With regard to zoning, the revised regulations retain the initial basic elements relating to speed limits and the maximum duration of observation; however, they now have the advantage of applying to the marine park as a whole rather than just the smaller fixed sectors of the Park as presented in the initial version of the regulations. The highly productive consultations were conducted in consideration of the needs of the public and the working conditions of a number of stakeholders. This approach will lead to better compliance with the regulations once they come into effect.

The Marine Activities in the Saguenay-St. Lawrence Marine Park Regulations result from commitments from the federal and provincial governments to co-operate with all concerned interest groups to attain exemplary management of the activities conducted within the waters of the Saguenay-St. Lawrence Marine Park.

#### Compliance and Enforcement

The park wardens at the Saguenay-St. Lawrence Marine Park will regularly patrol areas in the Park most frequented by whales to ensure compliance with the new regulations. To encourage compliance, the public will be informed of the main regulatory provisions by the issuance of an Observer Awareness Guide.

As a last resort, charges will be laid for violations of the regulations under the Saguenay-St. Lawrence Marine Park Act:

(a) on summary conviction, maximum fines of \$10,000, in the case of a person, and \$100,000, in the case of a corporation, could be imposed; or

(b) on indictment, maximum fines of \$20,000, in the case of a person, and \$500,000 in the case of a corporation, could be imposed.

### **CANARY ISLANDS REGULATION**

*These regulations were renewed in 2000 by the 'Decreto 178/2000'. Generally direct encounters with cetaceans in the water are forbidden, distances and total boat numbers as well as boat movements in the vicinity of groups of whales are regulated. Research as well as educational filming has to be authorized by the Canary government. Generally, you have to be licensed by the government to be a whale watch vessel.*

**2249 DECREE 320/1995 OF THE 10TH OF NOVEMBER, BY WHICH CETACEAN OBSERVATION ACTIVITIES ARE REGULATED.**

#### Preamble

The observation of cetaceans constitutes an important economic, recreational and educational activity for many people. For the great majority of people this experience is their first contact with marine mammals and their habitat. The observation of cetaceans in their environment is not a negative activity

in and of itself, as it can play an important part in conservation work and for environmental education. Nevertheless, problems begin to arise when there is a large growth in the number of vessels involved in these activities. The question is not the activity in itself, but rather in how it is undertaken.

The cetaceans referred to are included in Annex IV of Directive 92/43/CEE of the Council of 21 May, relating to the conservation and natural habitats and of wildlife (The Habitats Directive of the EU) as a strictly protected taxon. Said animals are threatened by degradation of habitat, contamination by heavy metals, organochlorides, etc., acoustic pollution, incidental takes in various fishing methods, overexploitation of fisheries resources, and, significantly in this case, by badly managed observation of the same. All of this provokes stress in the animals, as they are approached by numerous vessels that disperse their social groups or even box them in, not to mention the fact that bold approaches by the boats can even hit the animals or injure them.

The tourism development that certain areas of the islands have suffered in recent years has produced an increase in demand for recreational activities. This has led to the growth of numerous companies offering maritime excursions, which include the observation of whales (in particular pilot whales) and dolphins. From the economic point of view, this new market has run into two important problems in just a few years: on one hand, the companies that have legally constituted themselves as a business entity suffer competition from several boats that realize whale watching activities furtively, and on the other hand, the environmental impact question that arises as a result of harassing cetaceans.

For this reason, the adoption of measures of prevention and protection regulating the uses of these animals to which we have referred was mentioned in article 26 of Law 7/1995, of the 6th of April, under the Jurisdiction of the Tourism Department of the Canaries, which made reference to the placing of tourism activities under the laws on environment and conservation of nature, in particular to those affecting protection of flora and fauna, under Law 4/1989 of the 27 of March, which basically refers to, among other things, measures necessary to guarantee the conservation of species.

With this present Decree, rules of behaviour are established in order to resolve the questions put forth above, making them applicable not only to tourist activities but also to any other type of activities, whether scientific, recreational, educational, etc. which has as its objective the observation of cetaceans within the jurisdiction of the Autonomous Community of the Canaries.

In its virtue, by proposal of the Counselor of the Political Territory, and with previous deliberation of the Government in session, celebrated this day, the 10th of November 1995,

#### **I DECREE**

#### **Article 1: Objectives**

It is the objective of the present Decree to regulate activities that are realized by people or entities in the observation of cetaceans, with a goal of establishing the conservation means necessary to protect the same.

**Article 2:** The present Decree will be applied equally to all those who organise excursions for touristic reasons, recreational reasons, educational

reasons, scientific reasons etc. in order to observe cetaceans in the jurisdiction of the Autonomous Community of the Canaries.

**Article 3:** Legal guidelines of observation activities.

1. Persons cited in the above article must solicit in advance the pertinent authorizations and to carry on board the vessels used a monitor-guide who specializes in cetaceans, whose characteristics and means of accreditation will be determined by law.

2. During the observation of cetaceans, and in order to not injure, harass or distress the same, the Code of Conduct in Annex 1 of the present decree must be observed.

Failure to comply with the Code of Conduct will be considered as an administrative offense, and as such will be punished by application of the sanctions contained in Title VI of Law 4/1989 of the 27th of March on the Conservation of Natural Spaces and of Wild Flora and Fauna.

In any case, failure to comply with the Code of Conduct will lead to immediate loss of license, without prejudice to the sanction that might correspond to the infraction.

3. In those cases where the observation of cetaceans is for scientific or research purposes, certain elements of the obligations listed above may be waived as long as such an exemption has been asked for and is fully justifiable.

4. The authorization cited in part 1 of the present article will be issued by the Vice Counsel of Environment within 15 days of receipt of such a request, which will be understood to be denied if the time limit is passed with no express resolution of the authorization.

The requests for permits shall be presented to the same Vice Counsel of Environment following the model in Annex 2, and to be referred to as

- a) request for a set trip
- b) request for a set period of time

5. As a requirement of permission, the Counselor of the Political Territory may ask for the deposit of a bond in order to guarantee compliance with the responsibilities that must be followed.

**Additional Dispositions**

The permit referred to in article 3.1 is understood to be without prejudice to any other administrative measures that arise out of current laws.

**Temporary Dispositions**

Until such time as the characteristics and means of accreditation have been determined by law for the monitor-guide referred to in Article 3.1 of this Decree, vessels must take on board a monitor responsible for the excursion.

**Final Dispositions**

First: The present Decree will enter into force on the day following its publication in the Official Bulletin of the Canaries.

Second: The Counselor of the Political Territory is empowered to determine the precise dispositions that will be necessary for the development and application of the present Decree.

As given in Las Palmas of Grand Canary Island, this 10th of November 1995  
The President of the Government,  
Manuel Hermoso Rojas

The Counselor of the Political Territory,  
Antonio Fernandez Gonzalez Vieitez

#### **ANNEX I: Code of Conduct**

##### A) Basic obligations:

- do not intercept the trajectory of the animals.
- do not separate or disperse the groups of animals being observed, especially when a mother and calf are involved
- avoid the simultaneous presence of more than 3 vessels at a distance less than 200 meters from a cetacean or group of cetaceans
- Maintain a distance of at least 60 meters from the animals except in situations of emergency or under express authorization
- Do not swim or dive deliberately in the proximity of the animals, without express permission
- Do not throw food or waste in the proximity of the animals

##### B) Methods of approach:

- When a vessel is within 300 meters of cetaceans it must move at a slow speed, not more rapidly than the slowest moving animal of the group.
- Approaches to cetaceans must be made gently, converging in the direction that the animals themselves are following.
- Approaches must never be made head on, always allowing for the movement of the cetaceans in any direction.
- During the observation a parallel trajectory to the animal, must always be attempted to be maintained.
- Avoid in all cases abrupt changes in direction or velocity.
- Put the motor on idle, at least one minute before turning it off if the vessels stops in order to observe cetaceans. The same is to be done if an animal approaches the vessel.
- Do not start the motor, or increase speed, if an animal is found within 60 meters of the boat.

##### C) Behaviour with Cetaceans:

Abandon the zone if any sign of alarm, change or stress such as abrupt changes in direction or speed, successive dives or exhaling air under water is shown by the animals.

Avoid noises that could bother the animals, as well as emitting sounds to attract them.

Advise authorities of your location in the case of an accidental injury to a cetacean. Do the same in the event of observing a dead floating cetacean.

If two or more vessels approach the same individual or groups, they must communicate amongst themselves in order to coordinate the approaches and maneuvers in a way to minimise repercussions to the animals.

## **Annex II: Permit Request Model**

Asks such things as the accreditation as a tourism company (if applicable), certify that a monitor-guide will be on board, attach the accreditations of the monitor-guide, attach the navigation permits, identify species of cetaceans expected to encounter, description of the vessels(s), name and title of crew and professional experience, location proposed for the activity, duration, frequency and dates of excursions, and, in the case of educational tours, asks that copies of material provided to passengers be attached.

### **CHILE GUIDELINES**

#### **PROTOCOL:**

CONTINGENCY PLAN FOR CETACEAN SIGHTINGS AND STRANDINGS IN THE JURISDICTION OF VALPARAÍSO"

1. Once one has received notification of a sighting and/or stranding of cetaceans (whales and/or dolphins), one should proceed to activate the communication network between the ARMADA DE CHILE, SERNAPESCA and CODEFF (see definitions), with the objective of assembling at the site and confirming the given information.
2. These institutions should assemble at the site in order to identify the species in question, the nature of their presence in the area and their apparent state of health.
3. The area in which the cetaceans are active will be denominated "area of marine restriction" (A.A.M. in its Spanish initials), and will be regulated by the code of conduct of approaching cetaceans (Appendix 1).
4. On the coastline, one will establish an observation area parallel to the movement of the cetaceans. In this zone one will establish a "Permanent Post of CODEFF researchers" (P.P.I.C. in its Spanish initials) which will rely on a permanent guard of the Marine Authority.
5. If the cetaceans are dead, one will proceed to install a perimeter of no less than 100 meters around where the stranded corpses lie. If the cetaceans are alive, one will proceed to act according to the norms of the code of action for stranded animals (Appendix 2).
6. During the permanence of the cetaceans within the jurisdiction of Valparaíso, the scientists of CODEFF will elaborate periodic reports of activity, which will be remitted to the rest of the institutions involved.
7. The ARMADA DE CHILE will furnish a marine patrol, which will be in charge of enforcing the zone in question with the objective of ensuring compliance to the norms, for example to receive and respond to possible denunciations of embarkations, scuba divers or other persons that are transgressing the norms.

8. During the permanence of cetaceans in a period of reproduction or of giving birth and nursing, a maximum of two embarkations (The ARMADA's patrol boat and its zodiac, or inflatable craft) may approach the cetaceans per day. Functionaries of SERNAPESCA and scientists from CODEFF may be present on these embarkations, with the objective realizing all the pertinent studies, such as: photoidentification, the collection of skin samples, acoustic recordings and underwater filming. The periodicity of the approach of the embarkations to the cetaceans will be evaluated according to the behavior the animals exhibit. Once these tasks are realized, no other embarkations should be authorized (unless the first embarkation(s) were unsuccessful or if it is of another institution with scientific objectives, rightly accredited and approved by CODEFF scientists). The embarkations should be realized, when possible, with four days separating one from the next.
9. The signing institutions of this protocol commit to volunteer all their facilities for the later study and analysis if the samples obtained (biopsies, stomach content, osteology, etc.) with the objective of reaching a higher level of knowledge of the species and possible means for their conservation, such as through the elaboration of scientific publications.
10. In the case of dead animals and once rigorous studies are finalized, when the conditions of the site so permit, one will proceed to bury the animal(s) in a predetermined site, so that the bones can be recollected for scientific collections.
11. The ARMADA DE CHILE and SERNAPESCA, through their maritime and fishery authority, respectively, will order, as a means of order and security, those rules considered in the appendices of this protocol, according to each individual case, enforcing their compliance as it conforms to extant legislation.
12. All the information obtained or solicited in reference to the aforementioned activities will be coordinated by the Assessor of the Press of the ARMADA DE CHILE, including communications of the press (written or radial) or interviews by television channels.

#### Definitions:

ARMADA DE CHILE = Armed Forces of Chile

SERNAPESCA = Servicio Nacional de Pesca = National Fisheries Service

CODEFF = Comité Nacional Pro Defensa de la Flora y Fauna = National Committee in Defense of the Flora and Fauna

### I. Appendix 1.

#### **A. CODE OF CONDUCT OF APPROACHING CETACEANS**

1. In the zone, the presence of 2 embarkations of the ARMADA DE CHILE will be permitted. (In accordance with the conditions, a maximum of 2 private or commercial embarkations will be permitted.)
2. The scientists of CODEFF have the prerogative to be present on the embarkations in the zone, be they of the ARMADA DE CHILE or in effect whichever other institution with just authorization.
3. The incursion of persons (scuba divers, private and commercial embarkations) in the proximities of the cetaceans will be **strictly prohibited**. Scuba diving scientists may approach at a minimum distance



of 30 meters and only when supervised by the Maritime Authority and a scientific assessor recommended by CODEFF.

4. Embarkations observing the cetacean(s) should not exceed **30 minutes** as the maximum time for this activity. In the case that more than one cetacean is being observed, they should not be separated not followed. The embarkations should conserve a minimum distance of 300 meters (Figure 1), navigating at a slow and constant speed and avoiding sudden changes in speed and/or direction. Preferentially, embarkations should approach from a posterior-lateral position, adopting a parallel line of travel (Figure 2). If the cetaceans demonstrate a change in behavior, all types of activities should be suspended **immediately**.
5. In the case an embarkation should find itself less than 300 meters from the animals, it should **distance itself slowly** or stop applying speed without releasing the anchor.

For the persons and institutions that should observe and enforce norms regarding cetaceans, they should RESPECT THESE RULES, which conform to international protocols of cetacean protection.

## **COLOMBIA GUIDELINES**

### **GORGONA ISLAND**

Chapter VI, article 17 1995

During the period of time from June to November, inclusive, corresponding to the season that whales are located within the maritime areas of the Gorgona Island Park, the following regulations must be kept in mind:

1. Swimmers and divers can only observe whales from a distance greater than 30 meters.
2. Only six boats will be allowed in the area, including those authorized for diving and that of the enforcement patrol.
3. Whale researchers may have two boats in the zone during each observation.
4. Boats that are observing whales cannot cut off the passage of the whales, nor can they stay with a group of whales for more than a half hour.

#### **ARTICLE 18.**

Smaller boats are obliged to maintain a distance not less than 200 meters between the boat and the whales.

These boats must navigate at a slow and constant speed, without abrupt changes in velocity and direction, or putting the motor into neutral without turning it off.

In case whales approach the boat at a distance of less than 200 meters the boat must move off slowly or stop the movement of the boat without dropping anchor.

When a group of researchers is in the presence of whales, boats must maintain a minimum distance of 400 meters, and if the research boat is stopped and is flying a red flag, this indicates

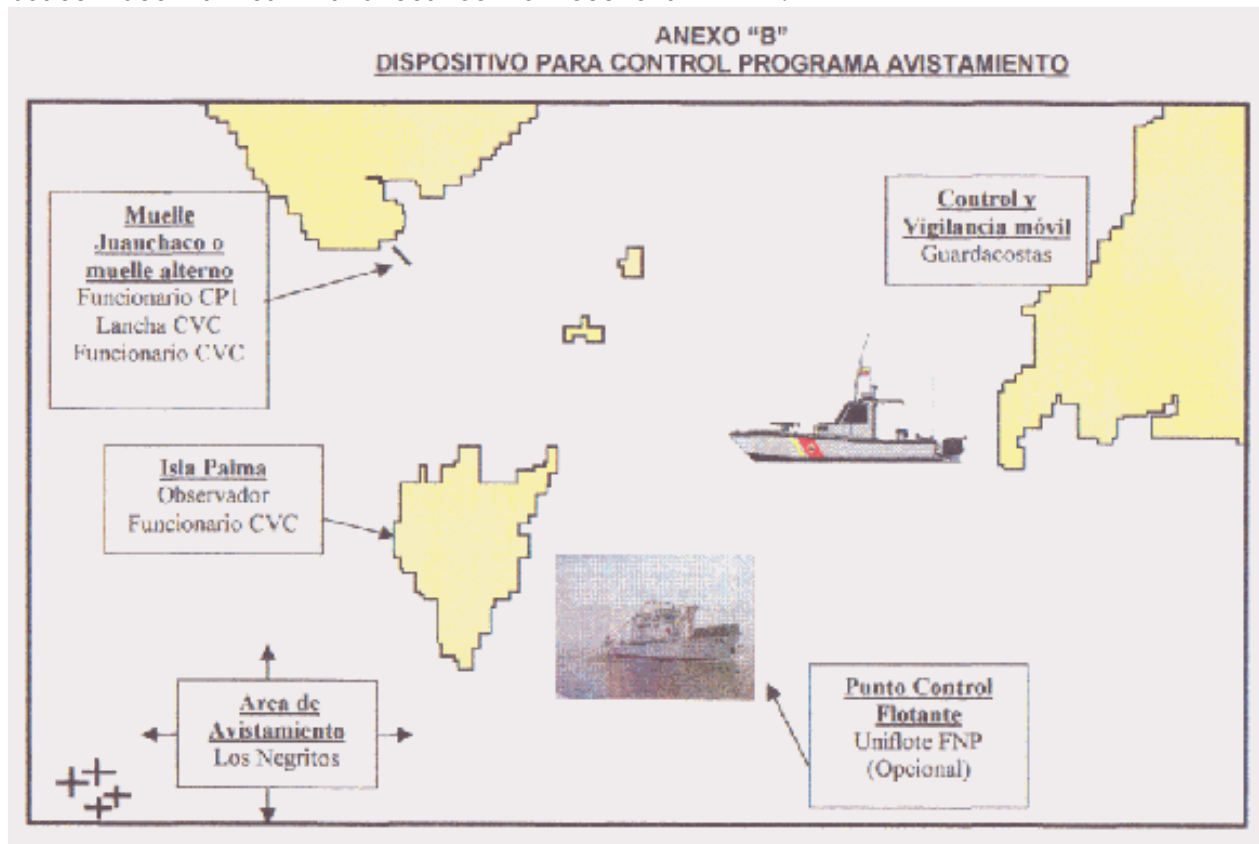
that recordings are being made of the whales, in which case motors must be turned off until otherwise indicated.

If in the zone a mother and calf appear the area must be left immediately at slow constant speed, that does not cause waves, and a minimum distance from the whales of 500 meters must be kept.

ARTICLE 19: Larger boat must abide by the following;

Do not approach any closer than 300 meters to any group of whales. If they appear within a closer distance, the boat must move to the distance designated.

If any research vessel appears or is found, the larger boats must maintain a distance no less than 2 km.



## DOMINICA

### DRAFT CODES OF CONDUCT

The following Marine Mammal Codes of Conduct are a compilation of existing international guidelines and regulations for watching whales that may be applicable to commercial operations in Dominica. These codes of conduct suggest permits for commercial operations and define the criteria for issuing permits, requirements to be satisfied before issuing permits for commercial vessels, land based operations, commercial aircraft operations and behaviour around marine mammals. These include:

**CRITERIA:** Before issuing a permit, the governing authorities shall be satisfied that there is substantial compliance with the following criteria:

1. That the commercial operation should not have any significant adverse effect on the behavioural patterns of the marine mammals to which the application refers.

2. That it should be in the interests of the conservation, management, or protection of the marine mammals that a permit be issued.

3. That the proposed operator, and the operator's staff who may come in contact with marine mammals, should have sufficient experience with marine mammals.

4. That the proposed operator, and the operator's staff who may come into contact with marine mammals, should have sufficient knowledge of the local area and of the sea and weather conditions.

5. That the commercial operation should have sufficient educational value to participants or to the public. Education can be enhanced by a talk on whales, natural history, geology or a comprehensive leaflet.

6. That the commercial vessel meets appropriate safety standards (for example: US Coast Guard or British Department of Commerce).

7. That the appropriate vessel be insured for the passengers that it carries.

8. That the vessel be judged appropriate for whale watching.

**PERMITS:**

Permits for commercial operations should be issued by area, with no more than three commercial vessels operating in any given area on a given day.

**SUGGESTED CONDITIONS GOVERNING ALL COMMERCIAL OPERATIONS AND BEHAVIOUR OF ALL INDIVIDUALS AROUND WHALES AND DOLPHINS:**

We suggest that every commercial operation and every person coming into contact with any class of marine mammals comply with the following conditions:

1. Persons shall use their best endeavours to operate vessels, and aircraft, so as not to disrupt the normal movement or behaviour of any marine mammal.

2. Contact with any marine mammal shall be abandoned at any stage if it becomes disturbed or alarmed.

3. No person shall cause any marine mammal to be separated from a group of marine mammals or cause any members of such a group to be scattered.

4. No rubbish or food shall be thrown in the water near marine mammals.

5. No sudden or repeated change in the speed or direction of any vessel or aircraft shall be made except in the case of an emergency.

6. Where a vessel stops to enable the passengers to watch any marine mammal, the engines shall either be placed in neutral or allow engines to idle for one minute before turning off.

7. When operating at an altitude of less than 600 meters, no aircraft shall be closer than 500m horizontally from a point above any marine mammal unless in the process of taking off or landing.

8. No person or vessel shall approach within 50m of any marine mammal or group of marine mammals.

9. No person or vessel shall cut off the path of a marine mammal or prevent a marine mammal from leaving the vicinity of any person or vessel.

10. The master of any vessel less than 400m from any marine mammal shall use their best endeavours to move the vessel at a constant, slow speed, no faster than the slowest marine mammal in the vicinity, or at an idle, no wake speed.

11. Vessel departing from the vicinity of any marine mammal shall proceed slowly at idle or no wake speed until at least 400m from the nearest marine mammal.

12. No aircraft shall be used to watch whales.

13. No swimmer or diver shall enter the water in the vicinity of marine mammals.

14. Do not approach animals that appear to be resting or continually avoiding the vessel.

15. A log of daily activities including cases of infractions should be recorded. Any infractions should be reported immediately to the department of Fisheries.

**SUGGESTED CONDITIONS APPLYING TO SPERM WHALES:**

1. No swimmer or diver shall enter the water in the vicinity of sperm whales.

2. No vessel shall approach within 50m of a sperm whale or a group of sperm whales.

3. If a whale or group of whales approaches a vessel, the master of the vessel shall put the vessel and neutral and turn off the engine.

4. No vessel shall approach within 300m of any whale or group of whales for the purpose of enabling passengers to watch the whale, if two vessels are already positioned to watch the whale or group of whales.

5. Where 2 vessels approach an unaccompanied whale, the masters concerned shall co-ordinate their approach and maneuvers in compliance with existing regulations.

6. When within 100 m of a whale, slowly approach at idle or no wake speed.

7. When within 100m of sperm whales, approach the whales very slowly and cautiously from behind or from an angle. Do not approach sperm whales from the front or closely parallel whales; they will invariably take avoiding action.

8. Where a sperm whale abruptly changes its orientation or starts to make short dives of about 1 to 5 minute duration without showing its tail flukes, all vessels shall abandon contact with the whale.

9. Do not suddenly accelerate, go into reverse or use outboard motors near whales, as they are extremely sensitive to sudden noises and sights.

10. Do not approach calves when alone on the surface.

11. Do not stay with a whale or group of whales for more than 3 of the whales' dive sequences.

12. Vessels should behave so that no whale or group of whales is visited for more than 3 of the whales' dive sequences per day.

13. Do not stay with a social group of sperm whales for more than 15 minutes.

14. Do not go upwind of the whales and drift down on them.

15. Do not use helicopters to watch the whales.

16. When departing from the vicinity of the whales, proceed slowly or at no wake speed until at least 400m from the nearest whale.

**SUGGESTED CONDITIONS APPLYING TO DOLPHINS:**

1. No swimmer or diver shall enter the water in the vicinity of dolphins.

2. No vessel shall proceed through a pod of dolphins.

3. Do not chase dolphins, whenever possible, let them approach you.

4. No vessel shall approach within 50m of a pod of dolphins.

5. No vessel shall approach within 300m of a pod of dolphins, for the purpose of enabling passengers to watch the dolphins, if two vessels are already positioned to enable the passengers to watch the dolphins.

6. Where 2 vessels approach an unaccompanied pod of dolphins, the masters concerned shall co-ordinate their approach and maneuvers in compliance with existing regulations.

7. Vessels shall approach dolphins from a direction that is parallel to the dolphin and slightly to the rear of the dolphin.

8. Do not separate dolphins in a pod from one another.

9. Do not stay with a pod of dolphins for more than 20 minutes.

**SPECIAL PERMITS:**

On occasion, activities such as research, or media coverage may require individuals or vessels to approach whales or dolphins at a distance closer than 50m. In such cases, we suggest that special permits, issued by the

Department of Fisheries, be required. Criteria for the evaluation of such permits should be drafted by a special "task force". Members of the task force should include representatives from the Department of Fisheries, Department of Tourism, Dominica Conservation Association, National Development Corporation, Dominica Water Sports Association and marine mammal specialists.

## **DOMINICAN REPUBLIC**

### **GUIDELINES**

#### **Samana Bay**

In 1994 in Samana, as a result of a Whale Tourism Workshop in 1992 organized by Centro para la Conservacion y Ecodesarrollo de la Bahia de Samana y su Entotrio (CEBSE) and Centro de Investigaciones de Biologia Marina (CIBIMA), an Agreement was reached between boat owners that conduct whale watching tours. This agreement has a wide acceptance among the different sectors of the community and considers the following:

#### 1.0 Whale Watching in Samana

- 1.1 A Vigilance Unit was created. It will coordinate the actions of the boat captains involved in whale watching and will assure the fulfillment of the Agreement.
- 1.2 A Boat Captain Committee was created. It will report any anomaly in the whale watching activities to the Vigilance Unit on a weekly basis.
- 1.3 The group of boat captains as a whole will evaluate the results of each year's whale watching season with the objective of making the activity more efficient while causing the least impact possible.
- 1.4 Boat captains and crew will continue to be trained. Environmental education programs directed towards the whale watching tourists will also be developed.

#### 2.0 Whale Watching Measures

- 2.1. No more than one large boat (greater than 30 ft/9 m) and 2 small boats (less than 30ft/9m and larger than 23 ft/7 m) are allowed to observe whale or group of whales at the same time. Each whale watch vessel must have a permit from the National Parks Directorate (DNP).
- 2.2 Vessels must stay at least 270 feet (80 m) from a group of whales that includes a calf and 165 feet (50 m) from adult whales.
- 2.3. Vessels waiting to observe a whale or group of whales must maintain a distance of 1500 ft (500 m).
- 2.4. When a vessel reaches the regulated distance, the engine must be put in neutral, and it must wait. The engine must be left running at all times.
- 2.5. A vessel may not stay with a whale or group of whales for more than thirty minutes.
- 2.6. After passing Cayo Levantado, the velocity of the whale watching vessels should not exceed 5 knots (9 km/h). If a vessel encounters whales further into the Bay (before Cayo Levantado) its speed should be immediately lowered to 5 knots.
- 2.7. It is prohibited to swim or dive with the whales.

### **REGULATIONS**

## **Silver Bank Whale Sanctuary**

The Sanctuary Committee (Comision Rectora del Sanruario del Banca del la Plata) is the institution responsible for the administration of the Silver Bank Sanctuary and for the protection of the humpback whales and other marine mammals (Decree No. 319, 1986) and Internal Regulations of the Governing Committee.

### 1.0 Visits to the Silver Bank Sanctuary

- 1.1 In order to visit the Sanctuary for research, education recreation (whale watching), sporting, or other purposes, all vessels must have a permit from the Sanctuary Committee. This permit must be authorized by the Executive Director and the Secretary of the Sanctuary Committee (see Internal Regulations of the Governing Committee).
- 1.2 The persons responsible for the vessel must fill in an application that includes information on the purpose of the visit, the time that will be spent in the Sanctuary, the number of passengers on the vessel, dates, as well as any specific activities included in the trip.
- 1.3 The application form can be obtained in the headquarters of the Sanctuary Committee as well as in the premises of the different Delegations of the Committee.
- 1.4 The vessels must display, in a visible place, a copy of their permit and the regulations of the Sanctuary Committee of the Silver Bank Humpback Whale sanctuary.
- 1.5 Given the case that the purpose of the visit is a research and/or study project, the visitor(s) must deliver a report of the activities and the results to the Sanctuary Committee, as well as a copy of any publication, video, etc. Elaborated during the study.
- 1.6 The Sanctuary Committee will establish a visitation fee dictated by the Internal Regulations of the Committee.
- 1.7 The Sanctuary Committee may limit the number of vessels present simultaneously in the area.
- 1.8 The vessel that visits the Sanctuary for whale watching must, when possible, take on a representative of the Committee with the purpose of collaborating in whale research and conservation.
- 1.9 The use of the Polyxeni as lodging for people is not permitted.
- 1.10 The Port Authority will not dispatch any vessel to visit the Silver Bank Sanctuary if it lacks the permits of the Sanctuary Committee.
- 1.11 All vessels must attain to marine safety and navigational regulations predisposed by Dominican law.

### 2.0 Protective Measures for Whales and other marine Mammals in the Sanctuary

- 2.1 The capture, hurting, killing, persecution or harassment of any mammal is prohibited.

Paragraph: it is understood that by harassment is meant any activity that affects the normal behavior of the whales. This infers that the animal is being harassed when any sudden change occurs in its behavior, such as:

- a) radical changes in swimming direction
- b) changes in breathing intervals
- c) abandonment of area where first observed
- d) evasive conduct

- 2.2 The discharge or deposition of any contaminants, explosives, or

- electrical equipment, as well as their use for fishing is prohibited.
- 2.3 The dredging, perforation, or any type of activity that disturbs the ocean floor, as well as the construction of any structure different to those used for auxiliary navigation, is prohibited without the corresponding permit from the Sanctuary Committee.
  - 2.4 Flights of any nature cannot be made at height under 300m (1000 feet) when at a maximum horizontal distance of 300m away from the whale.
  - 2.5 Hydroplane landing is not permitted in any area where a whale is present.
  - 2.6 Fishing activities by national vessels is permitted. Nets may not be used from November to May in the Sanctuary area as well as in the adjacent zones occupying a diameter of 10 nautical miles away from the limits of the Sanctuary.

### 3.0 Whale Watching Regulations

The Silver Bank is an important reproduction and weaning area for the North Atlantic humpback (*Megaptera novaeangliae*). The Sanctuary Committee has established a set of rules or regulations designed to protect this endangered species and to guarantee the security of the people interested in observing them.

- 3.1 Whale season. The humpback whale season extends every winter from December to April.
- 3.2 The vessels visiting the Sanctuary must obey the following regulations:
  - 3.2.1 The vessel and/or their occupants must not come any closer than 50m from where the whales are found, and less than 80m when in the presence of mothers with their calves.
  - 3.2.2 In the whale watching area, only one vessel may be observing the whales. The presence of various vessels together, be they small or large, confuse the whales.
  - 3.2.3 Each vessel must not stay longer than thirty minutes with any given group of whales.
  - 3.2.4 Each vessel must not make any sudden changes in direction and/or speed when near the whales.
  - 3.2.5 No objects may be thrown into the water, and no unnecessary noise may be made when near the whales.
  - 3.2.6 If the whales come closer than 100m from the vessel, the motor must be put in neutral until the whales are seen receding from the vessel.
  - 3.2.7 The vessel cannot interfere with the swimming direction or the natural behavior of the whales. (Whales can leave their natural habitat if harassed).
  - 3.2.8 If any vessel violates the regulations in any way, the Sanctuary Committee will ask the Fisheries Department of the Ministry of Agriculture and the Navy Secretariat Headquarters to retain their permit for fishing or access to the Sanctuary for a determined time period, and in the case the felony is repeated, to cancel the vessel's permit.

Note: The protection of the humpback whales will always be viable while they are found in Dominican waters.

## **ECUADOR REGULATIONS**

**Art. 1:** The *Comisión de Supervisión de la Observación de Ballenas* (Commission for the Supervision of Whale Watching), in accordance with *Acuerdo Interministerial* 026 dated 4 March 2002, includes the *Subsecretaría de Gestión Ambiental Costera* or its delegate, who will preside over it; the *Subsecretario de Turismo del Litoral*, or its delegate; and the *Director General de la Marina Mercante y del Litoral*, or its delegate. The Commission agrees to establish the present regulations, in accordance with Item A of the Second Paragraph of Article 1 in said *Acuerdo Interministerial*.

**Art. 2: Area of Application.**— The present regulations will be applied to whale and dolphin watching activities in the Ecuadorean shores, with the aims of tourism and /or research.

**Art. 3: Objective.**— These regulations will govern whale and dolphin watching activities, and they especially will:

- a. Dictate guidelines and procedures for whale and dolphin watching that should be followed by every jurisdictional person via their legal representative who carry out this activity;
- b. Safeguard the physical integrity of passengers, crew members and guides involved in this activity;
- c. Promote ecotourism;
- d. Guarantee the protection and conservation of whales and dolphins in Ecuadorean waters;
- e. Control whale and dolphin watching activities and inform the authorities of violations of guidelines and/or regulations.

**Art. 4: Fulfillment of requisites.**

a. Vessels:

Before granting authorization to weigh anchor, and in agreement with the Código de Policía Marítima y Resoluciones de la Dirección General de la Marina Mercante y del Litoral, the Capitanías de Puerto y Retenes Navales, will request the following from the vessel operators:

- Traffic permit granted by DIGMER
- Valid vessel license
- Valid personnel licenses
- List of passengers and their nationality
- Display an orange phosphorescent flag (1m long x 0.5 m wide) for tourist vessels, and red / yellow for research vessels, in the most visible place on the vessel
- Have life jackets in numbers that equal or exceed that of people on board (tourists, guides, crew members)
- Have a tour guide (I
- Boat capacity will be determined by DIGMER.

To register the vessel:

- Be a member of the Chamber of Tourism in the local jurisdiction and pay the corresponding fees by due date.
- Be sponsored by a tour operator authorized by the Ministry of the Environment and by the Ministry of Tourism, to record and control these natural resources.

b. Tour Guides:



- Certified to prove attendance to the training course on whale and dolphin watching (and other species) and resource management issued by the Ministry of the Environment and Ministry of Tourism.
- Certificate from the basic OMI course issued by DIGMER
- Tour Guide Credential issued by the Ministry of Tourism for whale watching.

c. Tour Operators at the national level:

- Registration from the Ministry of Tourism.
- Annual operating license issued by the Ministry of Tourism or by the City Government with a current Decentralization Agreement with the Ministry of Tourism.

The following information should be provided by the tour operator to the *Capitanía* together with the passenger list:

- List of passengers and their nationality
- Reference to the insurance policy for passenger accidents
- Vessel name and license number
- Name of guides and vessel crew

**Art. 5: Authorized ports to weigh anchor:**

- a. Whale and dolphin watching trips will be authorized only where there is a *Capitanía* or naval office.
- b. Permits to weigh anchor should be issued on a daily basis.

**Art. 6. On Restrictions.**

The tour guide should designate the observation area in conjunction with the Port Captain. To comply with this rule, the Port Captain or the Chief of the Naval Office will authorize only three trips every half hour to observe whales, and three trips every two hours to observe dolphins. The number of vessels that remain in the same observation area with the same group of whales should be limited to three in call cases.

**Art. 7. On Observation Rules.**

To avoid disturbance to whales and dolphins, the crew should abide by the following rules:

- a. Speed and distance of approach:
  - During approach: speed should not exceed 5 knots when at 400m from a group of whales and at 200m from a group of dolphins.
  - The vessel should keep a minimum distance of 100m from a group of whales and 50m from a group of dolphins.
  - The vessel speed should be adjusted to the speed of the individual (whale or dolphin) that is further back.
  - If a whale or group of whales approaches the boat, the vessel should be stopped, engine should be set to neutral, should wait for the normal behavior of the whale or group of whales, and wait until the animal or group moves away to the minimum distance (100m). If a group of dolphins approaches the vessel it is better to continue moving at the same speed and not change direction.

- Sudden changes in speed and direction in the vicinity of a group of whales or dolphins should be avoided. It is advised not to turn the engine off during the observation period.
  - When leaving the animals, the increase in speed should be gradual, using the same approach speed until the 400m distance is reached. The vessel should leave the animal in the direction opposite to its direction of travel.
- b. The observation time of the same group of whales or dolphins should not exceed 25 min.
- c. Other specifications that the vessels should follow are:
- The animals should be approached from the sides or the back relative to their direction of travel.
  - If a vessel arrives to an observation area where there are three authorized vessels observing the same group of animals, the new vessel should abide by the 400m minimum distance rule and wait until one of the other boats leave the area, or preferably should search for another group of animals.
  - Vessels should not cut the direction of travel of the animals, circle them, or place themselves in the middle of a group or between a mother and her calf.
  - It is forbidden to swim or dive with whales or dolphins.
  - Do not try to feed dolphins, and do not throw garbage to the sea.
- d. These regulations are binding on all national or foreign vessels. Ignoring these regulations will result in the penalties described in the Law, in accordance with Agreement # 0026 dated 4 March 2002.

## **FRANCE<sup>25</sup>**

### **GUIDELINES**

#### **There are no guidelines or regulation on a national level**

In Normandy, the GMN created a respectful code of conduct towards bottlenose dolphins which includes no pursuing. There is no limit of time when following a group (maximum 7 hours). There should not be more than 2 boats on the same group of dolphins. Approach distance is between 10 and 50m unless the dolphins do not come to "play".

## **GALAPAGOS ISLANDS**

### **GUIDELINES**

A pamphlet for norms on whale watching tour groups in the Galapagos has been compiled by Hal Whitehead and Godfrey Merlen<sup>26</sup>.

The pamphlet recommends that:

1. Vessels do not aggressively approach whales.
2. Mask and snorkel be used if the chance to swim with whales occurs, as whales do not seem to like the air bubbles from scuba.
3. Enter the water as quietly as possible.

The pamphlet suggests that since different species of whales have different behavior patterns they should be treated in varying ways. For Bryde's and humpback whales:

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<sup>25</sup> \_\_\_\_1994. From: Report on Responses to the Whale Watching Questionnaire prepared by the Secretary to the Commission. IWC/46/28. 46th Meeting Int. Whal. Commn.

<sup>26</sup>Whitehead, H. and G. Merlen. 1988. Norms for whale-watching tour groups in the Galapagos. Produced by Parque National Galapagos and Estacion cientifica Charles Darwin.

1. If a whale is approaching the vessel, or turning nearby, stop or maintain a slow and steady course.
2. If a whale is moving in a straight line, it is sometimes possible to parallel, with the boat keeping the same course and speed as the whale, but do not approach the animal.

Sperm whales are more sensitive to interference than other species of large whales and to maximize the chance of seeing them clearly boats should:

1. Maneuver with great care near sperm whales.
2. If whales are heading towards the boat, then stop the boat.
3. If they are heading away, follow behind them very slowly and cautiously at less than 2.5km. If approached too fast, they will quickly dive.
4. Do not approach sperm whales from the front or side, they will invariably take avoiding action.
5. Do not suddenly accelerate, go into reverse or use outboard motors near the whales as they are extremely sensitive to sudden noises and sights.

For beaked whales.

1. Do not approach the whales aggressively, they will almost certainly disappear from view.
2. When near the whales, stop the boat entirely.

For killer whales:

1. Do not approach the whales aggressively. If approached cautiously, it may be possible to parallel them.

For pilot whales or false killer whales:

1. Handle the boat gently with no sudden change in direction or acceleration. It is possible both species may come to the boat.

For dolphins:

1. There is little point in actively approaching bottle-nosed dolphins when within 400m of them as they will approach the boat if they wish to.
2. For other species (such as the common or Risso's dolphin, do not chase them as they appear to panic and flee when aggressively approached.

In summary:

When within 400m:

1. If they are traveling more than 3 knots, do not travel faster than them. If they are traveling at less than 3 knots, do not travel faster than 3 knots;
2. Do not actively approach any whale except from behind, and then slowly. Either parallel the whale's movement or (especially for sperm whales) stay behind;
3. Except in emergency (e.g., you are about to hit a whale) do not accelerate suddenly or go into reverse;
4. If the whales are moving consistently at more than 4 knots, stop following after 10 minutes- you may be chasing them;
5. Do not steer the boat to separate whales from one another; these may be special social groups or mothers with calves.
6. Do not try to scuba dive (with compressed air) around whales;
6. Do not use high-speed launches with outboard motors near whales, especially sperm whales.

## **GUADELOUPE**

### **Signature of the Code of Conduct for watching whales in Guadeloupe**

The following code of conduct has been approved and signed by the French local authorities, fishermen representatives, operators and the local conservative NGO.

Considering the economic potential for sustainable whale-watching operations in Guadeloupe, as well as the educational value of such activities as far as the conservation of the marine environment is concerned,

Considering that whale-watching activities can efficiently help develop scientific research on cetaceans in the area,

Convinced about the need to make operators as well as their clients responsible for the protection of the environment,

Attempting to prevent any adverse and negative effect of the unscrupulous development of whale-watching tourism on cetaceans and visitors alike,

Willing to ensure the sustainability of the activity thanks to the introduction of a "Code of non-disturbance" aimed at ensuring the well-being of the animals,

Understanding the need for monitoring the impact of whale-watching on the cetacean populations involved, as to document the need for introducing an official licensing system,

Aware that the activity has to be included in the general development of the use of marine resources,

Aware of the need to educate the public about the behaviour of cetaceans and to make data available to scientists and researchers, and willing to become partners in the process,

The institutional bodies and the contracting operators involved,

Agreed on the following terms :

## **I. TERMINOLOGY**

In the present Code of Conduct,

By "disturbance" we understand any action, omission or act of neglect which may affect or seems to affect the normal behaviour of the animals, or which may prove detrimental to their health.

By "operator" we understand any physical person, society or association owning a vessel and conducting whale-watching operations on a commercial basis.

By "institutional body" we understand any public authority or institution willing to support in one way or another the development of whale-watching activities in Guadeloupe.

By operator, we understand any moral person that supports the current initiative.

By "observation" we understand the action of approaching cetaceans using a vessel.

## **II. TECHNICAL GUIDELINES WITH REGARD TO APPROACHING CETACEANS AT SEA**

In order to minimize the stress on individual animals as well as the negative effects on groups and their social behaviour, the operators agree to abide to the following rules :

1) As soon as the first cetacean is spotted, the speed will be reduced and maintained to six knots, in order to :

- reduce the noise of the vessel as much as possible,
- keep the movements of the vessel fully under control and avoid any risk of colliding with cetaceans.

2) When getting close to cetaceans, sailboat pilots will start the engine and keep it in neutral gear, as to make the animals aware of their presence and avoid to surprise them.

3) Within a radius of 500 m from cetaceans, the pilots will not approach the animals directly but will circle around them from behind, in order to be able to evaluate the extend of the area of presence of the animals, and analyze their behaviour.

a) The cetaceans are not moving and stay close together at or near the surface, being active or not :

- reduce any source of noise to a minimum
- approach slowly, maintaining an angle from behind
- do not get closer than 100 meters

It is of primeval importance that the social activities of cetaceans are respected (mating behaviour, social hunting, calf suckling, social feeding, etc).

During the reproduction period (from December up to May), the ritual display of larger cetaceans can prove hazardous for boats approaching too close, one shall remain particularly careful and maintain the necessary distance from the animals.

b) The cetaceans are moving, alone or in a group

- if they are moving slowly, stay behind them, a little bit on their side, and follow a parallel route
- do not get in front of the animals
- do not approach closer than 50 meters
- do not change the route of the vessel and do not change its speed
- if the animals choose to come close to the vessel, reduce speed, remain in neutral gear and wait for all the animals to pass-by (one shall remain very careful, especially with larger whales moving slowly)
- avoid to move backwards when more than one cetacean is close by (except in an emergency)
- do never get close to calves who are not with their mother
- if a calf comes close to the boat, stop and remain in neutral gear : younger cetaceans are very inquisitive and are regularly hurt by propellers.
- do not separate groups : so, keep a regular route at a slow pace.

4) If the cetaceans show any sign of disturbance, such as :

- sudden changes in direction
- sudden, nervous and abnormal dives
- flipper slappings several times in a row (sperm whales)

Leave slowly the area.

5) One shall not stay longer than 30 minutes close to cetaceans

- 6) In a case when several vessels are present at the same time in the observation area:
- a perfect co-ordination between the different skippers will be the rule. Pilots will use VHF contacts as to approach the cetaceans in the same, uniform direction.
  - do not circle the animals and always leave an escape route open to them
  - between the different operators involved, try to initiate a planning system of the routes and schedules out at sea, as to minimize the presence of several vessels at the same time in the same area
- 7) Do not feed the animals, as this can cause infections and alter their natural feeding behaviour. Never interfere with their normal behaviour (do not try to involve them in plays using any object whatsoever)
- 8) Do not swim in the presence of animals, as this can be risky for the animals and the swimmers alike (transmissions of parasites and risks due to the presence of swimmers near large animals such as whales)
- 9) When leaving the area or when the cetaceans dive, wait for about five minutes before putting the engine in gear ; then proceed slowly for at least 400 metres.
- 10) Never chase cetaceans.

### **III - THE ROLE OF THE OPERATORS**

Any operator candidate to sustainable whale-watching activities needs to be fully aware of the risks involved with regard to the animals and their marine environment. The operator commits to fully respect the activities and the working environment of fishermen. In particular, the operator will stay remote from fishing attractive dispositive (FAD)

His/Her activity is,

- organizing commercial tours out at sea in order to peacefully watch cetaceans

In the practice, he/she will :

- operate vessels which are in good technical and mechanical conditions, are regularly maintained, use engines fitted with noise reduction devices and pollution limiter, and which meet the official safety requirements
- limit the number of passengers in respect of the regulations, and provide passengers with adequate information and safety during the tour
- avoid throwing any object, solid or liquid waste in the sea during the excursion, as to avoid any pollution of the marine environment.

The pilots will get adequate education in order to:

- act in a responsible way
- respect of the marine environment
- become experienced in approaching carefully cetaceans out at sea, and behave in order to minimize disturbances to the animals and avoid any risk for the passengers.

One trained nature-guide (or more according to the size of the vessel), with a good knowledge about cetaceans, their protection and the different aspects of the conservation of the marine life, will be present on every vessel with educational materials. A proper and expert information to passengers will give an added value to the tours and contribute the protection of the environment.

The information to passengers should be realistic and honest. Passengers will be informed that watching cetaceans can never be fully guaranteed : this will be explained with a short lecture on board and information pannels, including :

- photographs
- explicit mention that cetaceans involved are true wild animals and that their presence can not be guaranteed
- a report about the observations made during the previous excursions
- relevant information about the species involved and the marine environment
- relevant information about the conservation of cetaceans at national and international levels
- information about the weather conditions
- evidence of the "Ecotourism Label" granted by the relevant local authorities, certifying that the operator has signed the present Code of Conduct, that he/she is taking part to study activities and that a specialized nature-guide (or more) is (are) present on board.

Under any circumstances, the operator will give the priority to the well-being of cetaceans, and include the message of conservation in all information provided.

The operator will provide passengers with an evaluation form (questionnaire), which will allow them to express comments and remarks about the tour.

The form will mention the independant address where forms should be sent back.

#### **IV - MODIFICATIONS**

The present Code of Conduct may be re-actualized according to the evolution of whale-watching activities in the area and/or to the results of ongoing study and monitoring of cetaceans.

### **HONG KONG VOLUNTARY GUIDELINES FOR DOLPHIN WATCHING**

The following Code of Conduct was developed by the Marine Mammal Conservation Working Group, an advisory body to the Agriculture, Fisheries, and Conservation Department of the Hong Kong SAR Government. At present, the Code is voluntary.

For dolphin-watching, the general rule is:

Look from a distance, and do not seek to contact, touch, feed or harm dolphins in the wild.

Maintain forward progress at a slow, steady speed or stop with no sudden course changes. Boat speed should not exceed 10 knots.

Only one dolphin watching vessel should be within 500 meters of a group of dolphins.

Always slow down to no-wake speed, or stop if animals appear directly ahead within 100 meters.

Never approach dolphins head on; approach at an angle.

Never conduct reverse throttling in the vicinity of dolphins.

Never chase or cut across the course of dolphins, separate mothers and calves, split up groups or 'corner' dolphins between boats, nets or shore.

Never attempt to touch, swim with, or feed the dolphins.

Do not litter or dispose of any fuel, oil or other pollutants in the water.

Respect the dolphins and let them make the choice to approach or flee.

If a group of dolphins is difficult to observe and elusive, leave them alone and try to find a more cooperative group.

When observing, always parallel the dolphin's course at slow speed.

When observing dolphins which are following pair trawlers, the following needs to be observed:

i. the position of the dolphin watching vessel relative to the marker buoy of the trawl net should change as slowly as possible.

ii. after trawlers have hauled up the net, do not move away immediately or at high speed. Move away from the area at low speed very cautiously and ONLY after the dolphins have dispersed.

## **INTERNATIONAL WHALING COMMISSION**

A major new development in the IWC's involvement in whale watching as a sustainable use of cetacean resources. In 1993 the IWC invited Contracting Governments to undertake a preliminary assessment of the extent, and economic and scientific value of whale watching activities. These reports on the value and potential of whale watching were consolidated by the Secretariat and considered by a Working group at the 1994 meeting. As a result, the IWC has reaffirmed its interest in the subject, encouraged some scientific work and adopted a series of objectives and principles for managing whale watching proposed by the Scientific Committee. In 1996 it adopted a resolution that underlined the IWC's future role in monitoring and advising on the subject. The IWC Scientific Committee has agreed the following general guidelines for whale watching:

### **General Principles for Whale Watching**

#### **(1) Manage the development of whale watching to minimise the risk of adverse impacts:**

- (i) implement as appropriate measures to regulate platform numbers and size, activity, frequency and length of exposures in encounters with individuals and groups of whales;
  - management measures may include closed seasons or areas where required to provide additional protection;
  - ideally, undertake an early assessment of the numbers, distribution and other characteristics of the target population/s in the area;



- (ii) monitor the effectiveness of management provisions and modify them as required to accommodate new information
  - (iii) where new whale watching operations are evolving, start cautiously, moderating activity until sufficient information is available on which to base any further development.
  - (iv) implement scientific research and population monitoring and collection of information on operations, target cetaceans and possible impacts, including those on the acoustic environment, as an early and integral component of management;
  - (v) develop training programs for operators and crew on the biology and behavior of target species, whale watching operations, and the management provisions in effect;
  - (vi) encourage the provision of accurate and informative material to whale watchers, to:
    - developed an informed and supportive public;
    - encourage development of realistic expectations of encounters and avoid disappointment and pressure for increasingly risky behavior.
- (2) Design, maintain and operate platforms to minimize the risk of adverse effects on cetaceans, including disturbance from noise:**
- (i) vessels, engines and other equipment should be designed, maintained, and operated during whale watching to reduce as far as practicable adverse impacts on the target species and their environment;
  - (ii) cetacean species may respond differently to low and high frequency sounds, relative sound intensity or rapid changes in sound;
    - vessel operators should be aware of the acoustic characteristics of the target species and of their vessel under operating conditions; particularly of the need to reduce as far as possible production of potentially disturbing sound;
  - (iii) vessel design and operation should minimize the risk of injury to cetaceans should contact occur, for example, shrouding of propellers can reduce both noise and risk of injury;
  - (iv) operators should be able to keep track of whales during an encounter.
- (3) Allow the cetaceans to control the nature and duration of 'interactions':**
- (i) operators should have a sound understanding of the behavior of the cetaceans and be aware of behavioral changes which may indicate disturbance;
  - (ii) in approaching or accompanying cetaceans, maximum platform speeds should be determined relative to that of the cetacean, and should not exceed it once on station;
  - (iii) use appropriate angles and distances of approach; species may react differently, and most existing guidelines preclude head-on approaches;
  - (iv) friendly whale behavior should be welcomed, but not cultivated; do not instigate direct contact with a platform;
  - (v) avoid sudden changes in speed, direction or noise;
  - (vi) do not alter platform speed or direction to counteract avoidance behavior by cetaceans;
  - (vii) do not pursue, head off, or encircle cetaceans or cause groups to separate;

- (viii) approaches to mother/calf pairs and solitary calves and juveniles should be undertaken with special care there may be an increased risk of disturbance to these animals, or risk of injury if vessels are approached by calves;
- (ix) cetaceans should be able to detect a platform at all times;
  - while quiet operations are desirable, attempts to eliminate all noise may result in cetaceans being startled by a platform which has approached undetected;
  - rough seas may elevate background noise to levels at which vessels are less detectable.

**ICELAND**  
**GUIDELINES**  
**The Húsavík Whale Centre**

**Approaching the whales:**

When a boat approaches a whale, the main engines should be cut back and let idle.

If a whale-watching boat is already near the whale or whales, the approaching boat should not come closer than 2-300 meters until the first boat leaves or indicates that it is safe to approach.

Do not approach a whale head on or from directly behind.

The best approach to a whale is slowly from the side and slightly behind.

When a boat approaches a whale it should not go closer to it than 50 meters.

If the whale approaches the boat, the propeller should be stopped while the whale is near the boat.

Cause as little noise and disturbance for the animals as possible.

A good idea is to let the engines idle and let the boat drift when approaching the whale. It might be good to turn the engines completely off if the whale wishes to approach the boat. (Passengers can appreciate the quietude better and listen to the whale blowing)

Do not run the engine and propeller at full power in the vicinity of whales nor make sudden directional changes.

Avoid chasing the whales. If a whale shies away from the boat, then cease (following this whale) and look elsewhere.

If dolphins come under the boat and in front of the bow, it is alright to maintain speed 4-6 mph (miles per hour) to let the dolphins play in the wave from the bow. Point out to the passengers to look under the bow when dolphins are in front of the boat.

Do not throw trash to the whales or into the sea.

Avoid sudden changes in direction when the animals are close to the boat.

Memorise landmarks or locations on land to pinpoint the whales better.

Do not stay too long near the whales, it may be good to seek other grounds to find other animals.

## INDONESIA

### WATCHING WILD WHALES AND DOLPHINS WITH MINIMAL DISTURBANCE IN INDONESIAN WATERS.

Watching and swimming with whales and dolphins in their natural environment is an exhilarating and unforgettable experience. However, it is very difficult to ensure that the encounter takes place on the whale or dolphins' terms and is not an intrusive or stressful experience for what are, after all, wild animals. Anyone who runs commercial dive/nature tours and frequently comes across whales and dolphins (collectively called cetaceans) should be concerned about the welfare of this most important 'asset' - the whales and dolphins themselves. We all have the responsibility to minimise disturbance and ensure their wellbeing by approaching discreetly and following a few common sense rules. Whale watchers themselves are also becoming more and more aware about the threats to whales and dolphins. Often clients do not want to be part of a whale watch encounter which disturbs the animals - they will ask difficult questions such as: "Are we bothering that mother and calf?" "Why do they dive every time we get close?" "Why are the dolphins changing direction - are they trying to avoid us?" Bad reputations stick and they also travel around the globe amazingly quickly. All too often, wild whales or dolphins are repeatedly disturbed by boats attempting to get a better camera angle or put swimmers in the water with them. This quickly turns cetacean watching into cetacean harassment. Also, whales and dolphins are powerful animals and are capable of seriously injuring people in the water. Competent, careful boat handling, within a framework of regulations, always results in better whale watching. Fleeing whales are no fun to watch and so both the whale watchers and the whales benefit from responsible whale watching.

#### **A CODE OF CONDUCT FOR WHALE AND DOLPHIN WATCHING IN INDONESIA.**

There is no international set of regulations for whale watching. This is because it is not possible to develop regulations which are appropriate for all species and situations in all countries. Regulations vary from one place to another according to many different factors. However, there are certain elements that should be included in every case.

The following points are sensible, science-based guidelines. If this **Responsible Whale Watching Code of Conduct** is properly adopted, they will permit whale watching to be undertaken or continued without harm to individual whales, groups of whales, or populations being watched:

1. **Minimise speed** (no-wake speed) and avoid sudden changes in speed, direction and noise.

2. Adhere to a maximum **approach distance of 100m** for whales or **50m** for dolphins –the marine mammals can of course approach a stationary boat as close as they like.
3. **Minimise noise** from all sources (e.g. do not rev engines).
4. **Never pursue, encircle or separate whales.**
5. Do not approach the whales **directly from the front or back** and avoid approaching on a collision-course.
6. Do not try to feed the whales and dolphins, and do not throw any rubbish overboard.
7. **Allow whales and dolphins to control the nature and duration of the 'encounter'.**
8. Allow additional distance for **mother and calf** pairs.
9. Don't be tempted to have a closer look at **special behaviours** such as feeding or mating – this may be the primary reason why the whale are there in the first place and any disturbance could be detrimental to this.
10. Consider the **cumulative impacts** on whales of boat numbers and time spent with the animals. If there are more vessels in the area, don't join another vessel which has sighted the whales to avoid overcrowding. When with a whale, consider the time spent with the animals and **allow for rest periods** with no activity at all.
11. **Bow-riding dolphins** – If dolphins choose to bow ride, boats should maintain original course and speed. Running through groups of dolphins to solicit bow-riding should not be allowed.

*These guidelines are intended as 'rules of engagement' for individual boats and groups of boats. They are endorsed by WWF Indonesia Marine Program and The Nature Conservancy – SE Asia Center for Marine Protected Area as well as a growing number of local NGOs and tourism operators. To be most effective the guidelines should be adhered to by all responsible cetacean watching operators.*

*This information has been adapted from the Whale and Dolphin Conservation Society, a leading non-profit cetacean conservation body which promotes responsible minimum impact whale and dolphin watching and funds several major non-invasive cetacean research programs.*

## **IRELAND**

### **DEPARTMENT OF COMMUNICATIONS, MARINE AND NATURAL RESOURCES**

#### **Marine Notice No. 15 of 2005**

*To the Operators / Skippers of all Passenger Boats, Angling Boats, Passenger Vessels, Fishing Boats, and Recreational Craft.*

#### **GUIDELINES FOR CORRECT PROCEDURES WHEN ENCOUNTERING WHALES AND DOLPHINS IN IRISH COASTAL WATERS**

Irish Coastal Waters provide a habitat for a broad range of whales and dolphins (Cetaceans); to date some 24 species have been recorded.

In 1991 the Irish Government declared all Irish Waters a whale and dolphin sanctuary.

Under current National Legislation - S.I No. 94 of 1997, Natural Habitat Regulations, Cetaceans are listed, and regulations prohibit the deliberate disturbance of these species.

Coinciding with the increased awareness of these mammals within our waters is an increased frequency of small craft coming into contact with them, and the emergence of " whale watching " as a tourist activity using licensed passenger vessels.

There are definite risks associated in engaging these mammals, particularly the larger whales. Generally they are present some distance offshore, in open waters, and late in the year when weather conditions are not always suitable for small craft.

As wild animals their actions may be unpredictable particularly if they feel their young are at risk, and considering their size are certainly capable of causing damage to small craft.

Passenger vessels offering whale and dolphin watching tours should ensure the crew

- are aware of correct procedures to follow when encountering cetaceans,
- ensure craft are suitably licensed to operate in sea areas where whales may be located. e.g. for a passenger boat with a P3 license plying limit of up to three miles offshore, P5 has a plying limit for sea area up 30 miles offshore.
- Liase with staff of the National Parks and Wildlife or Irish Whale and Dolphin Group for guidance prior to offering any such service to the public.

The following guidelines are intended to offer best practice to be followed in cases of any interaction between small craft and large mammals within Irish waters:

- When whales or dolphins are first encountered, craft should maintain a steady course.
- Boat speed should be maintained below 7 knots.
- Do not attempt to pursue whales or dolphins encountered.
- In the case of dolphins, they will very often approach craft and may engage in "bow riding". Always allow dolphins approach a boat rather than attempt to go after them.
- Maintain a distance of at least 100m from whales.
- Maintain a distance of 200m between any other boats in the vicinity.
- Attempt to steer a course parallel to the direction whales or dolphins are taking.
- Do not corral whales or dolphins between boats.
- Special care must be taken when young calves are seen - do not come between a mother and her calf.
- Successive boats must follow the same course.
- Boats should not spend more than 30 minutes with whales or dolphins.
- DO NOT attempt to swim with them.

Craft that do encounter any species are encouraged to log all sightings and to advise the Irish Whale and Dolphin Group (IWDG) or officers of the National Parks and Wildlife Service, which is a division of the Department of Environment Heritage, and Local Government.

Director General

Maritime Safety Directorate  
Department of Communications, Marine  
and Natural Resources  
Dublin 2.

14<sup>th</sup> June 2005.

For any technical assistance in relation to this Marine Notice please contact  
The Marine Surveyors' Office, Leeson Lane Dublin 2 +353 1 678 3400  
For information in relation to technical specification/type approval of radio equipment contact the Radio Surveyor  
678 2363/2364/2365/2367.  
For general enquiries please contact the Maritime Safety Division at +353-1-678 3418  
Any enquiries concerning Marine Notices should be addressed to:  
Maritime Safety Directorate, Leeson Lane, Dublin 2  
Email: [marine.notices@dcmnr.gov.ie](mailto:marine.notices@dcmnr.gov.ie)  
Or visit us at: [www.dcmnr.ie](http://www.dcmnr.ie)

### GUIDELINES

These Codes of Conduct are accepted by the operators in the Shannon estuary and part of the new Accreditation Scheme for operators in the Shannon Estuary SAC (Special Area of Conservation under the EU Habitats Directive). As of two weeks ago the Shannon is a nominate SAC and dolphin-watching a notifiable activity. Operators must seek permission from the Minister of Arts, Culture and the Gaeltacht, Sile de Valera TD, to be allowed to commercially dolphin-watch in the SAC. To receive permission operators must

- comply by the Codes of Conduct
- abide by the Management Plan
- provide monitoring data
- demonstrate competence in environmental interpretation and species ID

If they do this they will be Accredited Operators. Under the SAC Management Plan (first draft done) the total time commercial tour boats are in the vicinity of dolphins will be controlled. Adopting the precautionary principle this will be fixed at the 1999 level, with allowance for present expansion rate, and will not be increased unless monitoring show that no detrimental effect of the dolphins will result. The Management Plan will also limit the time tour boats are in the vicinity (<300m) on a single dolphin or group of dolphins. Monitoring protocols, trialled during the 1999 season, combined with photo-identification, will enable the location, group and identity of dolphins watched to be assessed which is essential to determine the impact of commercial dolphin-watching.

The Accreditation Scheme has been established by the Shannon Dolphin and Wildlife Foundation, a new organisation established in March 2000 to formulate and implement a plan for the development of sustainable dolphin-watching in the Shannon Region (of which I am Project Manager). The Foundation will also develop an educational programme and raise local awareness of the dolphins and the importance of their estuary habitat.

Shannon Dolphin and Wildlife Foundation  
Merchants Quay  
Kilrush  
County Clare  
Ireland

### Codes of Conduct

1. A maximum speed restriction of 7 knots applies to an area south of a line joining the cardinal buoys Doonaha – Tail of Beal to Kilconnelly Point, as this is an important habitat for dolphins.
2. When vessels first see dolphins they should maintain a steady course, reduce speed (<7kts) and monitor the dolphins heading. Attempts should be made to steer a parallel course to the dolphins. DO NOT PERSUE DOLPHINS, allow the dolphins to come to the vessel not you to them.
3. maintain a minimum distance between vessels of 200m.
4. No more than 3 vessels on the same group of dolphins at any one time.
5. vessels on the same group of dolphins should maintain a serial course to each other if at all possible. DO NOT CORRAL BETWEEN VESSELS.
6. successive boats should follow the same course and come astern.
7. maximum time in the proximity of any one group of dolphins should be 30 minutes per vessel, per trip.
8. new vessels into dolphin encounter zones should make VHF contact with existing vessels on Channel 8.
9. there is to be no swimming with dolphins from commercial tour boats.

#### Accreditation Scheme

The Codes of Conduct are a critical part of Accreditation Scheme. All vessels will require Accreditation to be allowed to dolphin-watch in the Shannon estuary SAC. To be accredited commercial operators must:

- comply by the Codes of Conduct
- abide by the Management Plan
- provide monitoring data
- demonstrate competence in environmental interpretation and species ID

### **JAPAN GUIDELINES**

*There are no laws or ordinances that apply directly to whale watching in Japan. Some local promoters have established their own voluntary rules. The following is a partial list.*

#### **Ogasawara (Bonin) Islands**

Ogasawara Whale-watching Association(OWA) voluntary rule

#### **Purpose**

The rules are set by OWA voluntarily, so as not to disturb the natural behavior of cetaceans which are not only natural resources of Ogasawara but of the whole of Japan. The rules also set to protect humpback whales' breeding area while whale watching is conducted in the Ogasawara area.

#### **Area**

The rule applies in all areas within 5 miles of the coast of Ogasawara.

#### **Cetacean species**

This rule applies to all species of baleen whales and sperm whales.

- 1). Binding relation between whale watching boat and rule:
  - (1) Association's member boats have duty to observe following rules.
  - (2) Non-members' boats are requested to observe following rules.
- 2). Rules for small boats(less than 20 tons, include non-motor vessel such as yacht, canoe etc.)
  - (1) Following rules apply in all areas:
    - a. Do not play back cetacean sounds or similar sounds into the sea.
    - b. Do not make sounds, above or below water, which might confuse the behavior of whales. However normal motor sounds from vessels are excluded.
  - (2) Within 200 meters from the targeted whale is a slow down area, and the following rules are applied:
    - a. Whale watching boats must slow down when proaching a whale.
    - b. Do not approach from the targeted whale's direction.
    - c. Do not maneuver the vessel in ways which may disturb other current behaviour.
  - (3) Within 50 meters from targeted whales is an exclusive zone, and the following rules are set.
    - a. No whale watching boats may enter this area.
    - b. If a whale approaches a vessel, leave with slow speed or stop until it out of the zone.
- 3). Rules for large boats(more than 20 tons):
 

Slow down zone of above article (2) will be within 1000 meters, the exclusive zone will be within 300 meters, rules apply correspondingly to 2), (1) to (3).
- 4). Rules for approach from sky:
 

Do not approach within 300 meters of targeted whales, regardless of approach angles, from an airoplane or helicopter etc.
- 5). Exception to rules:
 

In order to approach whales for research or filming purposes without adhering to the above rules, one must submit a research plan/filmng plan and recieve permission from OWA. Boat with special permission will hoist a designated flag.
- 6). Other
 

Any other necessary rules will be set by Rules Committee of OWA.

#### **Ogata**

Ogata Commercial Fisherman's Sportfishing Association

The Association in Ogata is in the process of developing a new agreement for whale watching activities. The current agreement however is followed by all boats.

1. Do not approach within 100m of a whale.
2. Do not chase a whale from behind.
3. The first boat to sight a whale has the right to watch; the other boats must follow its instructions.
4. Do not approach a whale so as to alter its



direction of movement.

#### **Zamami**

#### **Zamami Village Whale Watching Association Voluntary rules**

- 1). Do not chase whales, do not rush to a whale, and be careful not to disturb whale's movement.
- 2). Slow down when 300 meters from a whale, and do not approach within 50 meters (except when a whale approaches a boat).
- 3). If a whale approaches unusually close, place engine in neutral and keep the boat in that situation.
- 4). Swimming with whales is princplly banned. However, in case of research purposes, an exception is possible but only up to 2 persons at any time.

Other guidelines include limits of number of boats (3), one hour observations, limit of approaches to 50m, limit of approaches to calves of 100m, and not to surround whales by boats.

#### **MADAGASCAR GUIDELINES**

***Madagascar is in the process of drafting legislation for whale watching***

#### **INTRODUCTION**

Antongil Bay is a very special place for humpback whales. It is an area of reproduction, nursing and calving for this species. Therefore, a number of factors must be considered because of the nature of this location, the types of behaviors that whales exhibit in these zones of reproduction, and because mothers with their newborn calves take shelter in the shallow and protected waters. Whale-watching and the presence of boats should not affect the presence, movements, or natural behaviors of the whales in Antongil Bay. There are many benefits to whale-watching and ecotourism to the Maroantsetra community. We have put together a series of guidelines that will assist the operators in conducting safe and responsible whale-watching. Failure to abide by the rules may cause whales to avoid boats or change their natural distribution in the bay, making it difficult to conduct whale-watching.

#### **Whale-watching**

1. Do not approach a group of whales any closer than 300 meters. If the group is a mother and calf or consists of 4 or more animals, do not approach any closer than 400 meters.
2. When approaching whales, reduce speed to "slow" when you are within 800 meters. The whales can change direction, speed, and activities rapidly and these factors could present a problem if you motor too quickly.
3. At a distance of 300 meters to the whales (400 m to mother and calf), the engines should be in neutral and progress should be stopped. Do not motor to a distance within 300 meters and then put the engines in neutral.
4. If a whale turns toward the boat or if you approach it (or drift to within 300 meters), the engines should be placed in neutral. If the whale

approaches the boat, do not panic. If engines are not in neutral, do so at this time (or shut the engines off) and do not attempt to start the motor or move until the whale has surfaced at least 300 meters from the boat. Starting the engine may startle the whale and could cause an inadvertent reaction. Attempting to move the boat while the whale is under or around the boat could be dangerous for you or the whale. Always account for the fact that the boat continues to move even when you have shut your engine off.

5. When encountering whales, never approach directly toward the head, from the sides, or directly behind the whale. You must alter your course so that you follow the whales from the directions detailed below. This is the safest way to whale-watch and gives tourists the best view of the markings on the tail and dorsal fin. Paralleling the course of the whales is permitted as long as it is done from the recommended distance and travel is discontinued while the whales are beneath the surface.
6. Only one boat should observe a group of whales. One boat should search one part of the bay at a time.
7. Observe a particular group of whales for a maximum of 30 minutes.
8. Do not attempt to observe a mother and calf beyond 30 minutes.
9. Do not observe whales in only one place. You may not find them there again, and you may impact their distribution or movements. For example, do not always go the place closest to Maroantsetra.
10. Do not follow a group of whales that are being studied by researchers. If you wish to observe research work with whales, maintain a distance of 600 meters. Place all engines in neutral or completely shut them off.
11. When whales dive or are below the surface, your engines should be in neutral or off. DO NOT attempt to move closer or to follow the whales when they are beneath the surface; they can change direction, speed, and surface at any moment. When you have positively confirmed that the group which you are observing (make sure it is the same group as other whales may enter the area) is at the surface, you can slowly approach the permitted distance.
12. When in doubt about the location or behavior of the whales, put your engines in neutral or shut them off.
13. Do not, at any time, make sudden or abrupt changes in speed or direction.
14. Do not encroach upon suggested distances.
15. Do not separate or impede the travel of a group of whales.
16. Upon leaving a group of whales, motor slowly until you are 600 meters away.
17. Swimming with the whales, dolphins and any other marine mammals is not permitted. It is not safe for tourists, boats, or the whales.
18. Touching the whales, dolphins, and other marine mammals is not permitted.
19. A trained guide from the Association of Parc Masoala Guides must accompany you on any whale-watch. They have been trained on the information to convey to the tourists in English and French. They are also familiar with the regulations and can help you conduct whale-watching in a safe and efficient manner.

20. Please abide by and respect these guidelines.

#### **WHALE-WATCHING GUIDELINES**

##### Recommendations for Safety

1. Maintain and prepare proper safety equipment for the boat when whale-watching (life-jackets, first aid supplies, fresh potable water, light, extinguisher).
2. Have sufficient amounts of gas (filtered, or make sure it doesn't contain a lot of water), oil, and spare spark plugs. Do not try to save money by taking less gas because you may have to travel further than you expect to encounter whales.
3. Abide by the safety system established by Project Masoala, including distress signaling and radio contact.
4. Use common sense and good judgement about traveling in inclement weather.
5. Do not overload your boat with tourists. It may cause a safety problem.

These guidelines may change as monitoring of ecotourism activities continues.

#### **MEXICO**

##### **PROPOSED REGULATION**

Proposed Official Mexican regulation PROY NOM 131 ECOL 1998 to establish guidelines and specifications for the development of whalewatching activities, relative to the protection and conservation of whale habitat. This proposed ruling PROY NOM 131 ECOL 1998, which was submitted and approved by the National Consultative Committee for the Regulating Environmental Protection, during the session which took place on August 10th 1998, and which is published in conformity with that established in article 47 of the Federal Law on Regulation, can be commented on within a sixty day period from its publication in the Official Federal Register, can present their comments to the Committee, located at Avenida Revolucion 1425, tel 624 3483 and fax 624 3583, colonia Tlacopac, Delegacion Alvaro Obregon, codigo postal 01040, Mexico, DF.

##### CONSIDERING

That the existence of areas that constitute significant natural spaces where both annual and on a permanent basis occur a large quantity of gray whales where they complete certain fundamental biological processes such as reproduction, calving and feeding;

That these phenomena have generated a growing interest on the part of a large number of visitors, causing a growth in the number of boats and tourists that might represent a risk to the habitat, which could cause alterations in the behaviour and biological processes of these species.

That taking into account the above, and in accordance with studies undertaken by the National Institute of Ecology, through its Directorate General of Ecological Use of Natural Resources and in coordination with those sectors involved, it is considered that these activities be regulated by means of this proposed Official Mexican Regulation.

That the observation of whales, in this context, constitutes a non-consumptive utilization or indirect use of whales, in that those offering whale watching services, scientists and those producing educational or publicity material are

benefitting from this resource with potential effects on the functional integrity and carrying capacity of the areas in which the whales reside, feed, reproduce and calve;

That the observation of whales for scientific purposes is of fundamental importance for the knowledge of our biodiversity, and particularly, in order to generate information on the effects of whale watching on the whales and their habitat.

That it is important to ensure that whale watching for recreational purposes is realized in such a manner that there are the largest numbers of people from the smallest numbers of vessels and that these vessels have on board persons experienced in the aspects of safety, health and ecology;

That the regulation of such use of wildlife species throughout the national territory is the responsibility of this Secretariat, with the objective of ensuring their conservation, balanced development in the country and the improvement of conditions of the life of rural and urban populations as direct or indirect beneficiaries of sustainable utilization.

The protection of whales is of special interest to our country, which has been a pioneer in conserving this species.

At the beginning of 1933, Mexico joined the Geneva Convention for the protection of Whales, in addition on the 16th of July 1938, it approved the International Convention for The Regulation Of Whaling; in 1949, Mexico formalized its adherence to the International Whaling Commission; on the other hand on the 14th of January 1972, Mexico declared a Sanctuary for Whales and Calves in the Ojo de Liebre Lagoon in Baja California Sur, followed on the 16 July of 1979 by the Sanctuary in San Ignacio Lagoon, and in 1980, incorporating the Natural Protected Area in Guerrero Negro and Manuela Lagoons; along the same lines, on the 30th of November 1988, in the Official Federal Register, Mexico declared the Vizcaino Biosphere Reserve, located in the municipality of Mulege, Baja California Sur and including the lagoon system of Manuela, Guerrero Negro, Ojo de Liebre and San Ignacio to which gray whales annually migrate in order to complete their biological cycle. As a consequence of the importance with which Mexico views these areas, in 1993, the UN designated the Lagoon Complex of San Ignacio and Ojo de Liebre as a World Natural Heritage Site.

The proposed ruling establishes guidelines and specifications to which whale watching activities will be subjected in order to guarantee the protection and conservation of this species and its natural habitat and the observance of these is mandatory for those undertaking such activities.

Official Mexican Law NOM 059 ECOL 1994, which determines that species of wild flora and fauna both terrestrial and aquatic, in danger of extinction, threatened, rare and subject to special protection and which establishes guidelines for their protection were published in the Official Federal register on 16 May 1994.

#### DEFINITIONS

Whale watching area: Portions of waters under federal jurisdiction determined by the concurrence and distribution of whales, in which any person might, following the guidelines and specifications established in this ruling, develop whale watching activities.

Harassment: any activity that interferes with the behaviour of a whale, such as forcing physical contact that would cause mistreatment of the whale.

Whales: All species and individuals of species of marine mammals grouped in the suborder Mysticetus, which at any point in its life cycle are found in national territorial waters: gray whale; humpback whale; blue whale; sei whale; fin whale; Bryde's whale; minke whale and right whale.

Ecosystem carrying capacity: Indicator of the maximum number of vessels allowed in a determined time and area, which undertake whale watching activities as defined by the Secretariat based upon studies done on distribution, abundance and biological cycle of the different species of whales.

Friendly behaviour: A non-violent attitude in which the whale itself seeks out and initiates physical contact with boats and the passengers on board.

Conservation: Mechanisms and strategies that allow the continuity of whales' biological processes.

Large vessel: More than 12 meters and up to 25 meters in length.

Small vessel: any vessel up to 12 meters in length.

Whale watching: The non-consumptive use of whales in which the animals are approached from vessels, with an intent to obtain visual contact in their natural environment, for the following reasons:

*Recreational:* when the activity is undertaken for recreational or pleasurable reasons and done by boats registered with this Secretariat.

*Scientific:* For those involved in the development of ecological studies, population studies, life cycle studies, studies of the whales' habitat or the socioeconomic conditions of local communities, with a basis in a research project, by means of various techniques; census studies, collection of individuals or parts thereof, or other biological materials with a goal of increasing knowledge of these animals and for scientific study.

*Educational or Publicity:* When the objective is to obtain information or film and recording materials.

Whale watch operator: A person offering services of transport on those whale watch areas and whose boats are registered with SEMARNAP and with the Secretary of Communications and Transport under the guidelines of "nautical tourism".

Secretary: SEMARNAP

Season: Period of the year, determined annually by the Secretary, in which it is possible to undertake whale watch activities.

Control Zones: Portions of national waters under federal jurisdiction delineated by the Secretary in which only designated whale watch operators can function.

Restricted Zones: Portions of national waters under federal jurisdiction in which only scientific observations of whales can take place.

#### **GENERAL GUIDELINES**

The Secretary will allow authorizations for recreational, scientific or educational/publicity whale watching through the National Institute of Ecology.

The Secretary, by means of the National Institute of Ecology will publish no later than the last working day of July, in the Official federal Register, an Advisory based on available scientific information, and in each case taking into account the information that established in the Natural Protected Areas,

as well as by the respective management programmes, by means of which it shall be communicated to those interested the following:

Whale watching areas, control areas and restricted areas; duration of whale watch seasons by area and in which whale watch activities can be undertaken; carrying capacity for each type of vessel and for control zones; the amount of time each vessel can stay with whales subject to control by type of vessel; the embarkation and disembarkation sites by whale watch area; the identification marks or badges to be used by each area and type of activity.

At the same time, the Secretary will promote the publication of these advisories in the official register of the corresponding federal entities.

Whale watching activities within Natural Protected Areas, as well as having to abide by the regulations established by this ruling, are also subject to those regulations established by the Decree governing the Area, and if applicable, to the corresponding management programme for that Area.

All vessels must operate under optimal mechanical and safety conditions according to those established by the Secretary of Communications and Transport and its applicable laws.

All vessels authorised by the Secretary must display a badge or mark identifying it.

The Secretary will make known to whale watch boat operators with the help of Harbour Masters that correspond to the areas on the temporal closings of whale watch areas based on the degree of danger that are possible due to the presence of aggressive whales.

The Secretary will promote training programme geared towards operators on aspects of safety, health and ecology of those species subject to observation.

At the beginning of each trip, the whale watch operator will indicate, disseminate and inform the clients as to general precautions of conduct, operation and health that must be complied with during the whale watch activities and such information must be supported by means of placement of posters or pamphlets or any similar means such that are visible to the clients.

The crew of all the vessels used for whale watching activities will allow personnel from SEMARNAP that are properly accredited to conduct any action relating to control and inspection of the level of compliance with this regulation.

#### **SPECIFICATIONS**

Approaches to observe whales in transit must be done in a diagonal line only from the lateral posterior side and the vessels must advance in a parallel course to any movement by the whale or group of whales.

Maximum velocity allowed for navigation within whale watch areas in the presence of whales is 8 km/hour or 4 knots, at all times the velocity of the vessel must be less than the slowest whale in any grouping.

If the whale displays friendly behaviour the vessel must remain at rest without accelerating with the motor turned to neutral, and will await the withdrawal of the whale and leave at low velocity without abrupt acceleration.

When the whales take evasive movements with rapid changes in direction and velocity or make prolonged dives, interruptions in feeding activities, mating, or nursing or change respiratory rates these are clear signs that the whales are harassed, it is recommended that vessels leave the whales at slow speed and without abrupt acceleration.

Only two (2) boats can stay with the same whale or group of whales. Any other authorized vessel wishing to observe the whale or same group of whales must remain at a minimum distance of 80 meters until such time as one of the original boats departs.

During whale watch activities the following are prohibited;

- Provoking dispersion of any group of whales;
- Harassing or harming the whales such as obstructing their course;
- Putting one's boat between a cow/calf pair or approaching any mating group;
- Going beyond the carrying capacity in those zones subject to controls established by the Secretary;
- Using any kind of jet-ski or marine cycles, kayaks, canoes, inflatables, submersibles, as well as ultralights and helicopters to undertake whalewatching in those zones authorised for such activities.
- Throw overboard any kind of organic garbage, solid residues or oils, gasoline, liquid wastes or any kind of pollutant into the water;
- Collect, capture, hunt, retain or appropriate any kind of wild flora or fauna, as well as introducing exotic species or transport examples of species from one community to another;
- Carry on board any kind of pet.

In the case of whale watching for scientific, educational or publicity reasons, the Secretary may authorise diving and swimming with whales, as well as the use of canoes or rowed inflatables or ultralight planes, in conformity with the needs of the project presented.

As well as having to abide by the requirements stated in above paragraphs, the following specifications must be complied with in each area or zone of observation:

In the areas of observation, the whale watch operators may stay a maximum of 30 minutes and must maintain a minimum distance of 30 meters between the vessel and whale or group of whales, excepting in the case of a whale that initiates friendly behaviour and approaches the vessel.

Vessels that are not registered for this activity with the Secretary can observe a whale or group of whales for only a maximum period of 10 minutes and must maintain a minimum distance of 80 meters.

In order to undertake whalewatch activities within a Natural Protected Area, the vessel must obtain the express authorization of the Secretary, via the National Institute of Ecology.

Access to zones subject to controls is only permitted to those operators who have the authorization of the Secretary.

Boats must navigate towards control zones along the margins of these zones and avoid any brusque changes in direction and velocity in the presence of whales.

The development of these whale watching activities for educational or publicity reasons in control zones can only be undertaken by those operators whose services have been authorised, with an aim to avoid surpassing the capacity limits established.

In restricted zones, access and development of scientific activities will only be permitted to the protection of authorizations expedited by the Secretary.

There are currently no international guidelines nor ordinances of internal character that exist in other countries that bring together the elements and legal precepts that this proposed Official Mexican regulation integrates and contemplates in a coherent manner and based on technical and recognized scientific fundamentals; nor do any Mexican laws exist that have served as a basis for elaboration the present proposal.

### **Mexican Whale Watching Regulations**

The articles in Mexican law from which these restrictions were taken are:

Articles 44, 46 para I, 48 and 64, 79 paras I,II,and II, 80 para I, V, and VII, 83 of the Let General del Equilibrio Ecologico y la Proteccion al Ambiente; Article 32bis paras II,III,VII,XXXIX of the Ley Organica de la Administracion Publica Federal; 8, para II, subpara c, 13 paras III,IV,VII and XI of the Acuerdo que regula la organizacion y funcionamiento interno del Instituto Nacional de Ecologia y de PROFEPA, 7, 15 and 16 of the Decree that declared theBiosphere Reserve El Vizcaino.

Whale watching Tours for gray whales will be done according to the following:

I.

1 In San Ignacio lagoon:

- a The only area in which anchoring and observing gray whales can take place is that area between Punta Piedra, Punta Bronauge, Punta Holcombe and the east coast of San Ignacio or Abaroa Island.
- b. It is strictly prohibited to navigate and to let tourists disembark in the nucleus zone of theSan Ignacio Reserve, as well as putting up campsites in all of the islands of the Reserve, which are the following: Pelicano Island, San Ignacio or Abaroa, Malcomb, Delgadito and Delgadito Islet.

2 In Magdalena Bay:

- a Anchoring and whale watch areas for gray whales are allowed in the northern part of Magdalena bay, which runs from TOMALA to PUNTA X, and from BOCA DE LA SOLEDAD to SANTA ELENA, as well as the southern part of Magdalena Bay, comprising the area from ISLA SANTA MAGARITA to the HERRADURA Estuary, from PUNTA REDONDA to PUNTA ENTRADA, and from PUNTA LA MIRA to PUNTA GATO.
- b. Whale watch activities are prohibited from the area of FLORIDA, comprising TOMALA to PUNTA I in its northern reaches, and from PUNTA LA MIRA to PUNTA GATO in its southern reaches, navigation is only allowed along those zones, with no stopping permitted.
- c For whale watching activities for gray whales, the smaller local vessels offered by those transport services authorized by this office must be used, or those launches of the cruise boat may be used when and only if express authorization of the Secretary of Communications and Transport (Harbor captain) has been given, and must use the services of a local, authorized permit holder as either a launch driver or guide.
- d Only two cruise ships are allowed to simultaneously enter the mouth of San Ignacio Lagoon, and only until the boats are securely anchored so that passengers can disembark to smaller, authorized vessels.



II.

- 1 Harassing, bothering, pursuing or harming the whales in any way is strictly prohibited.
- 2 Approaching mother/calf pairs is strictly prohibited, if this accidentally occurs, the boat must slowly distance itself from the mother/calf pair.
- 3 Approaching bird and sea lion colonies closer than 50 meters is strictly prohibited, and no activities should be undertaken that would cause a change or disturbance in the same.
- 4 Collecting, taking, hunting, detaining or appropriating any species, derivative and products of flora and fauna (terrestrial and aquatic) is strictly prohibited.
5. Any sport fishing, or extraction of marine organisms or in the case of commercial species in their reproductive season or in the time of a [fisheries] closure is strictly prohibited.
6. Introduction of exotic species and/or transporting species from one community to another is strictly prohibited.
7. Aquatic recreational activities such as free-diving, scuba, or any other type not specified are strictly prohibited in the interior of the San Ignacio Lagoon and in the zones where whales are found in Magdalena Bay.
8. Throwing or emptying out any kind of organic wastes, solid residues, garbage, as well as discharging liquid wastes, combustibles, oils and any other type of contaminant is strictly prohibited.
9. Carrying weapons, using, darts, harpoons, explosives, drugs and any other type of equipment or method that damage the organisms of wild and aquatic flora and fauna, or undertaking any other activity that puts at risk or can alter the ecosystem and its elements is arious prohibited.
10. Tourists and permit holders are prohibited from the development of scientific research and any type of data gathering on registering, measuring, quantifying or experimenting on various species, without the corresponding permission of the Secretaria de Medio Ambiente Recursos Naturales y Pesca (SEMARNAP).
11. Operators must conduct boats in a state of sobriety, and the consumption of alcoholic beverages during whale watch activities is strictly prohibited.

III.

1. Prior to the initiation of the wale watch activities, permit holders must approach the Secretary of Communications and Tansport (Harbor Captain) to obtain the specific permit to navigate.
2. The pemit holder must contact the delegations of SEMARNAP [Secretariat of Environment, Natural Resources and Fisheries] and PROFEPA [Procuraduria Federal de Proteccion al Ambiente, or Federal Attorney General's office for the Environment] in La Paz, BCS prior to beginning activities, in order to obtain from PROFEPA the permit sticker that identifies the permit

holder as an entity by the authorities.

3. The permit holder must collaborate with the Office of the Vizcaino Biosphere Reserve so that information is registered for the study underway by that office on tourism carrying capacity in the area. As such, the Office of the Reserve will contact the operator of the tour prior to the trip on the dates, and times when tourism activities cannot be undertaken in San Ignacio lagoon.
4. Any personnel designated by SEMARNAP, PROFEPA and/or the Secretary of the Navy must be allowed to board the authorized vessel in order to verify and supervise that regulations outlined herein are being adhered to; as well, help must be granted to those commissioned personnel who are undertaking any supervisory activity, or census activity and/or who are participating in enforcement activities.
5. The holder must heed those indications made by personnel working in the area, regarding the protection of the ecosystem and its natural resources.
6. At the end of the dates by a permit, the permit holder must present, no later than the 31 of May 1996, to the Direccion General de Aprovechamiento Ecologico de los Recursos arios INE-SEMARNAP a report on the activities developed during the whale watch season, which must be done according to the guide annexed, in Spanish and copying the report to the State offices of SEMARNAP and PROFEPA in Baja California Sur.
7. A temporary or © withdrawal of the present permit, and the denial of future permits and applications of sanctions will be based on the following:
  - a. Failure to comply with the outline and dispositions of this authorizations.
  - b. Ceding the permit to third persons.
  - c. Using the permit for an activity different than that stipulated herein.
  - d. A reoccurrence of failures detected in both presnt and past seasons.
8. The present permit loses its validity if corresponding permits are not authorized by other Secretariats with authority in the area.

This background comes from Serge Dedina and Emily Young in "Conservation and development in the Gray Whale Lagoons of Baja California Sur, Mexico", MMC contract number T10155592

Instituto Nacional de Ecología (National Ecological Institute) is the agency responsible for managing and administering the Vizcaino Biosphere Reserve. INE allocates whale watch permits in San Ignacio Lagoon and Laguna Ojo de Liebre. In addition to the restrictions arious above, kayaks and canoes are not allowed in the lagoon from January to April gray whale season.

In 1991, INE guidelines called for tour companies to hire local boat drivers.

### San Ignacio

In 1994, a private company in San Ignacio received one permit to operate 12 boats, and lagoon residents received three permits for four boats. For the 1995 season, San Ignacio residents received two permits for 15 boats, and lagoon residents received two permits for eight boats.

In 1994 PROFEPA initiated a gray whale program to observe activities. Three sets of PROFEPA agents visited the lagoon.

### Bahia Magdalena

In 1994, four permits were granted for a total of 13 boats, although a total of up to 58 boats operated throughout the northern zone of the Bay at one time (This includes 27 boats given permission by INE, 5 "pirate" local boats and up to 13 foreign operators without permits).

In 1995, six permits were issued in the North Zone. A total of 57 boats were permitted, 51 of which went to local operators. All permits stipulated that only eight boats would be allowed in the water at a time.

PROFEPA made repeated visits to the area in 1994 and 1995. In 1995, PROFEPA cited all tourism operators in the northern zone of Magdalena Bay as being in violation of whale watch regulations. Permit holders that did not request a hearing were fined; those who did not pay fines would not receive permits for 1996.

Comondú municipality, Baja California State Tourism officials and INE sponsored a seminar for whale watch boat drivers in November, 1994.

In addition to the various Federal Regulations in place, the 1992 Baja California Sur Law of Ecological balance and Environmental Protection gives the BCS state legal authority to protect wildlife and natural resources.

NOM 131 ECOL 1998: México Regulations for Humpback Whales  
Humpback whales are an endangered species protected by NOM 131 ECOL 1998 Mexican Law. Infractions are punishable by law.

The following regulations apply to whale watching in the Bahia de las Banderas:

When whalewatching:

- Do so only in authorized boats with experienced personnel.
- Boats without permits can stay looking at same whale or groups of whales for a maximum of 10 minutes at a distance of 80m.
- Maintain maximum speed permitted in whale watch area of 4k or 8km/hr at all times
- Boats should move at a speed slower than slowest whale
- If whales avoid the boat or change their direction, blow rate, or behavior, do not approach them. Move away slowly.
- Do not disturb mothers with calves as they are extremely sensitive.
- Do not split a group of whales.
- Do not harass or hurt whales.
- Do not obstruct the path of whale(s).
- Do not separate mothers and calves or approach birthing whales.

- There is a ban on sport fishing or commercial fishing during whale watch activities.
- No scuba diving or swimming/diving with whales.
- Water skis, para-sails, gliders and helicopters are not permitted for whale watching.
- Jet skis, kayaks, canoes and inflatable rafts with oars are not permitted for whale watching.
- Do not throw trash/solid residue.oil/gas or other water contaminants overboard.
- Approach whales diagonally from the lateral posterior.
- Boats should move parallel to the course of a whale or group of whales.
- Avoid unexpected changes in velocity and direction within 300m of the nearest whale.

### **NEWFOUNDLAND AND LABRADOR Code of Conduct**

Code of conduct for Operating Tour Boats in the Coastal Environment and Around the Marine Wildlife of Newfoundland & Labrador

**OUR MISSION:** It is our mission to provide passengers with an experience through which they can learn about, respect, care for and enjoy marine wildlife and Newfoundland and Labrador's coastal environment without causing any harm to that environment or its inhabitants. We believe that when our passengers learn about and care for the marine environment, there will be a direct benefit to the creatures that live there. Human activity can sometimes have a negative impact on the environment and the animals we care about. To ensure that does not occur during our tour boat operations, we have agreed to observe the following Code of Conduct.

**OUR MARINE ENVIRONMENT:** Newfoundland and Labrador's cold ocean gains its productivity by the instability of the water column that mixes oxygen rich and nutrient rich waters. Our coastal environment is dominated by the Labrador Current, a river in the ocean of cold Arctic waters that carries icebergs from Greenland. These conditions provide the primary productivity that builds the rich web of marine wildlife on which our Province depends.

**OUR CONDUCT IN THE MARINE ENVIRONMENT:** Our work environment is the ocean but it is home for the multitude of creatures that live there. In our operation we will strive in every way to minimize our impact on the quality of the environment while maximizing the comfort, enjoyment and satisfaction of our passengers.

- We will always operate our vessel safely in accordance with Department of Transport regulations.
- We will always operate our vessel with courtesy and we will be helpful to other vessels.
- We will operate our vessel in a manner which minimizes the release of any foreign material such as garbage, noise or pollutants
- We will be cautious within the vicinity of any fishing gear.
- When small vessels such as kayaks are present, we will ensure they will not be affected by the wake of our vessel
- We will operate our vessel in a manner which will minimize any harmful impact on the aesthetics of the marine environment.

- We will conduct an accurate and informative interpretation program on the marine environment.
- We will participate in training programs so that our staff has accurate, in-depth and up-to-date information on the marine environment and its inhabitants.
- We will report to the appropriate authorities any misconduct that is deemed to have a negative impact on the marine environment

OUR CONDUCT AROUND WHALES: Whales are important and plentiful animals in Newfoundland and Labrador's coastal environment. As it is in the observation of all wildlife behaviour, it is important to allow the whale to control any interaction. If the animal is curious, it will approach our vessel. If it is disturbed by our presence, it will move away. The key to our conduct around whales is to recognize that they are wild animals that must rest, forage, feed, socialize and complete other life processes to survive. Any activity by a vessel that disturbs or prevents animals from completing life processes represents a threat to the conservation and survival of these majestic creatures.

- Prior to whale watching tours, we will encourage realistic Expectations of encounters with whales to avoid disappointing our customers and to reduce pressure from them to undertake risky vessel activities.
- We will operate our vessel in a manner that does not disturb whales. Harassment is indicated when the animal changes its behaviour because of our presence or activities. A change in behaviour is observed when whales change their swimming direction or speed, when they cease or increase specific behaviours, or when they leave an area.
- We will not operate our vessel in a manner that changes the behaviour of the whales, causes disruption to their social groups, or makes them leave an area.

To insure our vessel does not disturb the whales we watch:

- When we are within 100m of whales, we will not try to get any closer to them.
- When animals are within 100 m of our vessel we will allow the animals to completely control the interaction and operate our vessel with due caution.
- We will ensure that animals are not surrounded by boats by giving way when more than two boats are within 100 m of whales.
- We will not pursue or chase whales.
- We will not operate our vessel at high speeds when whales are nearby.
- We will not cut across the paths of animals but will approach slowly from the rear, parallel to the animal's path.
- When whales are near our vessel we will reduce our speed and be aware of the noise our vessel makes underwater.
- We will take special care when mothers and calves are present to ensure that we do not separate them.
- When vessel traffic is intense and persistent near animals, we will conduct searches to find other, less disturbed animals.
- We will provide our passengers with accurate, up-to-date Information about whales, and inform them of their role in the marine ecosystem. We will urge them to appreciate and support the conservation of the animals and preservation of the marine habitat animals require.
- We will encourage research and cooperate with researchers who examine the impact of tour boats on whales and the marine environment and who contribute to a greater understanding of

marine biology.

**OUR CONDUCT AROUND SEABIRD COLONIES:** Seabird colonies on islands are critical habitats for reproduction. Mating, nesting, incubating and foraging to feed newly hatched chicks are natural and essential life processes. Islands have been selected as breeding habitats because they provide freedom from disturbances. Disturbance causes the birds to take flight, vocalize and circle in the area. This leaves eggs and chicks vulnerable to predators.

To ensure our vessel does not disturb nesting seabirds:

- We will operate our vessel at an adequate distance from the shores of colony islands;
- We will minimize any noise that can disturb the birds;
- We will operate our vessel at a speed and in a manner in which birds do not flush from nests.
- We will provide accurate information about the life histories of the birds, the habitat they require and instil care and respect for them.

**OUR CONDUCT NEAR SEABIRDS ON WATER:** Seabirds that are seen on the surface of the ocean around colonies may be resting, foraging, feeding, courting or preening. These are all critical activities that vessel presence can disrupt. If birds are repeatedly forced to fly and are interrupted in their activities, serious biological consequences could develop.

To insure our vessel minimizes disturbances to seabirds on the water:

- We will give birds on the water as wide a berth as is practical.
- We will control the speed, noise and activities of our vessel to minimize the flight responses of the birds.

**OUR CONDUCT NEAR OTHER SEA CREATURES:** Giant basking sharks, the endangered leatherback turtle, harp seals, harbour seals, grey seals, and ocean sunfish are found in our waters. All these animals are busy pursuing a living and vessel presence and behaviour can interfere with their endeavours.

In their presence, we will limit the speed and noise of our vessels. We will also control the proximity of our vessels to the animals so we will not disturb them.

**OUR CONDUCT AROUND ICEBERGS:** Icebergs are prominent features of Newfoundland and Labrador's coastal environment. They are ever changing and beautiful as they drift in currents from Greenland past our shores. However caution should be taken as these massive ice masses can break apart or rollover without notice.

To ensure our vessel and passengers are safe:

- We will give icebergs adequate berth for the safety of our vessel and passengers.

**USE OF THE CODE:** We will provide our passengers with copies of this Code of Conduct, on request, so they understand the constraints on the operation of our vessel.

- We have formulated this Code based on our experience with the animals and the marine environment and in consultation with marine mammal and seabird scientists. We are committed to providing a memorable experience for our passengers without harming the wildlife. Because there are no current guidelines which could evaluate and monitor correct conduct in the marine environment, we will participate fully in assessing the value of this newly created Code as a method of protecting ocean wildlife. We will work to adjust the code in the future to maintain its relevance as

a practical method of ensuring a secure habitat for wildlife while continuing to provide a first rate experience for our passengers.

If our passengers have complaints about our behaviour, or perceive a failure to follow this code, they should discuss them with us. They can also contact the Adventure Tourism Association of Newfoundland and Labrador (ATANL) to report and discuss their complaints. Tel: 722-2000 Toll Free: 1-800-563-0700  
Website: [www.hospitality.nf.ca](http://www.hospitality.nf.ca)

This Code of Conduct was developed by: the Adventure Tourism Association of Newfoundland & Labrador (ATANL) Hospitality Newfoundland & Labrador (HNL)

Assistance for the project was provided by: the Department of Fisheries and Oceans (DFO), the Department of the Environment, the Whale Research Group of Memorial University of Newfoundland

## **NEW ZEALAND REGULATIONS**

### **Marine Mammals Protection Regulations 1992**

New Zealand's Marine Mammal Protection regulations (1992) requires permits for commercial operations. The regulations define the criteria for issuing permits, requirements to be satisfied before issuing permits for commercial vessel, land based operations, commercial aircraft operations and behavior around marine mammals. These include:

**Criteria** (Part 1, #6). Before issuing a permit, the Director-General shall be satisfied that there is substantial compliance with the following criteria:

- a) That the commercial operation should not have any significant adverse effect on the behavioral patterns of the marine mammal to which the application refers, having regard to, among other things, the number and effect of existing commercial operations:
- b) That it should be in the interests of the conservation, management, or protection of the marine mammals that a permit be issued:
- c) That the proposed operator, and such of the operator's staff who may come into contact with marine mammals, should have sufficient experience with marine mammals.
- d) That the proposed operator, and such of the operator's staff who may come into contact with marine mammals, should have sufficient knowledge of the local area and of the sea and weather conditions:
- e) That the proposed operator, and such of the operator's staff who may come into contact with marine mammals, should not have convictions for offenses involving the mistreatment of animals:
- f) That the commercial operation should have sufficient educational value to participants or to the public.

**Behavior around marine mammals** (Part III):

**17. Applications of this part:** Nothing in regulation 18 or regulation 19 or regulation 20 of these regulations shall apply to persons, vessels, aircraft, or vehicles rendering assistance to stranded or injured marine mammals.

**18. Conditions governing commercial operations and behavior of all persons around any marine mammal-** Every commercial operation, and every person coming into contact with any class of marine mammals, shall comply with the following conditions:

- a) Persons shall use their best endeavors to operate vessels, vehicles, and aircraft so as not to disrupt the normal movement or behavior of any marine

mammal:

- b) Contact with any marine mammal shall be abandoned at any stage if it becomes or shows signs of becoming disturbed or alarmed:
- c) No person shall cause any marine mammal to be separated from a group of marine mammals or cause any members of such a group to be scattered:
- d) No rubbish or food shall be thrown near or around any marine mammal:
- e) No sudden or repeated change in the speed or direction of any vessel or aircraft shall be made except in the case of an emergency:
- f) Where a vessel stops to enable the passengers to watch any marine mammal, the engines shall be either placed in neutral or be switched off within a minute of the vessel stopping:
- g) No aircraft, engaged in a commercial aircraft operation shall be flown beneath 150 meters (500 feet) above sea level, unless taking off or flying:
- h) When operating at an altitude less than 600 meters (2,000 feet), above sea level, no aircraft shall be closer than 150 meters (500 feet) horizontally from a point directly above any marine mammal or such lesser or greater distance as may be approved by the Director General, by notice in the *Gazette*, from time to time based on the best available scientific evidence:
- i) No person shall disturb or harass any marine mammal:
- j) Vehicles must remain above the mean high water spring tide mark and shall not approach within 50 metres of a marine mammal unless in an official carpark or on a public or private slipway or on a public road:
- k) No person, vehicle or vessel shall cut off the path of a marine mammal or prevent a marine mammal from leaving the vicinity of any person, vehicle, or vessel:
- l) Subject to paragraph (m) of this regulation the master of any vessel less than 300 metres from any marine mammal shall use their best endeavors to move their vessel at a constant, slow speed no faster than the slowest marine mammal in the vicinity, or at idle, or "no wake" speed":
- m) Vessels departing from the vicinity of any marine mammal shall proceed slowly at idle or "no wake" speed until the vessel is at least 300 metres from the nearest marine mammal, except that in the case of dolphins vessels may exceed idle or "no wake" speed in order to outdistance the dolphins but must increase speed gradually, and shall not exceed 10 knots within 300 metres of any dolphin:
- n) Pilots of aircraft engaged in a commercial aircraft operation shall use their best endeavours to operate the aircraft in such a manner that without comprising safety, the aircraft's shadow is not imposed directly on any marine mammal.

**19. Special conditions applying to whales-** In addition to complying to the conditions set out in the regulation 18 of these regulations, every commercial operation and every person coming into contact with whales shall also comply with the following conditions:

- a) No person in the water shall be less than 100 metres from a whale, unless authorized by the Director-General:
- b) No vessel shall approach within 50 metres of a whale, unless authorized by the Director-General:
- c) If a whale approaches a vessel, the master of the vessel shall, whenever practicable: maneuver the vessel so as to keep out of the path of the whale; and maintain a minimum distance of 50 metres from the whale:
- d) No vessel or aircraft shall approach within 300 metres (1,000 feet) of any whale for the purpose of enabling passengers to watch the whale, if the number of vessels or aircraft or both already positioned to enable passengers to watch that whale is 3 or more:
- e) Where 2 or more vessels or aircraft approach an unaccompanied whale, the masters concerned shall co-ordinate their approach and maneuvers,



- and the pilots concerned shall co-ordinate their approach and manoeuvres:
- f) No person or vessel shall approach within 200 metres of any female baleen or sperm whale that is accompanied by a calf or calves:
  - g) A vessel shall approach a whale from a direction that is parallel to the whale and slightly to the rear of the whale:
  - h) No person shall make any loud or disturbing noise near the whales:
  - i) Where a sperm whale abruptly changes its orientation or starts to make short dives of between 1 and 5 minutes duration without showing its tail flukes, all persons, vessels, and aircraft shall forthwith abandon contact with the whale;

**20. Special conditions applying to dolphins and seals**-In addition to complying with the conditions set out in regulation 18 of these regulations, any commercial operation and any person coming into contact with dolphins and seals shall also comply with the following conditions:

- a) No vessel shall proceed through a pod of dolphins:
- b) Persons may swim with dolphins and seals but not with juvenile dolphins or a pod of dolphins that includes juvenile dolphins:
- c) Commercial operators may use an airhorn to call swimmers back to the boat or to the shore:
- d) Except as provided in paragraph © of this regulation, no person shall make any loud or disturbing noise near dolphins or seals:
- e) No vessel or aircraft shall approach within metres (1,000 feet) of any pod of dolphins or herd of seals for the purpose of enabling passengers to watch the dolphins or seals, if the number of vessels or aircraft, or both, already positioned to enable passengers to watch that pod or herd is 3 or more:
- f) Where 2 or more vessels or aircraft approach an unaccompanied dolphin or seal, the masters concerned shall co-ordinate their approach and maneuvers, and the pilots concerned shall co-ordinate their approach and maneuvers:
- g) A vessel shall approach a dolphin from a direction that is parallel to the dolphin and slightly to the rear of the dolphin.

These regulations, which came into force on 1 January, 1993, revoke and replace the marine mammal regulations 1990.

## **NORWAY**

***There are no written rules or regulations governing whale watching in Norway.***

### **Andenes**

Following is a general code of conduct for whale watching which includes:

- 1). Slow down when a whale is about 300m away.
- 2). Idle when a whale is about 100m away.
- 3). Never get closer than 30m.
- 4). Never two boats on the same whale.
- 5). And if (4) is violated, never a boat on each side of the whale.

## **OMAN**

### **WHALE AND DOLPHIN WATCHING GUIDELINES**

#### **Do:**

Let the whales or dolphins choose how they will interact with you.

Slow down to a "no wake" speed 300 m from whales or dolphins.

Approach from a position parallel and slightly behind.

Limit your approach to 100 m for whales and 50 m for dolphins.

If the whales or dolphins approach closer, turn off your engine or let the motor idle.

Maintain a predictable course or speed.

Limit the amount of time you spend with a group, especially if there are other boats in the area.

**Do not:**

Approach groups of whales or dolphins head on.

Speed through groups of whales or dolphins.

Separate groups (particularly groups with young).

Block their direction of travel or attempt to herd them in any way.

Throw rubbish in the water or attempt to feed them.

Chase animals if they are clearly trying to avoid the boat or leave the area.

**PUERTO RICO  
REGULATION**

**Government Of Puerto Rico  
Department Of Natural Resources And Environment  
San Juan**

Under Article 11, clause i of law number 70 enacted on 10 may, 1976, the regulations that are inforce to regulate the management of vulnerable and endangered species in the Commonwealth of Puerto Rico are amended and added as Appendix 3 of the law. Rules for the protection of the humpback whale (*Megaptera novaeangliae*) and other cetaceans that are vulnerable and in danger of extinction and to regulate the operations of passenger boats for the observation of these marine mammals.

**I. Purpose**

This rule is adopted with the purpose of protecting the humpback whale (*Megaptera novaeangliae*) and other cetaceans that are vulnerable and in danger of extinction in the territorial waters of Puerto Rico. It is publicly known that the activity of humpback whale watching in the Northwest area of Puerto Rico has developed and peaked in the last few years, which could threaten the presence of this marine mammal and other marine mammals in our waters. In addition, it can interfere with the behaviour natural life cycles of these marine mammals.

**II. Application and Management**

These rules are applicable in the territorial waters of Puerto Rico and its adjacent islands during the entire year.

**III. Prohibition**

In addition to the provisions of Section 12 in this ruling, it will be illegal for any person to engage in the following activities:

- a. To provoke the whales to change their natural direction, or to provoke the separation of the whales from their group, that

- might cause them to get lost, or to separate a mother from its calf as a result of interference.
- b. To feed the whales.
- c. To enclose or trap the whales inbetween boats or crafts impeding their path.
- d. Observe whales from jet skis.
- e. Observe whales from airplanes at less than 1,000 feet from sea level.
- f. It is prohibited to approach a mother and calf.
- g. it is prohibited to swim or dive near the whales.

#### **IV. Minimum Distances for the Observation of Whales from Boats**

- a. The minimum distance for observing the whales will not be less than 100 meters. The motor of the craft will remain in neutral as long as the minimum distance is obtained.
- b. The approach will always be from the posterior (rear) or bt the side of the whales, in parallel position to the last whale and/or slower whale of the group allowing for an area of 180 degrees in front of the whale(s).
- c. Swimmers and divers can get within a minimum distance of fifty meters.
- d. Scientific investigators, with federal and state permits in non-commercial vessels will be allowed to approach the whales at a distance less than the one stipulated as long as they comply with the established rules in their permits.

#### **V. Measures for Management**

- a. One boat is permitted to remain a distance of 100 meters(not less than 100 meters), and not more than two boats at a distance of no less than 400 meters at the same time.
- b. The time limit is no more than 30 minutes per boat.

#### **VI. Permits**

- a. Every owner or operator of commercial boat(s) that is dedicated to transporting passengers in the territorial waters of Puerto Rico with the purpose to observe humpback whales or other Cetaceans that are vulnerable or endanger of extinction must solicit a permit from the Department of Natural Resources and the Environment. The owners or operators of private boats that observe the whales as a pastime are exempt from this requisite, but must obey the rules of the law. The applicants for this permit must provide the following information:
  - a copy of their license or permit issued by the Public Service Commission Service to transport Passengers (or for the transportation of passengers)
  - a copy of the license issued by the Coast Guard of the United States certifying the vessel fit to transport passengers.
  - fill out the application for the permit to observe humpback whales. This permit is good for one year only.

#### **VII. Penalties**

Any person that violates any of these rules according and included in this Appendix will be penalized under section 18.00 of the Regulations to Manage the Species That are Vulnerable and Endangered in the Commonwealth of Puerto Rico.

This regulation will be enacted immediately, conforming to the section 2.8 a) (1) Law Number 170, 12 August, 1988 as amended.

Approved in San Juan, Puerto Rico, today, the 27<sup>th</sup> of June 1997.

English translation by the Liga Ecologica Puertorriquena de Rincon.

## **SOUTH AFRICA REGULATIONS**

### **Marine Living Resources Act, 1998 (Act No. 18 of 1998)**

#### **Regulations in Terms of Marine Living Resources Act, 1998**

The Minister of Environmental Affairs and Tourism has under sections 7(5), 9(3), 12(2), and (3), 39(2), 50(1), 77 and 80(2) of the marine Living resources Act, 1998 (Act No.18 of 1998) made the regulations set out in the Schedule.

#### **Whales, dolphins and turtles**

**58.** (1) No person, shall except on the authority of a permit-

- (a) engage in fishing, collecting, killing, attempting to kill, disturbing, harassing, keeping or controlling of, or be in possession of, any whale or any part or product thereof at any time;
  - (b) use any fish processing establishment, fishing vessel or any other vessel for the freezing or processing of whales or participate in any manner in the operation of or such activities on such an establishment, fishing vessel or vessel;
  - (c) have on board any fishing vessel or vessel any gear, apparatus or appliance which can be used in any manner for the fishing, freezing or processing of whales;
  - (d) supply any ships stores to any fishing vessels registered in a foreign state and used for the fishing, freezing or processing of whales or which has any connection with such fishing, freezing, or processing.
  - (e) operate any whale watching business that causes a disturbance or harassment of any whale within the meaning of subregulation (2); or
  - (f) offer his or her services for or make available his expertise in connection with any of the activities referred to in this subregulation.
- (2) For the purpose of subregulation (1), "disturbing or harassing" shall also include-
- (a) the shooting at any whale;
  - (b) approaching closer than 300 metres to any whale by means of a fishing vessel, vessel, aircraft or other method; and
  - (c) that in the event of a whale surfacing closer than 300 metres from a fishing vessel, vessel, or aircraft, the person in charge of such fishing vessel, vessel or aircraft fails to

proceed immediately to a distance of at least 300 metres from the whale:

Provided that paragraphs (b) and (c) shall not apply to Bonifide efforts by any person rendering aid to a beached, Entrapped or entangled whale.

- (4) No person shall, except on the authority of a permit, engage in fishing, collecting, killing, attempting to kill, disturbing, harassing, keeping or controlling of, or be in possession of, any dolphin or porpoise or any part or product thereof.
- (5) No person shall-
  - (a) feed any wild dolphin or porpoise; or
  - (b) advertise or engage in any fishing vessel or vessel trip, whether for gain or not, which is intended to provide for a swim-with-dolphin experience.
- (6) Subregulations (3), (4), and (5) shall not apply to bona fide Efforts by any person rendering aid to a beached, entrapped or entangled dolphin or porpoise.
- (7) No person shall, except on the authority of a permit, engage in fishing, collecting, killing, attempting to kill, disturbing, harassing, keeping or controlling of , or be in possession of, any turtle or any part or product there of.

#### **Behaviour Around Marine Mammals**

#### **Code of Conduct: Conditions Governing Commercial Operations Around Any Marine Mammal**

**Aim:** The Code of Conduct for Cetaceans under Observation by permit holders, covers interactions between people and cetaceans in the wild during recreational observation activities and has three main aims:

- to minimize harmful impacts on cetacean populations by ensuring that the normal pattern of daily and seasonal activity of whales and dolphins is maintained for the short and long term.
- to ensure opportunities for watching or interacting with cetaceans in the wild can be sustained.
- to develop a supportive public, to encourage realistic expectations of encounters and to prevent pressure from the public for increasingly risky behavior.

#### **Special Conditions Applying to Whales**

The operator must be a registered SATOUR guide and must have completed the special whale module in terms of the tourism act, and be a member of the local tourism structure.

No alcohol to be consumed or sold during the whale watching trips.

The operator is responsible for the behaviour of all passengers and crew.

Vessels may not be placed in the path of an approaching whale.

Operators must avoid restricting the movement or behaviour of the whales.

Anchorage within 300 metres of a whale is prohibited.

Echo sounders must remain switched either off or on within 300 metres of a cetacean.

Designated closed areas are to be avoided.

Swimmers and divers may not enter the water or be closer than 300 metres from any whale or dolphin.

Playback of underwater sound of any kind is prohibited. This includes playback of recorded whale, dolphin or seal sounds or songs.

It is not permitted for the passengers to touch or attempt to feed whales or dispose of any garbage or sewerage in the sea (including cigarette butts). There is to be no smoking on all permitted vessels visiting whales.

### **Speed of Departure**

When approaching or leaving cetaceans operators must move at a slow, "no wake" speed within 300 metres of the closest animal. Operators must avoid speeds over 10 knots, or sudden changes of speed or direction within 500 metres of whales and 300 metres for dolphins.

### **Approach Distances**

Permit holders may not approach closer than 50 metres of any whale or dolphins.

Permit holders may not allow vessels to drift down to within 50 metres of any species of cetacean, due to wind, currents, or forward movement. Such movement constitutes an approach and is not permitted.

### **Approach and Engagement of Whales**

- 1). Within a minimum distance of 300m all whales should be approached quietly, with motors at near idling speed ("no wake speed"). No person shall make any loud or disturbing noise near whales.
- 2). All approaches should be made from a parallel direction, slightly from the side and not directly from the rear or head-on. Vessels may not drift down on whales.
- 3). At a distance of 50m from any cetaceans, the vessel must proceed in a slow, straight course away from the cetacean **or** may proceed parallel to the cetacean at "no wake speed" **or** may place the engine in neutral. Continuous engagement and disengagement of the propellers to remain on station must be avoided. At 50m distance for all species, the cetaceans must be permitted to control the nature and duration of the interaction, including any close approach to the vessel. Operators should be able to keep track of all whales during an encounter.
- 4). The duration of the close contact (<50m) with the whale or group of whales should be limited to 20 minutes, while the total duration of the contact (<300m) should not exceed 30 minutes. Whales approached may only be revisited a maximum of twice in a day, with a minimum of 3 hours between visits.
- 5). There must be no rapid changes in direction or speed except in an emergency. If the whale flukes, the propellers must be disengaged until the whale surfaces again.

6). "Common sense" rules should be applied, in that whales that are not friendly, should not be approached at all. Animals displaying threatening behaviour such as tail slapping, must be avoided for the safety of all aboard. **In addition, contact with any Marine Mammal should be abandoned at any stage if one of the following indicators suggests disruptive behaviour caused by the vessel:**

- (i) Rapid changes in the speed and direction of movement of the cetaceans.
- (ii) Escape tactics such as prolonged diving, underwater course changes or underwater exhalations.
- (iii) Evasive swimming patterns such as rapid swimming at the surface.
- (iv) Changes in respiration patterns.
- (v) Certain surface behaviour such as tail slashes or flipper or tail slap.

7). Whales may not be encircled, separated from other whales, or the vessel placed within a group of whales.

8). Approaching cow-calf pairs (closer than 300 m) is forbidden. Should this accidentally occur, the vessel must leave the area at a constant "no wake" speed.

9). When departing, wait until all the whales are clear before moving directly away at no wake speed until 300m away.

#### **Approach and Engagement of Bryde's, Humpback and Sperm Whales**

Should any of these species of whales not approach the vessel but continue to move in a straight line, vessels may travel at "no wake" speed from a parallel direction, slightly from the side, and not directly from the rear or head on, but may not approach closer than 50 m or move ahead of the whale. In such cases, after an observation period of twenty minutes the vessel must break off the contact and proceed directly away. Vessels may not drift down on whales.

*Vessels must however immediately abort contact if any one of the above indicators suggest disruptive behaviour.*

#### **Special Conditions Applying to Dolphins**

In addition to complying with conditions set out above, any commercial operation shall comply with the following:

No vessel may exceed the speed of the slowest moving dolphin within 50 m of dolphins.

No vessel shall proceed directly through a school of dolphins.

Dolphins may be approached to within 50 m and contact should be broken unless the animals leave the school to approach the vessel. In particular, females with calves should not be approached or pursued and should be avoided unless they approach the vessel to bow ride. Engagement times for dolphin schools should not exceed 20 minutes.

Diving or swimming with dolphins is prohibited.

Feeding dolphins is prohibited.

Humpback dolphins (*Sousa chinensis*) may be approached, but as this species is particularly shy, care should be taken not to approach closer than 50 m unless the dolphins approach the vessel.

Vessels departing from the vicinity of dolphin schools may exceed 3 knots in order to outdistance the dolphins but must increase the speed gradually and shall not exceed 10 knots within 300 m of any dolphin.

Where two or more vessels approach a school of dolphins, the skippers concerned shall co-ordinate their approach and manoeuvres. Only one boat shall approach at a time while the other stands off at a distance of 100 metres.

### **Permit Conditions**

- 1). The letter "W" must be displayed on the vessel next to the area number.
- 2). The permit holder shall not use any vessel unless it bears the registration letters and numbers assigned thereto by the Director-General. Such letters and numbers shall be painted in white on a black background or in black on a white background on both bows in characters not less than 15 cm in height, 10 cm in breadth and 2 cm in thickness. ....Any registration numbers and letters assigned to and born by a vessel must be maintained in a clear, distinct and legible condition and shall at all times be clearly seen.
- 3). Should the permit holder not perform during the period for which this permit is valid, or fails to make any attempt to utilize his/her permit, such rights may be renewed, reduced or withdrawn.
- 4). Certified and dated statistics shall be rendered monthly on the Standardized Logbook prescribed for this purpose. This book must be kept on board the vessel at all times, and the relevant information must be entered each day before the end of the trip. It must be available for inspection by a Fishery Control Officer at all times. The permit holder shall submit a monthly facsimile of the Logbook no later than the 15<sup>th</sup> of the following month by registered post to the Chief Director of Sea Fisheries.
- 5). The permit holder shall not transfer this vessel or any interest therein without the prior approval of the Chief Director of Sea Fisheries.
- 6). The permit and a Code of Conduct or a copy thereof shall be available on board the vessel and shall be produced on demand to a Fishery Control Officer or any other authorized officer.
- 7). The permit is only valid for the specific area issued and is not transferable to any other area.
- 8). The permit holder must adhere to all the conditions prescribed in the Boat Based Whale Watching Code of Conduct. If any conditions are violated, or the monthly statistics for the Logbook not submitted before the 15<sup>th</sup> of the following month, the permit may be withdrawn.
- 9). Vessels used for whale watching must conform to all South African Maritime Safety Authority (formerly Department of Transport-DOT) regulations. They must be licensed by SAMSA for commercial passenger carrying.
- 10). Skippers of all whale watch vessels must be in possession of a valid SAMSA skipper's license.



- 11). The vessels skipper or guide must be a registered SATOUR guide and must have completed the specialized module on whales or within a period of three months from the date of issue of this permit.
- 12). The permit holder shall be the skipper or the guide of the vessel.
- 13). All whale watch vessels to carry a specified flag when carrying clients on whale watch excursions.
- 14). All whale watch vessels shall provide an adequate interpretation/education service as prescribed.
- 15). Permit holders may be required to carry one or more bona fide Sea Fisheries representatives, given a minimum notification period of 24 hours.
- 16). All whale watching vessels shall carry a logging GPS and must log positions every 5 minutes. Positions may only be deleted at the start of the next trip.

## **ST. LUCIA REGULATIONS**

### **PREAMBLE**

The sightings of whales has always aroused human curiosity and scientific interest. Over the past decade, whale watching has been developing into a world-wide industry and has gained significant importance from the scientific and educational perspective as well as that from commerce and the recreational areas. Nineteen-ninty-six saw the initiation of whale watching in many countries including St. Lucia, an activity expected to attract more visitors to our shores and bring economic benefit to many local communities.

The popularity of whale watching and the world-wide growth of the industry raised questions about the extent to which whale watching effects whales. This has led to the establishment of rules, regulations and codes of conduct governing whale watch activities in some countries. However, whale watching in itself must be regulated in a manner consistent with the International Whalking commission guidelines in order to avoid any negative impacts on the populations inhabiting our waters. The Commission recommends that whale watching activities are carried out in a manner, so as not to increase the risk or the ecological functioning of local populations, by changing population dynamics or impeding normal patterns of habitat use or activity. Whale watching should be conducted in such a way that it fosters positive, respectful interactions between whales and whale watchers and does not result in an increase in irritability or over stress to whales. To date there is almost no evidence of significant long-term impacts on cetaceans, but while studies continue it is prudent to adopt a precautionary approach.

These regulations are also based on the provisions contained in international treaties established for the protection of flora and fauna, such as the Biodiversity Convention, and as such States party to these treaties that must honor their national obligations as required by these. It is thus incumbent on St. Lucia to put in place the necessary guidelines for environmentally sound whale watching to ensure in the process that the rights of the fishers and priority users are respected.

These guidelines are established to regulate all activities related to the observation of cetaceans, particularly in the area of science, and recreation, and are developed in good faith respecting also the rights of the public to conduct such activities for pleasure. The department of Fisheries intends to work closely with the St. Lucia Whale and Dolphin Watching Association. It

expects the Association to provide the forum for the training and operational co-ordination of cetacean watching activities. As such, membership of the Association will be a pre-requisite for licensing.

In order then to assure the sustainable utilization of these resources, the following guidelines are provided:

### **Boats**

- Boats used for marine mammal watching should have the proper functioning engines and rapid response steering. In addition, engines should be installed so as to provide minimal noise and vibration.

### **Swimming**

- No swimming with marine mammals is permitted

### **Feeding**

- Do not attempt to feed marine mammals

### **Approach Strategy**

- Do not approach any fishing activity. However, if approached by a group of fishermen while whale watching, the watching party gets priority.
- No filming or photo shooting of any fishig activity is permitted.
- Always maintain a good lookout at all times when in the vicinity of marine mammals.
- Use extreme caution when approaching marine mammals.
- Within 400 meters of the nearest mammal
  - reduce noise to a minimum;
  - make no sudden changes in speed or direction (except in an emergency);
  - do not reverse (except in an emergency);
  - travel at no more than two knots faster than the slowest mammal at an idle, no-wake speed.
- Do not approach a resting animal; keep a minimum distance of four hundred meters.
- No more than than two vessels should attempt to watch a marine mammal or a group of marine mammals. Only one vessel is permitted to be in contact with mammals, the other vessel has to maintain a distance of 400 meters from any animal or group of animals, until the permitted watching time has elapsed. Radio contact between the two vessels has to be maintained at all times . Approach and departure must be carefully co-ordinated. Total watching time shall not exceed 30 minutes.
- Do not approach an animal head-on. Approach parallel to the animal or slightly to the rear of the animal. Do not cause the animal to change direction.
- Keep a minimal distance of 100 meters from the closest animal.
- Do not box an animal or a group of animals in, or cut off their path or prevent them from leaving.
- Keep a minimum distance of 200 meters from a mother with calf.
- Do not separate or scatter a group of whales or come between a mother and a calf.
- If an animal shows signs of disturbance, abandon contact immediately.
- Do not approach a marine mammal or a group of mammals under sail.

### **Stopping**

- When stopping to watch a marine mammal, place the engine in neutral or allow the motor to idle for a short period ( approximately 1 minute) before stopping.

- If an animal approaches closer than 100 meters, the vessel should be stopped with the engines in neutral.
- Do not chase an approaching animal.
- Keep clear of flukes.

#### **Departure**

- Move off slowly at an idle or no wake speed. Wait until boat is at least 400 meters from the nearest animal before increasing speed.
- If an animal dives, wait at least 5 minutes before starting up the engine.

#### **Other**

- No aircraft is to be used for marine mammal watching.
- The Department of Fisheries reserves the right to send a Fisheries Officer on any marine mammal watching trip as an observer for research purposes.
- Commercial fishing and scientific research requires special permission from the Chief fisheries Officer.
- Copies of all data collected on whale watching trips must be submitted to the Department of Fisheries.

## **TANZANIA**

### **PROPOSED GUIDELINES FOR DOLPHIN WATCHING AT KIZIMKAZI VILLAGE, ZANZIBAR ISLAND**

#### **Watch & Swim Guidelines**

##### **Rules for Boats:**

1. Drive the boat slowly with a steady speed. Do not reverse the engine and avoid going in and out of gear.
2. Approach the dolphin group from the side or from behind. Never head on.
3. Do not chase the dolphins around, let them come to the boat.
4. Always make sure the dolphins have an escape route.
5. Never be more than 2 boats on 1 group of dolphins.
6. Never approach a mother and calf.
7. Never stay longer than 30 minutes with the same group of dolphins.
8. Dolphins slapping their tails at the surface, making coughing sound, leaping or turning away from the boat, indicate that they are disturbed. Leave them alone and look for other animals instead.

##### **Rules for Swimmers:**

1. Enter the water as quietly as possible. Do not jump or dive in.
2. Stay close to the boat and hold on to the boat or line along the side of the boat. Do not swim after or chase the dolphins, let them come to you.

## **TONGA GUIDELINES**

The guidelines have been developed by the Government of Tonga in partnership with the whale watch operators.

### **When Whale Watching:**

Cease contact with the whales at any sign of their becoming alarmed. Allow the whales to control the nature and duration of the encounter. Whales may leave an area if continually disturbed.

Respect the marine environment. Do not throw rubbish or other objects into the water into the sea. Dumping rubbish, particularly plastics can kill Whales and other sea life through accidental swallowing or entanglement.

### **When Whale Watching On The Water:**

Do not approach whales closer than 100 meters.

Vessels when approaching a Whale must slow to a speed of no more than 4 knots within a 300 metre Caution Zone around the Whales.

In the Caution Zone:

- Vessels must allow their engines to idle for at least one minute before switching them off.
- Vessels must minimize boat and other noise, e.g. gear shifting, and
- No more than two vessels may be in the Caution Zone at any one time.

Vessels are banned from approaching Whales' head on or directly from behind. This is part of an Exclusion Zone for Vessels.

Vessels may not box Whales in, cut off their path, or herd or chase them.

If Whales approach you must avoid sudden changes in vessel movement, and when leaving a Whale you must move away very slowly (no wake speed) until at least 100 metres away.

Human-powered paddle craft must not approach within 75 metres of a Whale.

Swimmers must not approach a Whale closer than 30 metres.

- No more than four people may swim with any one group of Whales.
- The swimmer's vessel must use an attached line with an identification buoy.
- No other vessel may be within 100 metres of the swimmer's vessel.

Swimming with Whales can be dangerous. Adult Humpback Whales active at the surface are most likely to be males fighting for the right to mate females. In addition, newborn Humpback calves are vulnerable and under no circumstances should you come between a mother and a calf.

The use of SCUBA is banned for diving with Whales.

The use of artificial light sources is banned around Whales.

The use of jet skis is banned for Whale Watching. If a jet ski is in the vicinity of Whales, a distance of 2,000 metres is required.

**When Whale Watching From Land:**

Cliffs and headlands are good vantage points for watching Whales. Whales can be more easily seen on clear, calm days.

Remain within established footpaths and lookout points.

Protect the environment, e.g. don't trample vegetation.

Do not swim to Whales from shore.

Minimise noise levels.

**When Whale Watching From The Air:**

Aircraft include seaplanes, microlite and light aircraft. Aircraft must not approach closer than a height of 300 metres above a Whale.

No aircraft may land on the water to Whale Watch. If an aircraft has to land in the vicinity of Whales a distance of 2,000 metres is required.

The duration of a Whale encounter by aircraft is limited to five minutes or two approaches (sweeps).

No more than one Whale Watching aircraft may be within five kilometers.

Ban on helicopters for Whale Watching.

**Specialists Interactions:**

Specialists include scientific researchers and commercial filmmakers/photographers. When working with Whales they must use the guidelines.

However:

- Permits may specify additional requirements for researchers.
- Permits may specify additional requirements for commercial filmmakers and photographers.
- Any exception to guidelines for researchers, commercial filmmakers and photographers must be specified in their respective permits.

**TURKS AND CACOS  
GUIDELINES**

***New guidelines for whale watching are being reviewed***

Special rules exist for anyone seeing whales in the Turks and Cacos Islands because this is a breeding ground and the young calves and mothers are particularly sensitive to disturbance. The rules are designed to protect this endangered species and to ensure that people watch whales in safety. Vessels should observe the following restrictions<sup>27</sup>:

1. Boats should not approach nearer than 100 yards of a whale- this also applies to swimmers and divers who should not get into the water with whales (being so close can disturb whales and may be dangerous).
2. If whales approach within 100 yards of your vessel, put engine in neutral until whales are observed at the surface, clear of the vessel. (This avoids the risk of injury to the whale or of damage to the vessel by a frightened whale.

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<sup>27</sup>\_\_\_\_1990. The humpback whale. Distributed by .....Turks and cacos islands.

3. Avoid speeds over 10 knots or sudden changes in speed or direction within 1500 feet of a whales; do not travel faster than the slowest whale when paralleling or following them. (Whales are easily startled by unfamiliar objects, many have come from areas where contact with boats is rare and some may even have been hunted).
- 4 Do not allow your vessel to cause the whale to change direction. (Disturbance has driven whales away from critical habitats).
5. Do not call other boats to a whale and if more than one boat is present ensure that the whale is free to move in any direction. Too many boats confuse whales; an arc of 180 degrees should always remain open in front of the whales.
6. Never allow a boat or person to come between a mother and a calf. (Disruption of parental care may reduce a calf's chance of survival and mothers may be aggressive).
7. In all cases, do not change the normal behavior or movement of whales and always avoid physical contact.

## **UNITED KINGDOM**

### **GUIDELINES FOR MINIMISING DISTURBANCE TO CETACEANS FROM RECREATION AT SEA**

#### **Introduction**

Twenty-seven species of cetaceans (whales, dolphins and porpoises) have been recorded as occurring in the coastal waters of the north-east Atlantic. The main species seen include bottlenose dolphins, harbour porpoise, minke whale, Risso's dolphin, killer whale, common dolphin and white-beaked dolphin. Although many of these usually occur in offshore waters, bottlenose dolphins and several other species are regularly seen close inshore.

Cetacean-watching is increasing in popularity. In some places cetaceans come close to the coast and can be seen adequately from the shore without risk of disturbance. People intending to go to sea specifically to watch cetaceans should go with a recognised operator of cetacean-watching trips. These operators will be following specific guidelines, thereby limiting the number of vessels around cetaceans and limiting disturbance.

However, any vessel at sea, for whatever purpose, may incidentally encounter cetaceans. These guidelines are intended for such vessels. *The term 'vessel' is taken to mean any ship, boat, dinghy, personal watercraft, windsurf, surfboard, canoe, kayak or surf ski.* Recreational boating and water sports are on the increase, and people participating in these activities are likely to want to stop and look at cetaceans.

These guidelines are intended to complement existing local guidelines or, where these do not exist, to assist local bodies to develop locally targeted codes of conduct based on the experience of existing voluntary schemes. For example, the Dolphin Space Programme administers an accreditation scheme for dolphin-watching operators in the Moray Firth in Scotland, and guidelines for all boat users can be found in the Boat User's Guide for the Ceredigion Marine Heritage Coast in south-west Wales. Several other, more general, guidelines have also been produced.

A separate set of guidelines has been produced for operators of commercial vessels offering cetacean-watching trips.

#### **Potential adverse impacts of encounters with cetaceans**

It is recognised that many people at sea for recreational purposes will wish to enjoy encounters with cetaceans. However, these encounters pose a potential threat to cetaceans unless they are conducted in such a way as to minimise disturbance. Collisions with boats may result in injury or death of cetaceans; engine noise may interfere with their acoustic communication, prey detection and orientation systems; and, erratic patterns of movement of boats may cause the animals to suffer stress.

In addition to the physiological effects of stress, the natural behaviour of cetaceans may be disturbed, resulting in a reduction in foraging time, movement to less favourable areas, disruption of mother-calf bonds, decreases in survival, and possible adverse long-term effects on the population. Although the long-term effects are at present uncertain, there is some evidence that vessels lingering to watch cetaceans may cause short-term disturbance in a way that routine marine traffic does not.

The adoption of precautionary guidelines to minimise such disturbance is in the interest of maintaining healthy cetacean populations.

### **Requirement for protection of cetaceans in UK waters**

In the UK all cetaceans are protected under the Wildlife and Countryside Act 1981 and the Wildlife (Northern Ireland) Order 1985, which prohibit their deliberate killing, injury or disturbance.

All cetaceans are listed under Annex IV of the EC Habitats and Species Directive (92/43/EEC) as species being in need of strict protection. Under such protection it is an offence to deliberately disturb cetaceans.

The UK is a Party to the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) which requires signatory states to work towards the prevention of significant disturbance to cetaceans, especially that of an acoustic nature.

The UK is also a Party to the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) which requires signatory states to take appropriate measures to prohibit deliberate capture, killing or disturbance of nineteen species of cetacean listed as strictly protected. This includes most of the species commonly found in north-west European waters.

### **Precautions to minimise disturbance to cetaceans from encounters with vessels**

It is a rare privilege to be able to watch cetaceans in their natural environment. The most rewarding encounters occur when the cetaceans are undisturbed. The following guidelines are designed to minimise stress to individual animals and adverse effects on populations. Some of the points may be inappropriate for some classes of vessel.

1. On encountering cetaceans, continue on your intended route making forward progress at a slow, steady, no wake speed (or less than 5 knots). This will present predictable movements and thus minimise the risk of disturbance to, or collision with, the animals. Avoid erratic movements such as circling around the animals or sudden changes in course or speed.
2. To minimise the risk of disrupting mother-calf bonds leave cetaceans with young alone and avoid coming between a mother and her calf.

3. Allow groups of cetaceans to remain together. Proceeding slowly on a steady course will enable cetaceans to remove themselves from the path of a vessel as a group. Avoid deliberately driving through, or between, groups of cetaceans.
4. On sighting cetaceans, fast planing vessels should gradually slow down to a slow, no wake speed. A suggested speed is less than 5 knots. Wait until well clear of cetaceans before gradually resuming original speed.
5. Let cetaceans approach you. If cetaceans do choose to approach the vessel or bow-ride, maintain a steady speed without changing course. Refrain from altering course to approach them and remember that they may choose not to bow-ride.
6. Always allow cetaceans an escape route. If there is more than one vessel in the vicinity avoid boxing animals in. Be aware of your surroundings - cetaceans will have a restricted escape route in enclosed waters such as narrow channels or sea lochs.
7. Move away slowly if you notice signs of disturbance, such as erratic changes in speed and direction, or lengthy periods underwater.
8. There should be no more than two vessels in the vicinity of cetaceans at any one time, with no more than one vessel in close proximity. Refrain from calling other vessels to cetaceans.
9. For the sake of their own safety and for the health of the cetaceans, people should refrain from swimming with, touching or feeding cetaceans. The risks of contracting diseases such as brucellosis should be borne in mind.
10. Be aware of, and attempt to minimise, possible sources of noise disturbance. Maintaining a steady, slow, no wake speed will help to reduce noise disturbance. Excessive noise can also be avoided by keeping the engine and propeller well-maintained. However, care should be taken to avoid collision with cetaceans when using sailing boats or boats with a low engine noise as the animals are less likely to hear the vessel until it is close.
11. People regularly using vessels in areas where cetaceans are known to occur should consider fitting propeller guards to minimise the risk of injury to cetaceans.
12. Remember that it is an offence to dispose of sewerage, fuel, oil and litter at sea.

These guidelines may be revised in the light of new evidence on the impacts of cetacean-watching becoming available.

Compliance with the International Regulations for Preventing Collisions at Sea has priority over these guidelines at all times.

#### **Further information**

For further information on cetaceans in your area you should contact your local statutory nature conservation agency - for England, that is English Nature; for Wales, the Countryside Council for Wales; for Scotland, Scottish Natural Heritage; and, for Northern Ireland, Environment and Heritage Service (Northern Ireland). The number of your local office can be found in the Yellow Pages under 'Conservation organisations'.



If you have any comments on these guidelines, please contact the European Wildlife Division, Department of the Environment, Transport and the Regions, 902A Tollgate House, Houlton Street, Bristol BS2 9DJ.

## **ENCOUNTERS WITH WHALES, DOLPHINS AND PORPOISES**

**Text of 'credit card' for distribution to members of the public involved in recreational activities in UK coastal waters.**

On encountering whales, dolphins or porpoises you should follow these general guidelines:

- Continue slowly at no wake speed (or less than 5 knots) on your intended route until well clear.
- Avoid erratic movements.
- Avoid approaching directly, let them approach you.
- Refrain from chasing them.
- Always allow a clear escape route for them.
- Move away slowly if they show signs of disturbance.
- Avoid driving through, or between, groups.
- Avoid animals with young.
- Refrain from calling other vessels to the area
- For health and safety reasons, refrain from swimming with, touching, or feeding them.

Compliance with the International Regulations for Preventing Collisions at Sea has priority over these guidelines at all times.

### **BOAT USER'S CODE OF CONDUCT** **Whale and Dolphin Conservation Society**

February 2000

If dolphins approach the boat and/or bow-ride, maintain a slow, steady speed. Do not change course or turn back to them. Dolphins should never be chased or harassed in an attempt to make them bow-ride. When dolphin watching, please follow these simple guidelines:

- \* Please keep your distance and never get closer than 100m (200m if another boat is present). The golden rule when watching dolphins is always to let them decide what happens.
- \* Never drive head-on to, or move between, scatter or separate dolphins. If unsure of their direction, simply stop and put the engine into neutral.
- \* Please spend no longer than 15 minutes near the dolphins.
- \* Take special care with mothers and their young.
- \* Avoid repeated changes in direction or speed - maintain a slow, no wake speed. If dolphins keep heading away, or any of your activity appears to be distressing or harassing them, slowly leave.
- \* Do not dispose of any rubbish, litter or contaminants at sea.

### **CODES OF CONDUCT FOR WATCHING DOLPHINS AND PORPOISE** **Sea Watch Foundation**

There is no reason why boats and dolphins should not be able to co-exist if care is taken to observe the following rules:

- 1) **Do not** chase dolphins or drive a boat directly towards them; whenever possible, let them approach you.
- 2) **Do not** respond to them by changing course or speed in a sudden erratic manner; slowing down or stopping suddenly can confuse and alarm dolphins as much as sudden acceleration.
- 3) **Avoid** dolphins with young.
- 4) Do not swim with, touch or feed dolphins, for your safety and theirs.
- 5) **Ensure that** no more than one boat is within 100 meters, or three boats within one kilometer of dolphins at any one time.

## **SCOTLAND**

### **CODES OF CONDUCT FOR WATCHING MINKE WHALES**

- 1) Do not alter course to steer directly at a whale or circle around a whale. (Avoid appearing as a threat to the animal.)
- 2) Do not suddenly change course or speed in reaction to a sighting or in the presence of a whale. Never go into reverse.
- 3) Avoid getting close to whales with small young. (calves are more naive than older animals and may not perceive a boat and its propeller as a physical threat. Whales with young are more likely to feel threatened when they have young.)
- 4) Ensure that no more than 3 boats are within 1km. (More boats are likely to harass an animal. The whale is less likely to avoid them all.)
- 5) After first sighting a whale, limit your speed to a wake speed no more than 5 knots. (Lower speeds generate less noise disturbance; boats get particularly noisy when you push them towards their hull speed. Lower speeds give more time for a whale to avoid the boat.)
- 6) Remain more than 200m from the whale unless the whale chooses to approach you. (A whale may be feeding in a very specific area and your approach may disrupt its feeding.)
- 7) Do not repeatedly approach whales, which are obviously shy of boats. (Individual whales react differently to boats. You are unlikely to be able to approach a whale, which is shy.)

### **CODES OF CONDUCT FOR WATCHING DOLPHINS** **Scottish Natural Heritage**

- 1) If you are a boat user or jet skier (personal watercraft user), please follow these guidelines when you see dolphins or porpoises: Avoid sudden changes in speed or direction. Slowing down suddenly will confuse and scare dolphins and porpoises as much as speeding up.
- 2) Avoid traveling at high speed.
- 3) Look out for groups of dolphins or porpoises and avoid heading straight for them—they may not know you are there.
- 4) Avoid swimming with, touching or feeding the dolphins— for your safety and theirs. Remember, they are wild animals.

### **WILD SCOTLAND: BEST PRACTICE GUIDELINES** **WATCHING WILDLIFE BY BOAT**

#### **Introduction**

Wild Scotland is the Scottish Wildlife and Nature Tourism Operators Association. We represent wildlife tourism companies across Scotland, all of whom are passionate about Scotland's wildlife. These guidelines provide advice on best practice for wildlife tourism companies whose aims are to provide an enjoyable and memorable wildlife-watching experience whilst minimising the impact on the nature and wildlife.

This document is part of the Wild Scotland Best Practice Guideline Series. More details about other guidelines in the series can be found at [www.wild-scotland.co.uk](http://www.wild-scotland.co.uk).

Contents:

1. General
2. Responsible Professional Wildlife Watching
3. The Wildlife Watching Experience
4. The Law
5. Further information

1. General

- Vessels are to comply with all MCA licence regulations and be clean and well-maintained.
- An appropriate Ship's Management Plan, Vessel Operating Procedure Document, Environmental Policy and vessel service records should be available for inspection by competent authorities.
- All relevant insurances, policy statements (e.g. Health and Safety, Child Protection) and staff disclosures and qualifications should be available for inspection by competent authorities.
- Where a vessel is operated single-handedly, particular care must be exercised in relation to the choice of route and conditions, as well as to safety should the skipper become incapacitated. Please note that under Marine Guidance Note (MGN) 280, the MCA does not recommend single-handed operations (Annexe 3, section 7.1) unless conditions laid out in the document are met.
- Be aware of local codes of conduct or sensitive areas and adjust your activities accordingly.
- Staff should be encouraged to gain appropriate professional qualifications, such as WISE accreditation.
- Guests should be reminded not to throw any litter over the side of the boat or to drop any onshore.
- Guests should be encouraged to provide feedback on their tour. Where possible, this should be recorded.
- You are encouraged to join the VisitScotland Wildlife Experience Quality Assurance Scheme
- You are encouraged to display your Wild Scotland sticker on your boat.

2. Responsible Professional Wildlife Watching

All vessels should operate to and be familiar with The Scottish Marine Wildlife Watching Code. If operating on inland waters, reference to the Scottish Outdoor Access Code is also applicable. Each wildlife experience is different but to ensure best practice and a well-managed experience for customers, Wild Scotland recommends the following for additional consideration:

Wild Scotland recommends:

- Above all, you should set a good example. If you disturb wildlife, your guests and others watching you will think it is acceptable to do the same. If in doubt, back off (and explain your actions to your guests).
- Do not be tempted to get too close because your guests ask you too. The most genuine wildlife encounters are those where the animals are behaving naturally, so keep your distance.
- Any wildlife encounter should be on the animals' terms. Do not pursue an animal that continuously turns away from the boat.
- Generally, no more than 15 minutes should be spent with an animal, unless the animal is obviously associating with the boat and departure may cause disturbance.

**Wild Scotland: Best Practice Guidelines**



## Introduction

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- Above all, you should set a good example. If you disturb wildlife, your guests and others watching you will think it is acceptable to do the same. If in doubt, back off (and explain your actions to your

guests).

- Do not be tempted to get too close because your guests ask you too. The most genuine wildlife encounters are those where the animals are behaving naturally, so keep your distance.
- Any wildlife encounter should be on the animals' terms. Do not pursue an animal that continuously turns away from the boat.
- Generally, no more than 15 minutes should be spent with an animal, unless the animal is obviously associating with the boat and departure may cause disturbance.
- When several wildlife-watching vessels are in the vicinity of animals, establish contact with the other vessels and co-ordinate your actions to avoid disturbance. Consider limiting your time around an animal. Observe the points above.
- Animals should be approached cautiously at an oblique angle from behind. When you draw level maintain a steady parallel course to the animal or group of animals, at a distance that leaves them undisturbed. Never deliberately approach the animal head-on or directly from behind.
- Seal haul-out sites are particularly prone to disturbance. Sites should be approached at an oblique angle (not head-on) with constant watch of the animals for signs of disturbance. If individual animals are staring straight at the boat then you may well be disturbing them. Be prepared to move away smoothly, slowly and quietly.
- Do not form a barrier between an individual and a group and never split mother and calf pairs.
- If approached by marine mammals, and where it is safe to do so, put the engine in neutral and allow the animal to pass. Do not engage propellers until the animal(s) are observed at the surface and clear of the vessel.
- Should dolphins choose to bow-ride, maintain a steady course and speed. When you need to break off the encounter, slow gradually to a stop and allow the animals to leave of their own accord. When the animals leave, do not follow.
- Wild Scotland does not encourage feeding, touching, riding or swimming with marine mammals or basking sharks.
- Do not deliberately identify nest sites of rare or protected species; avoid them if possible.
- If you are putting people ashore, choose your landing area carefully. Do not land guests near a seal haul-out site or breeding colony. Respect seabird breeding areas.
- Do not leave unaccompanied guests in sensitive areas where they may inadvertently cause disturbance.
- It is the responsibility of the skipper to move away if any signs of disturbance are observed.
- It is the responsibility of the skipper to be aware of codes for specific species and specific locations and to take advice on local issues.
- Where possible keep a log of wildlife sightings. Sightings of key or unusual species should be recorded and submitted to a recognised sightings database (see Wild Scotland website for further information).
- If you see anyone intentionally disturbing or harassing basking sharks or other marine wildlife, the incident should be reported to the local Police Wildlife Liaison Officer with details such as boat type and registration as well as any photos or video footage.

## 2. Good guiding and safety

- A brief and friendly introduction is a professional way to start a trip (see Box 1).
- Members of the crew should be introduced before departure and guests informed of their role.
- When speaking to the group, ensure that everyone can hear you. The best way to check is to ask. Remember to face the group not the object you are referring to.

- If using an amplifier, ensure the balance is suitable for all aboard (adjust to weather conditions).
- Encourage people to become involved with looking for species - it helps keep guests engaged during the trip.
- Carry extra pairs of binoculars to maximise the quality of experience for guests, particularly where it is necessary to stand off animals or birds that would be disturbed by a closer approach.
- When wildlife is spotted, ensure the guide/crew are positioned so that the guests can get the best possible view of the wildlife.

#### **BOX 1: Getting Things Off To A Good Start**

Guests should feel welcome and involved in the trip. A briefing should be provided at the start of each trip. Key information may include:

- A welcome and introduction of the team;
- Safety instructions;
- Basic housekeeping (toilets, refreshments, where to put litter etc);
- Details of the trip and itinerary, including what wildlife may be seen during the trip (do not build up unreasonable expectations);
- Information about how the boat will be handled to minimise wildlife disturbance;
- Any other issues relevant to the trip relating to conservation, safety, behaviour, codes etc;
- The opportunity to ask questions.
- When around wildlife, ask guests to keep noise and movement to a minimum to avoid disturbance.
- Guests should be told about, or have information available on the natural history and behaviour of species seen (see Box 2). It is not acceptable to merely point out species.
- If you are landing people as part of your trip, be careful where you put people ashore. Avoid close proximity to breeding colonies and stay with your guests in sensitive areas.
- Ensure that guests going ashore understand how to behave responsibly, such as keeping back from puffin burrows, not approaching seal pups etc.

#### 4. The Law and Wildlife

It is your responsibility as a tour operator to be familiar with the law relating to wildlife. A summary of some of the key elements relating to marine wildlife law are shown below, but these are not exhaustive, both in terms of actions and species. Reference should always be made to the legislation itself.

It is an offence:

- to deliberately or recklessly capture, kill, injure or disturb any whale, dolphin, porpoise or basking shark;
- to damage or destroy a breeding site or resting place of any whale, dolphin, porpoise or basking shark
- to deliberately or recklessly harass any whale, dolphin, porpoise or basking shark;
- to take or keep any egg of a wild bird;
- to take, damage, destroy or otherwise interfere with any nest habitually used by any wild bird included in Schedule 1 of the 1981 Act as amended;
- to obstruct or prevent any wild bird from using its nest;
- to intentionally or recklessly harass any wild bird included in Schedule 1 of the 1981 Act;
- to take, damage or destroy or otherwise interfere with the nest or nest sites of birds included on schedule A1 of the 2004 Act (presently this only applies to the white tailed sea eagle);
- to harass birds listed on schedule 1A of the 2004 Act (presently this only applies to the white-tailed sea eagle);

Specific laws also apply to seals and flora.

If you see anyone intentionally disturbing or harassing marine wildlife, the incident should be reported to the local Police Wildlife Liaison Officer with details such as boat type and registration as well as any photos or video footage.

For further information about wildlife and the law, refer to Scottish Natural Heritage at [www.snh.org.uk/publications/on-line/wildlife/law](http://www.snh.org.uk/publications/on-line/wildlife/law) (Note: the site currently being amended and only serves as an introduction. Any decision relating to wildlife law should be based upon appropriate advice).

#### 5. Further Information

See the Wild Scotland website on [www.wild-scotland.org.uk](http://www.wild-scotland.org.uk) for current information

#### **BOX 2: Inspiring People to Find Out More**

Where possible, have available:

- map of the area
- laminated species identification charts
- species charts in other languages
- field guides and other reference material
- binoculars
- Wild Scotland members' listing and other literature

#### **Dolphin Space Program**



#### **Codes of Conduct**

There are currently two DSP codes of conduct for wildlife tour operators in the Moray Firth, one for operators in the inner firth area and another for operators in the outer firth area. The reason for this is that the inner Moray Firth is a much more enclosed area and is subject to higher volumes of vessel traffic than the outer Moray Firth. The use of the inner Moray Firth by bottlenose dolphins has been studied extensively and we know that there are several areas in the inner firth of particular importance to the dolphins. These areas are all deep water, narrow channels at the entrance to firths (Inverness, Beaulieu and Cromarty) which are important feeding grounds. Due to the sensitive nature of these areas the inner firth code is more proscriptive than the outer firth code and requires operators to adhere to agreed routes of operation. The idea being that the dolphins become used to the predictable routes taken by the tour boats and can choose to approach the boats when they wish to. This approach ensures that any interaction is under the dolphin's control.

In contrast the outer firth is a much bigger and more open area. It is subject to less vessel traffic and appears to have fewer sensitive areas. Therefore, the DSP code of conduct is less proscriptive and operators may move around and approach dolphins using recommended DSP approach guidelines. Again, any interaction is under the dolphins control and they may leave the boat without being pursued, at any time.

#### **Inner Firth Code of Conduct**

1. Maintain forward progress at a steady speed throughout the trip. The risk of collisions, harassment and noise disturbance is reduced by maintaining a steady, speed. If dolphins speed up or slow down this could be avoidance behaviour. Do not increase or decrease speed during an encounter to keep pace with dolphins.
2. Follow an agreed route within your area of operation, without stops or deviations except for safety reasons. Dolphins are more likely to habituate to predictable boat noise and behaviour and are therefore less likely to be disturbed.
3. Always slow down gradually if cetaceans appear ahead. Once clear of the animals slowly resume cruising speed. If dolphins choose to approach the boat or bowride, maintain slow cruising speed and do not make any sudden changes in speed or direction. Reduced speeds generate less acoustic disturbance and allow more time for dolphins to avoid an approaching boat, therefore reducing the chances of collision.
4. Limit duration of time spent and number of trips in certain sensitive areas (such as Kessock Channel and Chanonry Narrows). Sensitive areas may be areas of high usage for important activities e.g. feeding or breeding. They may also be areas where there are narrow channels or where high volume boat traffic exists. Narrow channels can amplify underwater noise and also give dolphins less room to manoeuvre. All of these factors can make dolphins particularly vulnerable to disturbance in these areas.
5. Do not allow anyone to touch, feed or swim with dolphins. The dolphins in the Moray Firth are self-supporting wild animals and do not need to be fed. Feeding these animals may alter their behaviour and can damage their health. Swimming with or touching dolphins may be dangerous as dolphins can be aggressive. Infections can also be transmitted between dolphins and humans.



6. Dispose of all rubbish, waste oil and fuel on shore using appropriate facilities and containers, or using oil absorbency mats in bilges, to reduce the potential for marine pollution.

#### **Outer Firth Code of Conduct**

1. Tour operators agree and maintain areas of operation. This ensures that tour boats are spaced out along the coastline, therefore reducing the potential for cumulative impacts on the bottlenose dolphin population.

2. Dolphins should be approached from the side using a converging approach. This allows dolphins to be aware of your approach whilst giving them the freedom to move away or close the distance. Dolphins should not be approached directly from the front or rear as this increases the likelihood of disturbance of important behaviours.

3. Maintain a steady course and speed during encounters with dolphins. The risk of collisions, harassment and noise disturbance is reduced by maintaining a steady, slow speed. If dolphins speed up, slow down or move away from the vessel this could be avoidance behaviour. Do not increase or decrease speed, or leave your course to keep pace with the dolphins. Instead, maintain a steady forward course until the dolphins return to the boat or have moved well clear, indicating the encounter is over. Do not turn back to the dolphins or try to encounter them a second time.

4. Do not allow anyone to touch, feed or swim with dolphins. The dolphins in the Moray Firth are self-supporting wild animals and do not need to be fed. Feeding these animals may alter their behaviour and can damage their health. Swimming with or touching dolphins may be dangerous as dolphins can be aggressive. Infections can also be transmitted between dolphins and humans.

5. Dispose of all rubbish, waste oil and fuel on shore using appropriate facilities and containers, or using oil absorbency mats in bilges, to reduce the potential for marine pollution.

#### **WALES CODES OF CONDUCT FOR WATCHING DOLPHINS<sup>28</sup> Cardigan Bay Forum**

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<sup>28</sup>\_\_\_\_1992. DOLPHIN Code of conduct. Produced by Cardigan Bay Forum and Snowdonia National Park Authority.

- 1) **Do not** chase dolphins or drive a boat directly towards them. Whenever possible, let them approach you.
- 2) **Do not** change course or speed in a sudden or erratic manner; slowing down or stopping suddenly can confuse or alarm dolphins as much as sudden acceleration.
- 3) **Avoid** dolphins with young.
- 4) **Do not** swim with, touch or feed dolphins, for your safety and theirs.
- 5) **Ensure** that no more than one boat is within 100m or three boats within one kilometer of dolphins at any one time.

The bottle-nosed dolphin and the harbor porpoise are protected by law under the Wildlife and Countryside Act (1981). If you see anyone deliberately harassing them, please report it to the police.

**Commercial passenger boat code for the Ceredigion Marine Heritage Coast (MHC) and Cardigan Bay Special Area of conservation (SAC), West Wales.**

General (not entire text):

- \* Speed limit within the MHC of 8 knot
- \* Speed limit of 8 kts within 300m from high tide line along other stretches of coast
- \* Outside these areas, be aware of wildlife and adopt suitable behaviours when coming into contact

Specific to cetaceans:

- \* Any individual should not be approached head on
- \* Throttle back from 300m when approaching
- \* Remain stationary or cruise by at 100m from any individual or group - let them come to you
- \* Do not circle around individuals or group
- \* Avoid "bunching" around animals
- \* Avoid deviating from agreed routes to see animals

**CETACEAN (Dolphins, Porpoises and Whales) CODE OF CONDUCT  
- FOR USE IN PEMBROKESHIRE**

Dolphins, porpoises and whales (cetaceans) share these waters with you. They are sensitive to disturbance so please show understanding when in their vicinity. These animals are protected by law under the Wildlife and Countryside Act 1981 (as amended).

Certain vessels can disturb their daily activities, scaring them away and even causing injury. If you see anyone harassing or recklessly disturbing them, please report it to the police.

It is an offence to intentionally kill or injure cetaceans. It is also an offence to disturb cetaceans and basking sharks. To do so intentionally or recklessly\* may result in a prison sentence.

By following this cetacean code of conduct, and any local guidance that is in place, you will not commit an offence and will minimise stress to cetaceans when you encounter them at sea. This code will also benefit turtles, basking sharks and sunfish and should be applied accordingly.

\*Recklessness is a legal term. A person who is heedless of the consequences of his actions or of danger will be reckless.

- 1 **On sighting cetaceans fast vessels should gradually slow down** to a slow speed (less than 5 knots).
- 2 **On encountering cetaceans continue on your intended route.** This will present predictable movements. Avoid erratic movements around the animals or sudden changes in speed.
- 3 **Let cetaceans approach you.** If cetaceans do choose to approach the vessel or bow-ride, maintain a steady speed without changing course. Do not change course to directly approach them and remember that they may choose not to bow-ride.
- 4 **Allow groups of cetaceans to remain together.** Avoid deliberately driving through, or between, groups of cetaceans. Proceeding slowly on a steady course will enable cetaceans to remove themselves from the path of a vessel as a group.
- 5 **Leave cetaceans with young alone** and avoid coming between a mother and her calf.
- 6 **Always allow cetaceans an escape route.** Be aware of your surroundings – cetaceans will have a restricted escape route in enclosed waters such as sounds (narrow channels) and bays. If there is more than one vessel in the vicinity avoid boxing animals in.
- 7 **Minimise disturbance from departure.** The boat departure has as much potential to disturb (if not more so) than the arrival. Wait until well clear of cetaceans (100m) before throttling up to travel above 5 knots.
- 8 **Do not seek to swim with, touch or feed cetaceans** for the sake of your own safety and for the health of the cetaceans themselves. Cetaceans are wild animals and there are risks of injury, contracting diseases such as brucellosis, and passing on human diseases.
- 9 **Noise disrupts.** Be aware of, and attempt to minimise, possible sources of noise disturbance. Maintaining a steady, slow, speed (less than 5 knots) will help to reduce noise disturbance. However, care should be taken to avoid collision with cetaceans when using sailing boats or boats with a low engine noise as the animals are less likely to hear the vessel until it is close.
- 10 **Limit vessel numbers.** There should be no more than 1 vessel in close proximity to cetaceans (less than 100m), and in the open sea no more than 3 vessels in the vicinity of cetaceans (100m-1km) at any one time. Refrain from calling other vessels to cetaceans.
- 11 **Limit observation time.** Presence in the watching area should be limited if there are other vessels in the vicinity interested in watching the cetaceans (15 minutes). The Wildlife and Countryside Act makes provision for licenses to be issued to allow certain activities such as research and survey to take place.
- 12 **Move away slowly if you notice signs of disturbance,** such as erratic changes in speed and direction, or lengthy periods underwater.

**Additional guidelines covering general use of the sea:**

- \*Remember that it is an offence to dispose of sewage, fuel, oil and litter at sea
- \*Avoid conflict with other users by knowing and abiding by the rules
- \*Always be safe at sea – follow the appropriate guidelines

General advice leaflets are available from organisations such as the Maritime Coastguard Agency and the Royal Yachting Association

#### **Additional guidelines covering vessel maintenance and fittings:**

- \*Keep your engine and propeller well maintained; regular maintenance can reduce excessive noise
- \*If you regularly use vessels in areas where marine mammals are known to occur you should consider fitting propeller guards to minimise the risk of injury to them

General advice leaflets are available from organisations such as the Maritime Coastguard Agency and the Royal Yachting Association

*Safety note – safety of vessels and passengers must take priority at all times. Actions taken to prevent personal injury or loss of life, or to save a vessel are exempt from byelaws and codes of conduct.*

*Speed note – 5 knots has been given as an appropriate slow motoring speed to use – this should not be exceeded where indicated. 5 knots should be the maximum speed over the ground unless tidal conditions dictate that a higher speed is needed for boat manoeuvring.*

*Local zoning note – Be aware of, and comply with, local zoning schemes designed to help minimise disturbance to known concentrations of wildlife.*

*Scientific work note – site wardens/managers should be contacted prior to any marine wildlife research or scientific study, as permits may be required.*

**To report marine wildlife disturbance contact Nic O'Brien – Dyfed/Powys Police Marine Unit (Pembroke Office Tel: 01646 621162, Patrol Boat Tel: 07976 060966)**

To report sightings of dolphins, porpoises and whales contact the Sea Trust (Tel: 01348 875639)

**To report dead dolphins, porpoises, whales, or turtles contact Marine Environmental Monitoring**

(Tel: 01348 875000)

**To report any live strandings, oiled sea birds or any marine animal or bird which seems to be in distress, contact the RSPCA (Tel: 08705 555999)**

Please contact the Activity Liaisons Officer for any general queries about the Marine Code (Tel: 01646 696134)

#### **UNITED STATES GUIDELINES**

##### **GUIDELINES FOR VIEWING MARINE MAMMALS FOR PRIVATE BOATERS**

You can make a difference when viewing marine mammals in the wild. By being aware of the steps for responsible marine mammal viewing, you can help reduce the potential to inadvertently harm marine mammals or violate Federal Law.

- Remain at least 100 yards away from whales, dolphins, porpoises and from seals and sea lions that are on land, rocks or ice.
- While viewing marine mammals, you should ensure that your actions do not cause a change in their behavior. Never attempt to chase, herd, or separate groups of marine mammals or mothers from their young.

- Do not encircle or entrap whales or other marine mammals between your boat and shore, or another boat and your boat. Always leave them an escape route.
- If approached closely by marine mammals while motoring, reduce speed and shift to neutral. Do not reengage your props until the animals are observed at the surface, clear of the vessel.
- Do not crowd other whale watching vessels. When encountering other whale watchers, wait your turn at a distance, then approach cautiously after they have left the area. Limit your viewing time with any individual or group of marine mammals to ½ hour.
- Avoid following behind or approaching directly in front of whales or other marine mammals. Vessels should attempt to parallel the whale's course.
- Avoid excessive speed or sudden changes in speed and direction near whales and marine mammals.
- Whales and marine mammals may surface in unpredictable locations. Emitting periodic noise may help whales to know your location and avoid whale and boat collisions. For example, if your engine is not running, occasionally tap the side of your boat with a hard object.
- Report incidents of harassment of marine mammals to the National Marine Fisheries Service 24-hour HOTLINE at 1-800-853-1964, state or local enforcement agencies, harbor patrol, or your local Coast Guard office.

**WHALEWATCHING GUIDELINES FOR THE NORTHEAST REGION  
INCLUDING THE STELLWAGEN BANK NATIONAL MARINE SANCTUARY  
Noaa - National Marine Fisheries Service & National Ocean Service**

All whales, dolphins and porpoises in the northeast region are federally protected by the Marine Mammal Protection Act (MMPA) and most large whales in the area are further protected under the Endangered Species Act (ESA). Under these Acts, it is illegal to "harass, hunt, capture or kill" any marine mammal. Prohibited conduct includes any "negligent or intentional act which results in the disturbing or molesting of marine mammals."

The following operational procedures are intended to avoid harassment and possible injury to large whales, particularly the finbacks, humpbacks and minke whales commonly seen by vessels engaged in whale watching. Following the guidelines can help protect both you and the whale you wish to watch and keep you from accidentally violating federal law.

The right whale is protected by separate State and Federal regulations that prohibit approach within 500 yards of this species. Any vessel finding itself within the 500-yard buffer zone created by a surfacing right whale must depart immediately at a safe slow speed. The only vessels allowed to remain within 500 yards of a right whale are vessels with appropriate research permits, commercial fishing vessels in the act of hauling back or towing gear, or any vessel given prior approval by NMFS to investigate a potential entanglement.

**OPERATIONAL GUIDELINES WHEN IN SIGHT OF WHALES:**

**From two miles to one mile away:**

Reduce speed to 13 knots.

Post a dedicated lookout to assist the vessel operator in monitoring the location of all marine mammals.

Avoid sudden changes in speed and direction.

Aircraft observe the FAA minimum altitude of 1,000 feet over water.

**From one mile to one-half mile away:**

Reduce speed to 10 knots.

**From one-half mile to 600 feet away:**

Reduce speed to 7 knots.

Maneuver to avoid head-on approach.

**Close approach procedure 600 feet or closer:**

Parallel the course and speed of moving whales up to the designated speed limit within that distance.

Do not attempt a head-on approach to whales.

Approach and leave stationary whales at no more than idle or "no wake" speed, not to exceed 7 knots.

Do not intentionally drift down on whales.

Vessels in multi-vessel approaches should maintain communication with each other (via VHF channels 9, 13, or 16 for hailing) to coordinate viewing.

Take into account the presence of obstacles (vessels, structures, fishing gear, or the shoreline). All vessels in close approach must stay to the side or behind the whales so they do not box in the whales or cut off their path.

**Stand-by Zone -- From 300 feet to 600 feet away:**

Two-vessel limit within the 300- to 600-foot Stand-by Zone at any one time.

**Close Approach Zone -- From 100 feet to 300 feet away:**

One vessel limit.

Other vessels stand off. (up to two vessels in the Stand-by Zone - others outside 600 feet).

If more than one vessel is within 600 feet, the vessel within 300 feet should limit its time to 15 minutes in close approach to whales.

**No Intentional Approach within 100 feet.**

Do not approach within 100 feet of whales. If whales approach within 100 feet of your vessel, put engines in neutral and do not re-engage propulsion until whales are observed clear of harm's way from your vessel.

**II. Departure Procedure**

All vessels should leave the whales following the same speed and distance procedures described above.

In order for vessels to be clear of whales before dark, vessels should cease whale watching and begin their return to port 15 minutes before sunset.

**Penalties:**

A violation of the Marine Mammal Protection Act or the Endangered Species Act may result in fines or civil penalties of up to \$10,000 or criminal penalties of up to \$20,000 plus IMPRISONMENT and/or SEIZURE OF VESSEL and other personal property.

**Whale Watching Information**

For more information on the whale watching guidelines or laws pertaining to marine mammals you should call:

National Marine Fisheries Service, Protected Resources Division -- 978-281-9254 OR

Gerry E. Studds/Stellwagen Bank National Marine Sanctuary --781-545-8026

**Right Whale Sighting**

All sightings of a right whale should be called in to the NMFS Sighting Advisory.

Sighting Advisory System -- 508-495-2264 or 978-585-8473 (Beeper)

#### Entangled Whale

Any sighting of an entangled whale should be reported. Vessels should stand-by and keep the whale in sight until help arrives, or arrange for another vessel to maintain contact with the whale.

Disentanglement HOTLINE -- 800-900-3622 or call the USCG on VHF CH-16

#### Dead Whale

Any sighting of a dead whale should be reported.

Marine Mammal Stranding Network -- 508-495-2090 or 978-585-7149 (Beeper)

#### Potential Violations

Any reports of an activity that appears to be an intentional or negligent action leading to a collision or harassment incident should be called in to the NOAA Enforcement Office. Enforcement HOTLINE -- 800-853-1964

The National Marine Fisheries Service is the Federal agency responsible for protecting whales within U.S. waters under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. It is part of the National Oceanic and Atmospheric Administration (NOAA).

The Gerry E. Studds/Stellwagen Bank National Marine Sanctuary is part of a network of marine protected areas chosen for their special ecological and/or historical significance including a central summer feeding ground for whales. The 842-square-mile area, between Cape Ann and Cape Cod, is administered under NOAA's National Ocean Service.

### **SOUTHEAST REGION, NATIONAL MARINE FISHERIES SERVICE Cape Hatteras to the Mexican Border, including the Gulf of Mexico**

#### Marine mammal Viewing Code of Conduct

- Remain a respectful distance from marine mammals.
- The minimum recommended distances are 50 yards from dolphins and porpoise and 100 yards from whales.

Marine Mammals have sensitive hearing and many species communicate by vocalizing underwater:

- Underwater sound produced by a vessel's engines and propellers can disturb these animals.

Cautiously move away from the animals if you observe any of the following:

- Rapid changes in direction or swimming speed.
- Erratic swimming patterns
- Escape tactics such as prolonged diving, underwater course changes, or rapid swimming at the surface.
- Tail slapping or lateral tail swishing at the surface
- Female attempting to shield a calf with her body or by her movements.

Even if approached by a marine mammal or sea turtle:

- Do not touch or swim with the animals.

Never feed or attempt to feed marine mammals or sea turtles:

- It can alter their natural behavior, make them dependent on handouts, and can be harmful to their health.
- Marine mammals, like all wild animals, may bite and inflict injuries to people who try to feed them.

If you need to move around marine wildlife, do so from behind (i.e., never approach head-on):

- Vessels that wish to position themselves so that the animals would pass them, should do so in a manner that stays fully clear of the animals path.

Be aware that marine mammals may surface in unpredictable locations.

- Breaching and flipper slapping whales may endanger people and/or vessels.

Marine mammals are more likely to be disturbed when more than one boat is near them:

- Avoid approaching the animals when another vessel is near.
- Always leave marine mammals an escape route.
- When several vessels are in an area, communication between operators will help ensure that you do not cause disturbance.

Limit your viewing time:

- Prolonged exposure to one or more vessels increases the likelihood that marine mammals will be disturbed.
- Viewing periods of greater than ½ hour should be undertaken only if you are absolutely sure that you are not causing disturbance or any changes in behavior.
- Since individual animal's reactions will vary, carefully observe all animals and leave the vicinity if you see signs of disturbance.
- Your vessel may not be the only vessel in the day that approaches the same animal(s); please be aware of cumulative impacts.

Travel in a predictable manner:

- Marine mammals appear to be less disturbed by vessels that are traveling in a predictable manner.
- The departure from a viewing area has as much potential to disturb animals as the approach.
- If a marine mammal or sea turtle approaches, put your engines in neutral and allow the animal to pass.
- Never pursue or follow marine wildlife.
- Never attempt to herd, chase, or separate groups of marine mammals or females from their young.
- Avoid excessive speed or sudden changes in speed or direction in the vicinity of the animals.

#### **NORTHWEST REGION, NATIONAL MARINE FISHERIES SERVICE WATERS OFF THE COASTLINE OF WASHINGTON STATE AND OREGON**

In order to protect and conserve marine mammals and promote public awareness of the need to avoid harassment of marine mammals, the National Marine Fisheries Service is providing the following information and guidelines for viewing marine mammals. These guidelines are directed towards those whose interests and enthusiasm for watching marine mammals may inadvertently result in harm to the animals being viewed. Although these guidelines are generally directed at gray whale watching, they also apply to other species of marine mammals such as killer whales, dolphins, and porpoise and include specific guidelines for seals and sea lions (pinnipeds) on land.

Marine mammals are protected under the Marine Mammal Protection Act of 1972 (MMPA). Large whales such as sperm whales and humpback whales are also protected under the Endangered Species Act. These laws prohibit the 'take' of any marine mammal except by permit or exception. The term 'take' means to harass, hunt, capture or kill any marine mammal or attempt to engage in any such conduct. Thus, any actions by persons or vessels or aircraft that they are operating in the vicinity of marine mammals that substantially alter the



behavior of the marine mammals may be a violation of the law unless such persons have specific legal authority or a permit issued under the MMPA. Violators of the MMPA may be subject to a civil penalty of up to \$10,000 for each violation or criminal prosecution with a fine of up to \$100,000 or imprisonment for up to one year or both.

Human activities in the vicinity of marine mammals may result in a range of impacts varying from no observable effect to modifying their behavior to causing physical harm to the animals. Activities that harass marine mammals may cause detrimental effects such as: separation of mother whales and their calves; disruption of migratory patterns; disruption of social groupings such as killer whale pods; interference in breeding and reproductive activities; abandonment of nursing pups and/or rearing activities. These guidelines are intended to not only protect the animals, but also to benefit and protect the general public since an occurrence such as a vessel/whale collision could be detrimental to both the animal and the people involved.

### **Guidelines**

People should not perform any action that substantially disrupt the normal behavior of a marine mammal. Such actions include the negligent or intentional operation of an aircraft or vessel, or individual acts that result in a substantial disruption of a marine mammal's normal behavior pattern. These actions would be harassment and thus would be violations of the Marine Mammal Protection Act.

Substantial disruption of a marine mammal's normal behavior pattern are actions by the marine mammal such as, but not limited to:

1. a rapid change in direction or speed;
2. escape tactics such as prolonged diving, under water course changes or underwater exhalation;
3. evasive swimming patterns such as rapid swimming or 'porpoising' at the surface;
4. a rapid departure off land by seals and sea lions;
5. attempts by a female whale to shield a calf from a vessel or a human observer by tail swishing or other protective movements.

### **Vessels**

1. While underway, vessels should avoid intentionally approaching closer than 100 yards to a marine mammal. Activities within 100 yards of marine mammals require caution and approaching closer than 50 yards would involve high risk of harassing the animal.
2. Vessels should not be used to herd or chase marine mammals nor to separate any groups of marine mammals.
3. Vessels should not be used to put people in the water in the vicinity of marine mammals.
4. When whale watching or within 100 yards of a whale:
  - Do not take actions that may evoke a reaction from the whales or result in physical contact.
  - Maintain a constant speed while in the vicinity of the whale.
  - Avoid following behind a whale or approaching directly in front of a whale. Vessel movements should parallel the whale movements. When approaching whales, it should be from an oblique angle.
  - Avoid speed. Vessels should not operate at speeds faster than a single whale or the slowest whale in a group.
  - Avoid radical speed or direction changes when approaching

- or leaving whales.
- If possible, put the vessel in neutral and allow the whales to approach the vessel.
- Avoid positioning the vessel such that it restricts or modifies the whale's normal movements.
- Avoid going through or separating any groups or pairs of whales such as mother/calf pairs.

### **Aircraft**

1. Aircraft include seaplanes, microlite and light aircraft. Aircraft must not approach closer than a height of 300 metres above a Whale.

No aircraft may land on the water to Whale Watch. If an aircraft has to land in the vicinity of Whales a distance of 2,000 metres is required.

The duration of a Whale encounter by aircraft is limited to five minutes or two approaches (sweeps).

No more than one Whale Watching aircraft may be within five kilometers.

Ban on helicopters for Whale Watching.

### **Individual Actions**

1. Individuals should restrict their activities when within 100 yards of marine mammals to prevent an alteration of the whale's behavior due to the person's presence.
2. Swimmers or divers should not approach within 50 yards of marine mammals.

### **Seals and Sea Lions**

Pinnipeds (seals and sea lions) are also protected under the Marine Mammal Protection Act and should not be disturbed or by humans or dogs accompanying them. Pinnipeds on land (haul-out areas) are especially sensitive to human and vessel disturbance. Intentional or negligent actions by persons, their pets, or the vessels/aircraft that they are operating in the vicinity of pinnipeds haul-outs that cause the pinnipeds to flee can be MMPA violations.

1. People/vessels should not intentionally approach pinnipeds hauled-out on land any closer than 100 yards.
2. The following reactions by the pinnipeds may indicate disturbance:
  - a number of animals raise their heads;
  - a few animals hurriedly enter the water;
  - a number of animals move closer to the water;
  - increased vocalizations by sea lions;

### **Summary**

People should exert caution when in close proximity to marine mammals. Some activities may result in harassment of the animals even in instances when these guidelines are being adhered to. For example, in some circumstances, vessels operating outside the minimum approach distances may result in disruption of the marine mammal's behavior, and therefore, could be viewed as harassment. Failure to observe these guidelines may result in the harassment of marine mammals which is a violation of the MMPA. Public cooperation in adhering to these guidelines is essential for the protection of these animals. Observations of marine mammal harassment should be reported to the NMFS or State law enforcement agencies.

**BEST PRACTICES GUIDELINES**  
**The Whale Watch Operators Association – North West**

**Background Information**

The Whale Watch Operators Association – North West is the international industry organization representing commercial whale watchers operating in the Pacific North West waters of Juan de Fuca, Haro and Georgia Straights, the waters of Puget Sound and those waters surrounding the Gulf and San Juan Islands. Generally, the waters home to the Southern Vancouver Island resident Killer Whales known as J, K and L pods.

WWOA-NW members have compiled a vast number of hours of observation of the J, K & L Pods comprising the largest known body of observational knowledge of these whales. One of the results of the continuous review of these observations has been the refinement of conservation objectives and the resultant ongoing development of guidelines outlining the best practice given a certain situation when a vessel encounters various marine mammals, particularly Killer Whales.

One of the Association's major objectives is to assist in the conservation of all marine species in these waters, but particularly to contribute to the conservation of these resident Killer Whales. A very large accomplishment towards this conservation objective was the development of the original Guidelines in the early 1990's. Those rudimentary Guidelines have now been developed into this series of Best Practices Guidelines of the new millennium, the objectives of which are two-fold: Firstly, to minimize potential negative impacts on marine wild life populations by maintaining normal daily and seasonal activity patterns in the short and long terms; and, Secondly, to provide the best viewing opportunities such that watchers have ability to enjoy and learn about wild life through observation, whether for pleasure, commerce or research purposes with the objective of sustaining all such activities.

In addition to these conservation objectives, some Guidelines are intended to manage vessel traffic in order to fairly and efficiently move vessels through transition zones as well as in the viewing area. These are intended to increase viewing opportunities for all persons and further minimize the impact on the various animals.

The industry, government and non-governmental-organization conservation management model employed in these waters (and initiated by the Whale Watch Operators Association – North West) is one of the most comprehensive self-management conservation frameworks in the world. Its pioneering framework is a model being applied in the conservation management of other species in other parts of the world. It has proven to be one the most utilizable conservation tools anywhere and has been presented at the Conference of the North American Committee for Environmental Cooperation (NACEC) attended by the United States, Canada and Mexico.

**General Application**

These Best Practices Guidelines are to be applied by all members' vessels and those others who wish to manage their vessels responsibly while in the presence of marine wild life. Member vessel operators are required to review and be proficient in the application of these Best Practices Guidelines.

It is worthy of note that these Best Practices Guidelines are significantly more stringent than the Laws and Regulations currently in effect in both Canada and the U.S.A.. Where a situation has not been addressed in these Best Practices Guidelines it is the intention that the prevailing regulation of the relevant jurisdiction be observed. In Canada, that is the federal Fisheries Act and in the U.S.A that is the federal Marine Mammal Protection Act. Member vessel operators are required to be thoroughly familiar with sets of Regulations and ensure compliance at all times, in addition to complying with these WWOA-NW Best Practices Guidelines.

### **Operation of Vessels in the Vicinity of Resident Killer Whales**

1. A vessel shall approach an area of known or suspected whale activity with extreme caution.
2. A vessel within 1/2 mile (880 yards) of a whale is considered to be in the vicinity of whales and is required to abide by all of these Best Practices Guidelines as are relevant.
3. If a vessel operator is unaware of the whales' location he must maintain a vigilant watch for whales at all times. Mere observation of whale watching vessels in the distance does not fulfill this responsibility as individual whales may be encountered anywhere and at any time. Maintaining a vigilant watch often includes significant speed reductions.
4. A vessel approaching the vicinity of whales - within 1/2 mile (880 yards) of a whale - is considered to be in the slow-down zone and must gradually reduce speed such that vessel speed is no more than 7 knots at 1/4 mile (440 yards) off or closer. This speed transition shall also be observed when dis-engaging the vicinity of whales.
5. As the vessel approaches, the distribution of whales and the positioning of other viewing vessels should be surveyed. Communication with other member vessels is strongly encouraged at this point (on the designated marine radio frequency).
6. A vessel approaching the vicinity of whales from ahead must apply the Stop & Wait Viewing Sequence once inside 1/2 mile (880 yards) of the nearest whale or within 1/4 mile (440 yards) of a vessel maintaining its priority sequence and waiting for the whales to arrive. (See Stop & Wait Viewing Sequence).
7. A vessel approaching the vicinity of whales from behind must apply the Parallel Viewing Sequence once inside 1/2 mile (880 yards) of the nearest whale or within 1/4 mile (440 yards) of a vessel maintaining its priority paralleling sequence. A vessel may disengage the area to reposition at any time. (See Parallel Viewing Sequence).
8. A vessel approaching the vicinity of whales from the side must apply the Parallel Viewing Sequence once inside 1/2 mile (880 yards) of the nearest whale or within 1/4 mile (440 yards) of a vessel maintaining its priority paralleling sequence. A vessel may disengage the area to reposition at any time. (See Parallel Viewing Sequence).

#### **Parallel Viewing Sequence**

9. A vessel approaching the vicinity of whales from behind or from the side must apply the Parallel Viewing Sequence once inside 1/2 mile (880 yards) of the nearest whale or within 1/4 mile (440 yards) of a vessel maintaining its priority paralleling sequence. A vessel may disengage the area to reposition at any time.
10. When approaching a whale or a group of whales from behind or from the side the vessel operator must ensure his vessel moves to the outside of the nearest group of whales, and outside the vessels already accompanying these whales, and head in a direction parallel to the direction these whales are traveling, maintaining existing view angles of all vessels previously on scene.
11. Vessels in more favorable positions should limit their time in that

position to 15 minutes and then allow other vessels engaged in viewing that more favourable position.

12. Vessels should stay to the outside of the whale(s) they are watching, maintaining the vessel on the ocean (deep-water) side of the whales farthest away from shore.

13. Vessels should travel in a direction parallel to the direction the whales are traveling, maintaining a minimum distance of 100 yards (300 feet), 100 metres (328 feet) when in Canadian waters.

14. A vessel's speed should be the same as the whale's speed or slower. However, when traveling slower than the speed of the whales, a vessel relinquishes its priority sequence. This technique is generally used to disengage the vicinity of whales when the intention is to break away and return to port.

15. A vessel approaching the vicinity of whales from ahead must apply the Stop & Wait Viewing Sequence once inside 1/2 mile (880 yards) of the nearest whale or within 1/4 mile (440 yards) of a vessel maintaining its priority sequence and waiting for the whales to arrive.

### **Stop & Wait Viewing Sequence**

16. A vessel approaching a whale or group of whales from the side or from behind may apply the Stop & Wait Viewing Sequence but only if it does not engage in viewing, namely maintains a minimum distance of 1/2 mile (880 yards) from the nearest whale and the nearest whale watching vessel and moves to approach the whales from ahead (see above).

17. When approaching a whale or a group of whales from ahead the vessel operator must ensure his vessel enters the sequence of viewing vessels such that all other vessels on scene prior to his vessel will all be afforded a viewing opportunity prior to his vessel, given that the current course of the whales at the particular time is extrapolated on the whale's most likely course. Once the vessel is in viewing sequence, it must stop, shut down engines and allow the whales to travel toward the vessel, if they so choose. The Master of an inspected and certified vessel is provided with limited latitude - shut down of engines is not required only if the Master of an inspected and certified vessel has sufficient safety or seamanship reasons to avoid shutdown of main and auxiliary engines.

18. A vessel engaged in the Stop & Wait Viewing Sequence may have whales approach inside 100 yards (300 feet) only if it has followed all relevant procedures.

19. Each whale in the vicinity must be allowed to pass a minimum of 1/8th mile (220 yards) before re-starting engines.

20. Repositioning is most relevant to vessels utilizing the Stop & Wait Viewing Sequence. To reposition a vessel must dis-engage the vicinity of whales by allowing each whale in the vicinity to pass a minimum of 1/8th mile (220 yards) before re-starting engines. The vessel then proceeds on a course perpendicular to the current course of the particular whales at a maximum speed of 7 knots until it is at least 1/4 mile (440 yards) away from the nearest whale after which point it can make the speed transition until it is at least 1/2 mile (880 yards) away from the nearest whale after which point it is not in the vicinity of whales. This is the minimum required buffer zone and, in addition, the vessel must be outside and behind any other vessel engaged in a similar maneuver, maintaining its current priority sequence. At this point the vessel is able to engage in viewing and able to employ either viewing sequence.

21. A vessel within 1/2 mile (880 yards) of a whale is considered to be in the vicinity of whales.

22. A vessel within 1/4 mile (440 yards) of a whale is considered to be in the vicinity of whales and engaged in viewing.

### **At All Times in the Vicinity of Whales**

23. It is incumbent on the vessel operator to be able to recognize resting behaviour.
24. A vessel shall not approach a resting whale from behind, leaving a minimum clearance of 1/8th mile (220 yards).
25. A vessel shall not approach a resting whale from ahead or be ahead of resting whales while in the vicinity of whales.
26. A vessel in the vicinity of a resting whale shall always employ the Parallel Viewing Sequence. The Stop & Wait Viewing Sequence shall not be utilized at anytime when whales are resting in the vicinity, unless the vessel is maneuvered in such a manner that the nearest whale passes the vessel a minimum of 100 yards (300 feet), 100 metres (328 feet) when in Canadian waters.
27. A vessel in the vicinity of a foraging or feeding whale shall employ the Stop & Wait Viewing Sequence. The Parallel Viewing Sequence shall not be utilized at anytime when whales are feeding or foraging in the vicinity.
28. Whenever a vessel is upwind of and in the vicinity of a whale, engine exhaust emissions are to be minimized, either by shutting down one or more main and auxiliary engines.
29. A vessel shall limit its cumulative time in the vicinity of whales on any one tour to a maximum of 33% of the scheduled tour length. For a 3-hour tour this is a maximum of 1 hour spent in the vicinity of whales. Vessels should further limit the amount of time in the vicinity of whales on days when there are a large number of vessels with the animals. On these occasions vessels should spend more of their tour observing other marine wildlife (birds, porpoises, seals, etc.) in other locations.
30. A vessel shall not leapfrog, that is to repeatedly maneuver to intercept the course of the whales. Vessels are, however, able to dis-engage the vicinity of whales and subsequently re-engage the vicinity of whales.
31. All sonar, depth sounders, fish finders and other underwater transducers should be shut off whenever a vessel is in the vicinity of whales.
32. Vessels shall ensure a boat-free foraging zone for the whales when they are near shore by maintaining a position seaward of the whales and not positioning within 1/8th mile (220 yards) of any shoreline when whales are in the vicinity.
33. A vessel's speed shall never exceed 30 knots when it is within 1/2 mile (880 yards) of any shoreline at any time during a tour.

### **Operation of Vessels in the Vicinity of Transient Killer Whales**

1. All Best Practices Guidelines as they relate to resident killer whales are applicable and must be followed with the following modifications.
2. It is incumbent on the vessel operator to be able to recognize a transient killer whale.
3. The Parallel Viewing Sequence must be applied when engaged in viewing transient killer whales, when they are in transit.
4. Either the Parallel Viewing Sequence or the Modified Stop & Wait Viewing Sequence may be employed when engaged in viewing transient killer whales when they are not in transit.
5. The Modified Stop & Wait Viewing Sequence employs the techniques of the Stop & Wait Viewing Sequence for Resident Killer Whales with the following modifications:
  - a. The minimum distance off in all cases is 1/8th mile (220 yards);
  - b. A vessel shall not allow a transient killer whale to pass within 1/8th mile (220 yards) while engine are running;
  - c. If engines are shut down, it is permissible to allow a transient killer whale to pass within 1/8th mile (220 yards).

### **Operation of Vessels in the Vicinity of Migratory Baleen Whales**

1. All Best Practices Guidelines as they relate to resident killer whales are applicable and must be followed with the following modifications.
2. It is incumbent on the vessel operator to be able to recognize Gray, Humpback and Minke Whales.
3. Either the Parallel Viewing Sequence or the Stop & Wait Viewing Sequence may be employed when engaged in viewing Baleen whales

#### **Operation of vessels around Pinnipeds**

1. When approaching pinniped haul-outs, vessels should slow such that at 100 yards there is minimal wash.
2. At the first sign of disturbance (sea lions sitting up and shifting position or harbor seals bouncing on their bellies) vessels should slowly back away.
3. Avoid loud noises or sudden rapid movements. Particular caution should be exercised during pupping season (early summer).

#### **Operation of vessels around birds**

1. Caution should be exercised when approaching birds on land or on the water. Approach slowly, watch for signs of agitation and leave slowly.
2. Birds on the water should be given as wide a berth as is practical. Disturbance while fishing may be more detrimental than disturbance while resting on land. There is a great deal of variation in how different species respond to marine traffic.
3. Cormorants are particularly sensitive to disturbances when nesting although all nesting birds should be avoided. Extra caution should be exercised from nesting through fledging (beginning of May to the end of August). Vessels should approach very slowly and remain at least 100 yards from rookeries.
4. All operators should be aware of areas designated as refuges and remain 200 yards away.

#### **Operation of vessels around porpoises**

1. Operators should be able to distinguish harbor porpoise from Dall's porpoise.
2. When harbor porpoise are encountered, vessels should either (1) disengage the area and leave them alone or (2) if they wish to observe them, either (a) reduce speed as low as possible and maintain their course to their next destination or (b) STOP with engine off or in neutral and observe. Under no circumstances should vessels attempt to engage harbor porpoise in bow riding.
3. When Dall's porpoise are encountered vessels should either (a) continue their course and speed or (b) STOP and observe. If the porpoises decide to bow-ride vessels should continue their course and adjust their speed accordingly. Vessels should not repeatedly drive through groups of Dall's porpoise in order to encourage them to bow-ride. If no porpoises are interested in bow riding after 2 passes, either continue on your way or stop to observe.
4. When more than one vessel is with the same group of Dall's porpoise that are actively bow riding, they should communicate and/or have one of the vessels parallel at a safe distance so that passengers can observe the bow riding on the other vessel.

#### **Race Rocks Proposed Marine Protected Area**

1. Race Rocks will likely be designated as Canada's first Marine Protected. It has been chosen as a prototype for the creation of other Marine Protected Areas across Canada.
2. The Whale Watch Operators Association - North West has worked collaboratively with all stakeholders and the Canadian Government in the development of these Best Practices Guidelines for the Race Rocks Marine

Protected Area, which apply equally to all vessels, whether commercial or private, whether intending to view wild life or otherwise transiting the area.

3. Race Rocks is recognized as an area which can be utilized to educate viewers on the richness of the biodiversity of the Pacific Northwest coastline to assist in the raising of public awareness for the benefit of resident wild life species.

4. Vessels will allow for a speed transition by slowing their approach to Race Rocks such that speed at 1/8th mile (220 yards) from any rock or landmass is reduced to minimal wake and wash, relative to the conditions of the sea state at the particular time. This Go Slow Zone extends 1/8th mile (220 yards) around every rock and landmass in the Race Rocks area.

5. Vessels in the Go Slow Zone will remain as close to mid-channel as is practicable between the major rock outcroppings known as North Race Rock, West Race Rock and Helicopter Rock.

6. While in the Go Slow Zone vessels will transit the area with the current whenever conditions are suitable to do so.

7. Vessels exiting the area will allow for a speed transition.

8. Vessels will remain outside all of the Go Slow Zone whenever Resident, Transient or Off Shore Killer Whales are present in the Go Slow Zone.

#### **Lime Kiln Light House - San Juan Island Special Operating Area**

1. Vessels will remain a minimum of 1/2 mile (880 yards) from the light beacon of the Light House at Lime Kiln on San Juan Island when whales are in the vicinity.

#### **West Side - San Juan Island Special Operating Area**

1. Vessels will remain a minimum of 1/4 mile (440 yards) from the main shoreline of the west side of San Juan Island when between the southern most point of Henry Island in the north and the north side of Pile Point in the south when whales are in the vicinity.

Whale Watch Operators Association - North West

BEST PRACTICES GUIDELINES

May 2001

#### **Radio Etiquette**

1. Vessels engaged in viewing or in the vicinity of whales will monitor the Marine VHF Radio frequency designated from time to time by this Association, in addition to those frequencies required to be monitored by regulation.

2. Radio transmissions should be courteous, helpful, to the point, use appropriate language and be brief. Passengers in other vessels and in dispatch offices are able to hear transmissions.

3. Brevity of radio transmissions is particularly important when discussing location and travel patterns of the whales. This in order to minimize the broadcasting of the whales' location.

#### **Guiding/Naturalist Services**

1. WWOA-NW members will ensure that the services of an appropriately educated, trained and experienced naturalist or biologist are available to passengers aboard their vessels at all times.

2. WWOA-NW members will ensure that passengers aboard their vessels are informed of these Best Practices Guidelines and how they relate to marine wildlife viewing and species conservation.

3. Operators are encouraged to maintain a logbook of sightings of all types of creatures including birds, cetaceans, pinnipeds and other animals of interest and make it available to researchers.



## **Hydrophone etiquette**

1. A vessel with a hydrophone down should fly the hydrophone down flag (letter 'R' in the international system).
2. Any vessel flying the hydrophone down flag should monitor the designated marine VHF frequency.
3. Vessels approaching a stationary vessel flying the hydrophone down flag should establish communications and move to a position likely suitable to the stationary vessel as quickly as possible and shut down engines at the earliest time.
4. A vessel dis-engaging the vicinity of whales should communicate its intention to do so to any vessel engaged in viewing with a hydrophone down prior to the commencement of its dis-engagement to ensure minimal interference.

## **Vessel Operation**

1. WWOA-NW should ensure their vessels are always operated in a manner respectful of other vessels and their passengers.
2. A vessel should not take a course between another vessel and the animals its passengers are observing or between another vessel and the shoreline.
3. A vessel should not accelerate or pass near other vessels.
4. Loudspeakers and public address systems should not be used near shore - especially in inhabited residential areas - or when boats are closely grouped.
5. A complaint of the actions of another member's vessel should not be voiced over the VHF radio. These discussions should be in person, by telephone or by using a courtesy reminder after the incident.

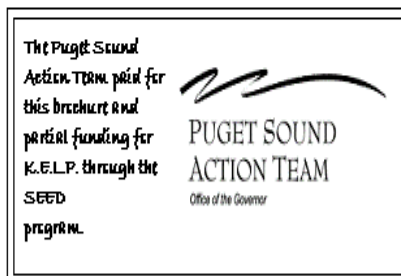
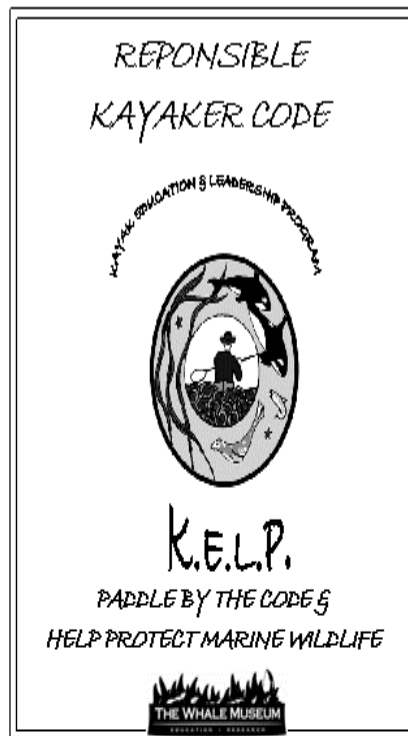
## **Research and Education**

1. WWOA-NW members support local whale research by providing written records of sighting information to bona fide research groups and through WWOA-NW approved financial support of research activity.
2. WWOA-NW members should not address non-compliance of the Best Practices Guidelines or of legislative non-compliance except in the most extreme of cases. Compliance enforcement is not the role of WWOA-NW nor do WWOA-NW members have any legislative authority to take any action whatsoever. If unavoidable, courteous and educational approaches should be taken and then only in the most flagrant violations. Report flagrant violations to the competent authority of the relevant jurisdiction.

If you see any discrepancies or have any comments or suggestions, please contact the Whale Watch Operators Association - North West by emailing Dan Kukut at [springtide@coastnet.com](mailto:springtide@coastnet.com)

## THE RESPONSIBLE KAYAKER CODE:

- ◆ I WILL HAVE A TRIP PLAN. I will learn the laws, accessible public landing areas, safety issues and environmental conditions before leaving shore. I WILL RESPECT THE PEOPLE, ANIMALS AND PLANTS THAT MAKE THIS AREA THEIR HOME.
- ◆ I WILL NOT INTENTIONALLY POSITION MYSELF IN THE PATH OF WHALES, PADDLE INTO GROUPS OF WHALES OR CHASE WHALES. I will move out of the whales' route and position myself and my group 100 yards/meters from whales, preferably towards the shore or in kelp beds and stop paddling. I will group together with other kayakers to appear as one vessel. Whales can navigate around a cluster of boats more easily than if kayakers are spread out. Outfitters have experienced closer whale encounters when grouped up and not paddling.
- ◆ I WILL PADDLE A WIDE ARC, 100 YARDS OR MORE, AROUND SEAL HAULOUTS AND NESTING BIRD SITES. I will avoid making loud noises and/or pointing at wildlife. Resting seals and nesting birds are especially sensitive to paddle and/or movements. I will watch for warning signs such as a heads-up posture and alarm calls. I will take extreme caution to avoid stampeding seals into the water or birds away from their nests or fledglings.
- ◆ I WILL NOT APPROACH DESIGNATED WILDLIFE REFUGES CLOSER THAN 200 YARDS.



K.E.L.P./SOUNDWATCH  
a stewardship program of  
THE WHALE MUSEUM  
PO BOX 945-FRIDAY HARBOR, WA 98250  
1-800-946-7227 www.whalemuseum.org



K.E.L.P. (Kayaker Education & Leadership Program) is a kayak-specific component of The Soundwatch Boater Education Program. Soundwatch is a non-governmental, community-based stewardship program funded and administered by The Whale Museum, a nonprofit educational institution in Friday Harbor, WA. The Soundwatch program originated in 1988, with on-the-water vessel education initiated in 1993. The program goal is to facilitate proper boating etiquette in the Salish Sea that respects wildlife needs as well as existing regulations.

The boundary waters between the U.S. San Juan Islands and the Canadian Gulf Islands, or Salish Sea, represent one of the highest-density marine wildlife viewing areas in the world.

Recent studies indicate that vessels can contribute to potentially damaging and unlawful situations around marine wildlife. Because of the large number of vessels in the Salish Sea, there is now the need for self-management.

We can all be part of the solution to protect the precious resources that symbolize this part of the world. Paddle by the code, set an example, and help educate others.

Soundwatch is funded by grants and donations from individuals, private businesses, foundations and government grants. Soundwatch has no legal authority for enforcement of federal laws beyond that of any other citizen in the United States or Canada. For more program information or to donate please contact us:

SOUNDWATCH BOATER EDUCATION PROGRAM &  
K.E.L.P.  
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**ALASKA MARINE MAMMAL VIEWING GUIDELINES**  
**National Marine Fisheries Service Protected Resources**

**Guidelines for Water-Based Viewing**

Remain at least 100 yards (length of a football field) from whales, dolphins, porpoises, and from seals and sea lions that are on land, rock or ice.

- Use extra caution when viewing seals and sea lions that are on land, 100 yards may not be sufficient distance to prevent harassment.

- If a whale approaches within 100 yards of your vessel, put your engines in neutral and allow the whale to pass.

Even if approached by a marine mammal:

- Offering food, discarding fish, fish waste, or any other food is prohibited.

- Do not handle pups, do not touch or swim with the animals as this may constitute harassment, which is prohibited.

If you need to move around a whale, do it from behind the whale.

- vessels that wish to position themselves to allow whales to pass the vessel should do so in a manner that stays fully clear of the whale's path.

Whales may surface in unpredictable locations.

- Breaching and flipper slapping whales may endanger people and/or vessels. Feeding humpback whales often emit sub-surface bubbles before rising to feed at the surface. Stay clear of these light green bubble patches.

- Emitting periodic noises may help whales know your location and avoid whale and boat collisions. For example, if your engine is not running, occasionally tap the side of the boat with a hard object.

Whales, dolphins, and porpoises are more likely to be disturbed when more than one boat is near them.

- Avoid approaching the animals when another vessel is near.

- Do not encircle the animals or trap them between the shore or another boat and your boat.

- Always leave whales, dolphins, and porpoises an "escape route."

- When several vessels are in an area, communication between vessel operators will ensure that you do not cause disturbance.

Limit your time with any individual or group of marine mammals to ½ hour.

- Your vessel may not be the only vessel in the day that approaches the same animal(s), please be aware that cumulative impact may also occur.

Vessels traveling in a predictable manner appear to be less disturbing to animals. The departure from a viewing area has as much potential to disturb animals as the approach.

- Pursuit of marine mammals is prohibited by law.
- Never attempt to herd, chase, or separate groups of marine mammals or females from their young.
- Avoid excessive speed or sudden changes in speed or direction in the vicinity of whales.

#### **Guidelines for Land-Based Viewing**

Approaching seals or sea lions hauled out on land should be accomplished without the animal's awareness of your presence.

- Avoid detection by sight, smell or sound (for example by staying hidden by natural cover and approaching viewing areas quietly - avoiding conversation and noisy movements).
- Pups are often left alone when the mother is feeding. They are not abandoned and should be left alone.

#### **Guidelines for Aircraft-Based Viewing**

- Buzzing, hovering, landing, taking off, and taxiing near marine mammals on land or in the water is likely to result in harassment.
- Maintain a 1500 foot minimum altitude when viewing marine mammals from the air.

#### **Behavior Awareness**

While viewing marine mammals, you should ensure that your actions do not cause a change in the behavior of marine mammals. Since individual animal's reactions will vary, carefully observe all animals and leave the vicinity if you see the following signs of disturbance.

#### **Seals, Sea Lions and Fur Seals**

Harbor seals, Steller sea lions, and Northern fur seals hauled out on land, rock or ice are particularly sensitive to boats, aircraft, and human presence. Assume that your action is a disturbance and cautiously leave the vicinity if you observe any of the following behaviors:

- Aggressive behavior by many animals towards the disturbance; or movement by many away from the disturbance.
- Herd movement towards the water.
- Hurried entry into the water by many animals.
- Increased interactions with other animals.
- Increased vocalizations.
- Several individuals raising their heads simultaneously.

#### **Whales, Dolphins and Porpoises**

Much of the disturbance for these animals is related to underwater sound produced by a vessel's engines and propellers. Assume that your action is a

disturbance and cautiously move away from the animals if you observe any of the following behaviors:

- Rapid changes in direction or swimming speed.
- Erratic swimming patterns.
- Escape tactics such as prolonged diving, underwater exhalation, underwater course changes, or rapid swimming at the surface.
- Tail slapping or lateral tail swishing at the surface.
- Female attempting to shield a calf with her body or by her movements.

**Guidelines for Observing Marine Mammals in Kenai Fjords, Alaska**  
Developed by **The Kenai Fjords Tour Vessel Operators Association**

**General Guidelines for all Marine Mammals**

1. View marine mammals from no less than 100 yards distance.
2. Approach and depart from marine mammals slowly.
3. Determine behavioral state from a distance greater than 100 yards before approaching marine mammals for viewing. Be responsive to the specific situation.
4. Terminate viewing if behavioral changes are seen.
5. Keep noise levels down around marine mammals. Do not use horns or whistles. Do not shout or race motors.
6. Communicate with other ship's captains to coordinate timing and behavior of vessels around marine mammals. Allow no more than 15 minutes observation time for each vessel when there are multiple vessel and no more than 20 minutes when alone.
7. All vessels observing marine mammals should remain near each other on the same side of the animal(s). Do not box in animals against shorelines or corral animals between boats. Avoid rapid changes in speed or direction. Avoid shifting gears unnecessarily.

**Additional Viewing Guidelines for Pinnipeds and Sea Otters**

1. Observe pinnipeds or sea otters one vessel at a time.
2. Conduct narration before and after (not during) observation.
3. Do not use camera flashes.
4. Be mindful that hauled out pinnipeds react to human smells. Attempt to keep vessel down-wind of haul-outs, if possible.
5. Minimize time around mothers and pups.

**Additional Viewing Guidelines for Cetaceans**

1. Minimize contact and interference with resting whales.
2. Minimize contact with transient killer whales.
3. Exercise caution around cow and calf pairs.
4. Approach killer whales from the side, not from the front or back.
5. Do not "leap-frog" when viewing whales. Leap-frogging consists of repeatedly running ahead of whales and stopping in their path.
6. During an encounter, each vessel may once move ahead of a group of whales several hundred yards (giving whales a wide berth and shut down engine, allowing whales to determine the closeness of approach).
7. Avoid re-viewing the same group of whales more than once in a day.
8. Do not approach killer whales, either by sea or on the beach, when they are rubbing.

### **Southwest Region, National Marine Fisheries Service Waters off the coastline of California and Hawaii Guidelines**

The National Marine Fisheries Service is the federal agency responsible for protecting gray whales under the [Marine Mammal Protection Act of 1972](#). In order to protect the gray whale from harassment and to promote a better understanding of the need to avoid harassment, the National Marine Fisheries Service is providing these guidelines for safe, non-disruptive whalewatching.

- Vessels should not be operated at speeds faster than a whale or group of whales while paralleling them within 100 yards.
- Vessels should be operated at a constant speed while paralleling or following whales within 100 yards.
- Vessels should do nothing to cause a whale to change direction.
- Aircraft should not fly lower than 1,000 feet while within a horizontal distance of 100 yards from a whale.

Generally, a whale's normal behavior should not be interrupted. Such annoyance may cause a whale to change its direction rapidly, swim faster, or swim in an erratic pattern. To interrupt a whale's normal activity constitutes harassment and is against the law!

### **Hawaiian Islands Regulations**

NOAA's national marine Fisheries Service, The National Marine Sanctuaries and the State of Hawaii's Department of Land and Natural Resources provide the following guidelines for viewing whales, dolphins, monk seals and sea turtles in Hawaii.

#### **Responsible Viewing Guidelines**

*Keep a safe distance* - Please do not closely approach, surround, swim with, or attempt to touch marine wildlife.

For humpback whales in Hawaii, federal regulations prohibit approaching closer than:

- 100 yards (90 m) when on the water
- 1000 feet (300 m) when operating an aircraft

For other species of whales, dolphins and monl seals the recommended distance for observation is:

- 50 yards (45 m) when on the beaches or on the water
- 100 feet (300 m) when operating an aircraft

Use extra caution in the vicinity of mothers and their young and in other sensitive wildlife habitat such as feeding, nursing or resting areas.

Never entice marin wildlife to approach you.

*When on or under the water, please remember that the Hawaiian Islands Humpback Whale National Marine Sanctuary is there to protect humpback whales. Disturbing the whales can disrupt vital calving, nursing and breeding behaviors.*

Loud noises and abrupt movements can startle and stress wildlife, which can react unpredictably, harming themselves or you.

Disturbing wildlife interrupts their ability to perform critical functions such as breeding, feeding, nursing, resting or socializing. Please keep your distance.

### **For Whales and Dolphins**

Much of the disturbance for these animals is related to direct pursuit or from underwater sound produced by a vessel's engine and propellers. Ensure that your presence does not disturb them.

*Cautiously move away if you observe any of the following behaviors:*

- Rapid changes in swimming speed or direction.
- Erratic swimming patterns.
- Escape tactics such as prolonged diving, underwater exhalation, underwater course changes, or rapid swimming away from your location a the surface.
- Female attempting to shield a calf with her body or by her movements.
- Sudden stop in important breeding, nursing, feeding or resting activities after your arrival.

While on the water, you may find yourself in the presence of marine animals and occasionally they may even approach you. Stay alert and be careful when maneuvering vessels around marine wildlife.

- Vessels traveling in a predictable manner are less disturbing to marine wildlife.
- Avoid excessive speed or sudden changes in speed or direction in the vicinity of marine wildlife.
- Never attempt to chase, herd, or separate a group of marine mammals or females from their young.
- If marine wildlife approaches your vessel, put your engine in neutral and allow the animal to pass.

Leaving a viewing area has as much potential to disturb animals as your approach and should be done carefully.

- When leaving a viewing area, slowly maneuver your vessel away from the animals.
- Pursuit of marine mammals is prohibited by the law.
- If you need to move around marine wildlife, do so from behind.
- Avoid approaching marine wildlife head-on or cutting across the animals direction of travel.

Marine wildlife may surface in unpredictable locations.

- Actively look for surfacing animals—slow down and steer away from their direction of travel.
- Marine mammals engaged in breaching and flipper/tail slapping may endanger people and/or vessels.
- Whales and dolphins are more likely to be disturbed when more than one vessel is near them.

Avoid approaching whales and dolphins when another vessel is near.

- Do not encircle or trap them between boats or between boats and the shore.
- Always leave the animals an “escape route”.

When several vessels are in an area, communicate with the other vessel operators to ensure that you do not cause disturbance.

- Limit your time with any individual or group of marine wildlife.
- You or your vessel may not be the only one that day to have approached the same animal(s). Please be aware that cumulative impacts may also occur.
- Encounters with marine wildlife may cause stress to the animals even if it isn’t obvious. In order to be a respectful viewer, please limit your time spent observing to avoid causing disturbance of their natural behavior.

## **REGULATIONS**

### **ALASKA**

#### **Final Approach Regulations to Protect Humpback Whales**

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

#### **PART 224-ENDANGERED MARINE AND ANADROMOUS SPECIES**

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 et seq.

2. In § 224.103, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 224.103 Special prohibitions for endangered marine mammals.

\* \* \* \* \*

(b) Approaching humpback whales in Alaska--(1) Prohibitions. Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (*Megaptera novaeangliae*):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale;



(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or

(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) Exceptions. The following exceptions apply to this paragraph (b), but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraph (b)(1) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1) of this section.

(iii) Paragraph (b)(1) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or trade. Commercial fishing does not include commercial passenger fishing operations (i.e. charter operations or sport fishing activities).

(iv) Paragraph (b)(1) of this section does not apply to state, local, or Federal government vessels operating in the course of official duty.

(v) Paragraph (b)(1) of this section does not affect the rights of Alaska Natives under 16 U.S.C. 1539(e).

(vi) These regulations shall not take precedence over any more restrictive conflicting Federal regulation pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

(3) General measures. Notwithstanding the prohibitions and exceptions in paragraphs (b)(1) and (2) of this section, to avoid collisions with humpback whales, vessels must operate at a slow, safe speed when near a humpback whale. "Safe speed" has the same meaning as the term is defined in 33 U.S.C. 2006 and the International Regulations for Preventing Collisions at Sea 1972 (see 33 U.S.C. 1602), with respect to avoiding collisions with humpback whales.

#### **SPECIAL PROTECTION FOR STELLAR SEA LION ROOKERIES FROM THE KENAI PENINSULA WEST THROUGH THE ALUTIANS**

**Water-based:** Regulations prohibit vessels from approaching within 3 nautical miles of some Stellar sea lion rookeries.

**On land:** Regulations prohibit approaching within one mile of some Stellar sea lion rookeries, or within one-half mile of the Marmot Island Stellar sea lion rookeries. Regulations also prohibit persons from approaching within sight of these rookeries.

#### **SPECIAL PROTECTION FOR NORTHERN FUR SEAL ROOKERIES**

Regulations prohibit person from entering northern fur seal rookeries on St. Paul and St. George Islands in the Pribilof Group without special permission.

#### **GLACIER BAY NATIONAL PARK AND PRESERVE**

To minimize disturbance to humpback whales in the Park the following Federal regulations are in effect<sup>29</sup>:

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<sup>29</sup>\_\_\_\_1991. Special federal regulations that protect humpback whales in Glacier Bay National Park. Distributed by the National Park Service, US Department of the Interior.

- 1) No vessel, except a commercial fishing vessel, actively fishing, will intentionally or negligently position itself within 1/4 mile of a whale.
- 2) No vessel of any kind will pursue or attempt to pursue a whale.
- 3) Motorized vessels accidentally positioned within 1/4 mile of a whale at any time will slow to a stop, avoiding use of reverse gear unless impact with a whale is otherwise likely.

The following regulations are in effect from 1 June through 30 August:

- 1) All vessels, except for commercial fishing vessels actively engaged in fishing, must have a valid permit to enter Glacier Bay during the whale season. All pleasure craft should notify Bartlett Cove headquarters each time you enter or leave the Bay. A limited number of permits will be issued with a maximum number of 25 pleasure vessels in the Bay.
2. All motorized vessels operating within areas designated as whale waters shall maintain constant speeds of ten knots or less and a steady course unless it is necessary to avoid closing with a whale or endangering other vessels or itself.
3. All motorized vessels underway between the mouth of Glacier Bay and the northern tip of Strawberry Island will maintain a speed of ten knots or less.
4. All motorized vessels over 18 feet in length except for those actively fishing, will follow a designated mid-channel course, or maintain at least one nautical mile distance from the shoreline, between the mouth of Glacier Bay and the northern tip of Strawberry Island, unless such course will result in closing with a whale or endangers the vessel itself.
5. Emergency restrictions which require any and/or all vessels to maintain a specified course shall be enacted by the Supervisor for a period not to exceed 10 days when six or more whales are disturbed in the area of the Bay in such a way that the risk of interaction between whales and vessels is unacceptably high and/or ten or more instances of a whale or whales altering behavior in response to vessels are recorded in any one day.
6. Commercial vessels are subject to additional permit and operational requirements.

#### **Federal Law (50 CRF part 222.32) and Massachusetts State Regulations for Approaching Northern Right Whales**

Despite international protection by the International Whaling Commission established pursuant to the 1946 International Convention for the Regulation of Whaling and national protection afforded by the Marine Mammal Protection Act of and the Endangered Species Act of 1973 the northern right whale is listed as endangered and its population remains dangerously low in the Atlantic. With its numbers standing at 260 identified whales, and an estimated number of 350, there remains a significant risk of extinction for this species due in part to human activities.

In response to this threat, the Massachusetts Legislature passed a resolve in 1985 requesting the Department of Fisheries , Wildlife and Environmental Law Enforcement to study the northern right whale in Massachusetts waters and make recommendations for its conservation. That study recommends, among other measures, a 500-yard buffer zone between right whales and vessels within Massachusetts's waters.

The purpose of 322 CMR 12.00 is to implement the 500-yard buffer zone recommendation and, in addition, prohibit activities of vessels that affect right whales within Massachusetts's waters. The scope of 322 CMR 12.00 exempts vessels with federal or state scientific study permits and commercial

fishing vessels in the process of hauling back or towing gear. In addition, 322 CMR 12.00 applies only to the territorial and inland waters of the Commonwealth.

**12.03. Management measures:**

1. Buffer Zone. There is created a buffer zone surrounding a right whale which consists of an area outward from the right whale(s) a distance of 500 yards in all directions.
2. Departures. Except as otherwise provided for in 322 CMR 12.04 vessels shall depart immediately from any buffer zone created by the surfacing of a right whale.
3. Approaches. Except as otherwise provided for in 322 CMR 12.04 vessels may not approach a right whale or turn in any manner to intercept a right whale within a buffer zone.
4. Interference. No vessel may harm any right whale at any time or place.

**12.04. Exceptions:**

1. Federal Permits. Any person issued a permit from any federal department, agency or instrumentally having authority to issue permits for the scientific research, observation or management of the right whale may conduct the activity authorized by such permit.
2. State Permits. Any person issued a permit in accordance with 322 CMR 7.01(4)(e) may conduct the activity authorized by such permit.
3. Commercial Fishing. Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations at anchor within a buffer zone created by the surfacing of a right whale may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whales and departs from the buffer zone immediately after the haul, tow or fishing operation. In no event may this provision be construed to authorize a commercial fishing vessel to begin to haul, tow or conduct its fishing operation in or into a buffer zone. When conducting activities within the scope of this exemption commercial fishing vessels shall make every effort to comply with 322 CMR 12.03.

**12.05. Prohibitions:**

It is unlawful:

1. to approach within 500 yards of a right whale, except as otherwise provided for in 322 CMR 12.04;
2. to turn in any manner to intercept a right whale within 500 yards;
3. not to depart immediately from a buffer zone created by 322 CMR 12.03(1), except as otherwise provided for in 322 CMR 12.04;
4. for any commercial fishing vessel, which has completed a haul back, a tow of its gear or otherwise completed its fishing operation and is no longer at anchor not to depart immediately from a buffer zone created by 322 CMR 12.03(1).
5. to harass a right whale; or
6. to harass a right whale cow and calf pair.

**Federal Law and Marine Mammal Viewing**

**The Marine Mammal Protection Act (MMPA)**

The Marine Mammal Protection Act (MMPA) prohibits the *TAKE* of all marine mammal species in U.S. waters. *TAKE* is defined as "to harass, hunt, capture or

kill, or attempt to harass, hunt, capture, or kill any marine mammal." Harassment is defined in the MMPA as "any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild, or has the potential to disturb a marine mammal or a marine mammal stock in the wild by causing disruption of behavioral patterns, including , but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." *TAKE* is further defined by regulation to include feeding or attempting to feed a marine mammal in the wild. Some exceptions are made for authorized scientific research and subsistence hunting.

#### **The Endangered Species Act (ESA)**

The Endangered Species Act (ESA) provides additional protection to species of marine mammals listed as endangered or threatened. The definition of *TAKE* is the same under the ESA as under the MMPA, except that the ESA adds the terms harm, pursue, shoot, wound and collect.

### **URUGUAY**

#### **A. Decreto 261/002**

To regulate activities related to the observation and approach to members of whale species-

#### **III. Ministry de Ganaderia, Agricultura y Pesca**

*Ministerio de Defensa Nacional*

*Ministerio de Turismo*

*Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente*

#### **A. Montevideo, 10 June 2002**

*Seeing:* the existence of species of marine mammals found in Uruguayan waters, either seasonally or year round.

*Resulting:* I) That in recent years different species of cetaceans, principally in costal areas of Maldonado y Rocha;  
II) Whale watching activity has seen an important increase worldwide  
III) Near our coasts actions that have bothered the whales have been detected in reproductive areas caused by the imprudent approach of boats, in some cases resulting that the whales flee or are disturbed,  
IV) The Southern Right Whale is a migratory cetacean that makes use of the Uruguayan costal areas for reproduction and birth, principally in the period comprised between June and November each year.  
V) This species behaves in ways that distinguish it from others y that makes it of particular interest for whalewatching

*Considering:* I) it suitable, from the point of view of biology, conservation, and the preservation of the resource, to adopt measures for the regulation of whale-watch activities and vessel approach to members of the different species of whales by individual operators

A normative framework is needed, adequate to regulate the exploitation by tourist services and of water activities in areas of concentration, permitting also a rational tourist appropriation.

Attention:

**El Presidente de la Republica Decrees:**

*Article 1.* To prohibit activities between the months of June and November any activities that imply disturbance in any manner, fleeing or

that bother the different species of whales, such as motorboat races or sailboat races in said areas of concentration in departments of Maldonado and Uruguay.

*Article 2.* To bring about whalewatching activities and other cetaceans, tourist operators and boat captains need prior special authorization sticker issued by the National Naval Prefecture.

*Article 3.* Authorized vessels should comply with the following conditions:

- A) In the same area, a maximum of three boats are permitted, respecting a distance of 200 metres.
- B) During the time of observation, speed must be constant, without sudden changes in speed.
- C) Where calves may be present or during times of mating, a distance of 300 metres should be maintained, and duration should not be more than 30 minutes.
- D) It is prohibited, the feeding of whales, swimming and snorkeling, as well any other human activity that could bother the whales.

*Article 4.* At first indication that a whale is disturbed, boats shall leave the area immediately and communicate with the maritime Authority.

*Article 5.* According to Article 4, the following behaviors would constitute a disturbance:

- a) rapid changes in direction, speed, or natural swimming patterns
- b) the jumps, flipper strikes
- c) exhalation (spray of air bubbles) under the water
- d) vocalization different from the normal

a) Article 6

A registry of Whale watch operators shall be made with the Ministry of Tourism in which persons offering seasonal or permanent vessel tours for purposes of whale watching. The registration should be made in writing accrediting the individual responsible for an adequate vessel for such ends, duly equipped to handle the transport of passengers in accord with the norms established by the National Naval Prefect.

At the same time, the following should be checked:

Idoneidad???? (misprint?ID?)

Sticker of insurance covering passengers

Authorization of the Prefecture of the Navy and the National Authority of Marine Resources.

**2. Article 7**

Non-compliance of measures set forth in this decree are punishable by prior laws NO 13.833, 29 December, Article 285 of Law 16.736 of 5, January 1966, and Chapter VII of the decree, Law No. 14.335.

**3. Article 8**

To be communicated, published, etc.

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