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## Making Changes - Amending the Marine Mammal Regulations

# Pacific Region Consultation Summary

for Consultations Conducted  
between January and March, 2003

August 1, 2003



Marine Mammal Regulatory Amendment  
Consultation Summary

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# Making Changes - Amending the Marine Mammal Regulations

## Pacific Region Consultation Summary

*January - March 2003*

### 1.0 EXECUTIVE SUMMARY

Fisheries and Oceans Canada (DFO) is responsible for the conservation and protection of Canada's marine resources, including marine mammals. Regulations, policies, management plans and education programs are the tools of protection. In order to facilitate regulatory amendments, DFO conducted consultations on the proposed changes to the Marine Mammal Regulations through the use of Information Bulletins, public meetings at various locations around the Province and a Consultation Workbook.

Human interactions with marine mammals in their environment are increasing. Growing eco-tourism industries, recreational boating activities, and other maritime industries have the potential to impact the survival and conservation of many marine mammal populations. Current regulations are limited in their ability to protect marine mammals from these activities.

The public consultation efforts were well received and elicited excellent input at public meetings and through workbooks. Overall support for amending the current regulations was strong, and many suggestions were provided for more appropriate and specific regulations and measures important to protecting marine mammals.

In general, the following common themes emerged:

- strong public interest in protecting and conserving marine mammals
- stewardship, training and public education awareness programs are important tools
- concern regarding the application and enforcement of new regulations
- concern whether DFO would have the resources to support these key measures

Approaches to new regulations that resemble the current marine mammal viewing guidelines were generally found acceptable. On the issue of regulating the commercial marine

mammal viewing industry, it was felt that this might have merit but further discussion among stakeholders, particularly the marine mammal viewing industry was required.

These initial consultations will be provided for use in conjunction with similar consultations conducted in other regions of Canada to develop draft regulations. These draft regulations will be brought back to the Regions for further consultations prior to Gazetting. The following report summarises the approaches to consultation and the results thereof from the public meetings and workbooks.

## 1.0 INTRODUCTION

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

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

To protect Canada's marine mammals, additional regulations that provide protection from non-consumptive human activities on the land, sea and in the air that may disturb or harm marine mammals are being considered. Therefore, DFO is proposing to amend the existing Marine Mammal Regulations (MMR) of the Fisheries Act. Amending the MMR will ensure that all Canadians clearly understand their responsibilities with regard to protecting marine mammals and that DFO has the tools to fulfill its mandate.

DFO Pacific Region is committed to holding consultations with First Nations, stakeholders and the public to ensure a transparent, accountable, inclusive, and well-documented process for regulatory change. To find more background information on this important initiative in your community, please visit DFO's Consultations Secretariat website at:

<http://www-com.pac.dfo-mpo.gc.ca/paes/consultations/marinemammals/default.htm>

As part of the regulation amendment consultation requirement, DFO Pacific conducted public awareness campaigns and public community meetings (Table 1). To facilitate additional feedback and input subsequent to the public meetings, a question and answer workbook was created. Copies of the workbook were given out at the public meetings. It is also available on the DFO website (<http://www-com.pac.dfo-mpo.gc.ca/paes/consultations/marinemammals/default.htm>). During the initial phase of consultations key regulation concepts (Table 2) were identified to initiate discussion.

This report summarises the consultation activities and the feedback, which was received both from meetings and the Consultation Workbooks. The initial submission deadline for the workbooks was March 15, 2003, but workbooks that were submitted after the deadline have been included in the review. The review process is on going.

TABLE 1: SCHEDULE OF COMMUNITY MEETINGS

January 8, 2003 6-9 p.m.	Port McNeil Haida Way Inn
January 22, 2003	Queen Charlotte City Community Centre
January 23, 2003 1-4 p.m.	Tofino Community Centre
January 29, 2003 6-9 p.m.	Victoria - Institute of Ocean Sciences (IOS) Sidney
February 3, 2003	Prince Rupert Crest Hotel
February 8, 2003 1-3 p.m.	Saturna Community Hall, Saturna Island
February 11, 2003 6-9 p.m.	Vancouver Aquarium Stanley Park (Door 5)
February 20, 2003	Victoria - Institute of Ocean Sciences (IOS), Sidney

TABLE 2:

## Proposed Regulatory Concepts

### General Prohibitions

- Prohibiting the disturbance of marine mammals' life processes
- Prohibiting feeding, touching, swimming with, and moving marine mammals

### Marine Mammal Viewing

- Approach distances
- Vessel operation and numbers around marine mammals
- Licensing of commercial eco-tourism operators

### Rescue, Reporting & Rehabilitation

- Mandatory reporting of collisions, injured and entangled marine mammals
- Clearer permitting requirements for rescue and rehabilitation efforts

### Research and Education

- Clearer permitting requirements for invasive and non-invasive research activities
- Permitting of film makers and media activities that contravene other regulations

### **3.0 CONSULTATION APPROACH**

#### **3.1 Public Awareness and Advertising**

Public awareness of these community meetings was created by the distribution of a DFO Marine Mammal Bulletin, (Appendix 1) providing information to more than 700 stakeholders, and news releases posted on the DFO Web and distributed through media outlets and the Vancouver Aquarium and Orca Sighting Network list services. Advertisements were also placed in the local newspapers of each city. A letter was sent to all First Nations Bands, Councils and organisations as well as by notification (Appendix 2) in the Bulletin as well as by word of mouth.

Community presentations to introduce these consultations (Appendix 2) were given in Tofino, Port McNeil and Victoria during the summer and fall of 2002. In addition, upcoming consultations were highlighted at the north and south coast Sports Fishery Advisory Board Committees in December of 2002. The following stakeholders were identified as the target audiences for the consultation process: Provincial and Federal Government Agencies, First Nations, Eco-Tourism Industries, Ocean related Industries, Aquaculture Industry (BCSFA), recreational boaters (RBAC, Kayak Association, etc.), Commercial Fishing Industry, Environmental Non-governmental Organisations (ENGO's) and Academics.

#### **3.2 Awareness Campaign**

A series of eight community meetings were held between the dates of January 8 - February 20, 2003 in various key locations on the Pacific Coast (Table 1). The purposes of these meetings were to describe the regulatory amendment process, to review proposed regulatory concepts and to solicit public feedback. Eco-tourism, recreational boaters, the public at large, maritime industries, scientific research, and Coastal First Nations were notified. Each meeting except, Queen Charlotte Island, where the Marine Mammal Co-ordinator was unable to attend, DFO was represented by the Marine Mammal Co-ordinator, area Marine Mammal Managers, Stock Assessment and Conservation and Protection Officers.

#### **3.3 Public Community Meetings**

The Marine Mammal Co-ordinator gave a Power Point presentation at every meeting, except for Queen Charlotte Islands, which consisted of an introductory presentation with an overview of the DFO marine mammal program and the regulatory amendment process. The Queen Charlotte City meeting was attended by Dale Gueret, Area Chief, Oceans & Community Stewardship who kindly gave his time to give the presentation. This set the stage for reviewing and utilising the Consultation Workbook. An extensive question and answer period followed each meeting with those in attendance. Materials distributed at the community meetings included:

- Marine Mammal Bulletin - December 2002
- Consultation Workbook
- Canadian Technical Report of Fisheries and Aquatic Sciences 2363
- "Be Whale Wise" Guidelines for Watching Marine Wildlife Brochure
- Whales Dolphins & Porpoises of British Columbia, Canada

#### **3.4 Consultation Workbook**

The workbook was developed to provide background information on key issues and regulatory concepts in a question and answer format for participants to provide feedback. A section for

additional comments as well as contact information was also included. The topics that were covered in the workbook are listed below:

- Application and Definitions of Regulations
- Regulations Related to Marine Mammal Viewing
- Regulation of Commercial Marine Mammal Viewing Businesses
- Regulations for General Protection and Conservation
- Regulations for Scientific Study, Rehabilitation, Filming or Educational Purposes
- General Conclusions - Additional Comments

## 4.0 PUBLIC MEETINGS SUMMARIES

### 4.1 Port McNeil Meeting Discussion Summary - January 8, 2003

The Port McNeil public meeting was the first of the public meetings and was well attended by twenty three people representing a variety of interest groups from the North Vancouver Island communities of Port McNeil, Port Hardy, Campbell River and surrounding areas. There was considerable attendance by local eco-tourism companies, however, local researchers, the Mt. Waddington Regional District, the RCMP, and interested members of the community were also in attendance. There was a note of general support for the importance of protecting marine mammals and that better regulations are required. Both enforcement and education were highlighted as key elements necessary to protect marine mammals.

On a local level, the group expressed concerns about the increased traffic of cruise ships in the area, related to the noise, speed and proximity and their impact on marine mammals. It was generally felt that the cruise ships should be required to stay further away than smaller vessels and to slow down.

The meeting concluded with a commitment by DFO and some of the local participants to convene a follow-up meeting to further explore the issue of commercial regulations. The participants were appreciative of the opportunity to become informed about this initiative and offer their opinions and are looking forward to working with the DFO area representative on some of the local issues. A summary of key points on the regulatory concepts presented at the meeting are provided below. For a detailed record of the meeting, see the MMR Consultation website at:

<http://www-com.pac.dfo-mpo.gc.ca/paes/consultations/marinemammals/default.htm>

It was noted that, because the definition of a vehicle as a means of conveyance, Remote Operated Vessels (ROV's) should be added to the Definition. Under the Marine Mammal section it was stated that River Otters should be added and that reproduction should be included under Normal Life Process.

### *Regulations Related to Marine Mammal Viewing*

It was generally felt that 100m, as defined in the current guidelines, is a good approach distance for boats, but further distances in sensitive areas may be required and should be evaluated. The noise created in approaching marine mammals was discussed and it was felt that seaplanes should have stricter distance restrictions on taking off and landing near marine mammals because of their noise, speed, inability to manoeuvre and the unpredictability of the animals. It was suggested that 1,500 ft (300m) be used as there is some evidence that there is minimum disturbance at this height and that it is consistent with the current height restrictions for populated areas. It was noted that once the seaplane has

landed it could then be considered a boat. There was a suggestion that helicopters should not be allowed to be used to view marine mammals because they are very disruptive to wildlife. Some concern was raised regarding the need for aircraft to fly at a height lower due to weather conditions and then being found in contravention to a regulation. The group stated that they currently "self policed" their industry and were concerned that regulations would be hard to enforce.

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

While this concept was presented, given the amount of time available at the meeting, a full and in-depth discussion was not possible. Based on the current operations, it was felt the industry was well behaved and self-policing. However, it was recognized that eco-tourism is a growing industry and, around the world, there are examples of people wanting new and different experiences. One participant described the history of grizzly bear viewing and the move to licensing, noting that licence restrictions were brought in too late and now the industry is over capacity. Participants wondered how "viewing businesses" would be defined and whether a sport fishing boat would be considered a "viewing business" if they stopped to observe whales or seals etc. It was generally felt that people needed more time to think about this form of regulation in Port McNeil and agreed it could be the focus of a follow-up meeting.

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

It was generally supported that a measure to prohibit the life process of any marine mammal is an effective conservation measure. It was noted that in the North Island area, diving and swimming with whales and dolphins is happening and that such packages were already being "sold" to tourists. It was also noted that tactics were being used to attract marine mammals. There was general consensus that diving and swimming with marine mammals should not be allowed.

#### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

There was very limited time to discuss this concept. However, it was generally accepted that DFO should regulate all of the above.

#### 4.2 Queen Charlotte City Meeting Summary - January 22, 2003

The Queen Charlotte City meeting had the fewest participants, with the four people in attendance representing the eco-tourism industry. There may have been scheduling factors that affected turnout. Generally, participants felt that the applications and definitions were inclusive and better regulations were required to protect marine mammals.

Locally, licensing was an issue of most concern and it was expressed that although licensing can be a valuable tool, too many licenses are already required and the guidelines vague. Vessel operation sound levels i.e.; propeller cavitations and underwater noise-sonar were also pointed out by the group as a disturbance to marine mammals. The group felt that the Be Whale Wise guidelines were reasonable but more information was needed in recognizing behavioural cues caused by disruptive behaviour and activities.

In conclusion, it was noted that participants felt the structure of the meeting should follow a specific format and that a presentation/workshop on whale watching in BC by a recognized expert such as John Ford followed by an open discussion would have been beneficial. It was also pointed out that a partnership with local NGO's for continuity and content would have been advantageous as the community representatives stated that they had already attended

two other departmental community meetings and so many meetings resulted in meeting burnout.

A summary of key points on the regulatory concepts presented at the meeting are provided below. For detailed records of the meetings see the MMR Consultation website:

[www-com.pac.dfo-mpo.gc.ca/pages/consultations/marinemammals/default.htm](http://www-com.pac.dfo-mpo.gc.ca/pages/consultations/marinemammals/default.htm).

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

The group felt that approach distances should be kept simple and the same for all marine mammal species and viewing participants. It was asked if DFO would have the same approach distance for land and sea and it was stated that 100m is hard to judge therefore the regulations would be hard to enforce.

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

In response to concerns of over licensing, DFO staff suggested that Area Licensing would be a way to adjust to the specific needs of an area by providing more flexibility in various situations.

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

The group in general was concerned with how enforcement would be handled in particular to any activities disruptive to marine mammals' i.e.: swimming with sea lions, as there is concern over possible habituation. Participants felt that it was difficult to determine if an animal is really sick or injured but that rather than a regulatory requirement to report a sighting, an education program would be more beneficial. However, there was support for the mandatory reporting of animals entangled or hit. Questions were raised about MPA's and DFO pointed out the MPA regulations could be adjusted to provide protection.

#### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

The group felt that the same standards should be applied for the public and filmmakers and that there should not be a double standard. As to the requirements of obtaining a permit, it was suggested that a photo of the vessel should be a prerequisite. It was also mentioned that rehabilitation groups should be controlled, as they can be more harmful than beneficial.

### **4.3 Tofino Meeting Summary - January 23, 2003**

Tofino was the third in a group of eight public meetings and thirty-four participants from Tofino, Ucluelet and Bamfield were welcomed, representing local eco-tourism companies, BC Parks, Parks Canada and First Nations. At this meeting a Power Point presentation was also given by Parks Canada regarding their current and proposed regulations and guidelines for Pacific Rim National Park.

Public education and enforcement of infractions to marine mammal viewing was a prominent issue. It was suggested by the group that DFO help the community by instituting a "communications package" consisting of: public notices, brochures, signage at sites, notices in recreational magazines and local newspapers, advertising, informing tourists and visitors of whale watching issues, dangers, regulations and protocols. It was noted that diving and touching of marine mammals is an activity that does occur in the Tofino-Ucluelet area with both cetaceans and pinnipeds. A general concern was relayed about DFO funding in the Pacific Region and the length of time it would take to pass regulations and how DFO will manage enforcement on a limited budget.

A recommendation was made by Ed Lochbaum to form a working group in the near future with Paul Preston to further discuss the marine mammal guidelines and regulations by the whale watching industry.

### *Applications and Definitions*

It was suggested that additions of "in Canadian waters", "non-motorized vehicles" such as surfboards, SCUBA activities and ROV's (Remote Operated (underwater) Vehicles) should be included as marine mammal viewing conveyances. Also, it was questioned whether vessels just passing through an area frequented by or having marine mammals present would be covered by the proposed regulations and would the proposed regulations have influence on migrating whales and other marine mammals including pinnipeds? It was suggested that Normal Life Process should include breathing and dying but a question was raised whether interactions with "human" mammals be included.

### *Regulations Related to Marine Mammal Viewing*

Currently, a 50 meter approach distance is used by the operators in the Tofino area for Gray Whales. Comments were made that because of the high concentration of whale watchers in the vicinity, perhaps 100 meters would be better with one boat at the front/in the lead. The general feeling was that 50m was appropriate for grey whales and 100m would be appropriate for other species. It was discussed that perhaps different distance guidelines for commercial/professional and non-commercial/non-professional participants would be applicable and that guidelines/regulations could be categorized into: species, species at risk or split species.

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

The cost and number of licenses issued to the whale watching industry was discussed and a concern was raised about owners leasing out their licenses. DFO suggested that a community scheme through a licensing and management plan could include a section on the number of days each vessel could view in the area. It was noted that the whale watching industry in their area is self-regulating, but has problems with research permits and 'leap frogging' of vessels.

### *Regulations for General Protection & Conservation*

It was generally accepted that the measure to prohibit the disturbance of life processes of any marine mammal was an effective conservation means. However, specific situations need to be considered where marine mammals approach humans and how 'intent' is to be viewed in regards to enforcement. Incidents of "patting" whales and surfing with sea lions have been noted in the vicinity.

### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

There was limited time to discuss this concept. However, it was generally accepted that DFO should regulate all of the above.

## **4.4 Victoria Meeting Summary - January 29, 2003**

The Victoria meeting was held at the Institute of Ocean Sciences in Sidney and had the largest attendance with sixty-one people representing eco-tourism groups, recreational boaters, concerned citizens, non-government organisations and the Provincial Government Parks Canada. The forum commenced with an overview of the regulatory amendment process and the methods available for public comment and participation. The work of the

expanded Marine Mammal Research Program within the DFO was discussed. It was noted that following upon past efforts, a Marine Mammal Advisory Council will be established by DFO to ensure all concerns and view points will be addressed throughout the regulatory process and for ongoing marine mammal management. The importance and value of stewardship groups such as M3/Straitwatch/BCCSN/Soundwatch was also acknowledged by the DFO panel.

The group, on the whole, supported the importance of the protection of marine mammals and the fact that better regulations, enforcement and education are required. On the local scene, concerns was raised over the impact of different forms of disturbances (e.g. explosive testing near Race Rocks) and the raw sewage being discharged by the City of Victoria and the effects on marine mammal habitats.

The stakeholders in attendance represented a large cross section of various interest groups and, therefore, many differing opinions and perceptions were expressed.

### *Applications and Definitions*

Ferries, deep sea tankers, cruise ships and kayaks were cited as being a form of conveyance that interact with the local marine mammal populations, especially around Vancouver Island and should be added under Definitions. Concern was raised about the impact of speed, noise and emission standards (exhaust fumes) of the above on marine mammals. Under the Marine Mammal section it was asked if certain species of seabirds should be considered as an addition, specifically the Cormorants, as two thirds of the population resides between the Great Chain Islands and Mandarte Island. It was clarified that birds fall under a different Federal Act.

### *Regulations Related to Marine Mammal Viewing*

In Victoria, the commercial whale watching industry indicated that they maintain the 100 meters approach distance in addition to a 100 meter distance spacing between vessels in order to decrease the concentration of boats near whales. It was brought up that recreational boaters are also a key user group and that often they are not educated on protocols around marine mammals and act inappropriately on the water. Education of pleasure craft operators was generally viewed as being mandatory and it was suggested that the small vessel operator's certification course could be one approach

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

Industry representatives indicated that they are self-regulating and that licensing could cause problems if imposed because of the inadvertent differentiation created between licensed and non-licensed vessels, whereupon those that are licensed would expect more access to the resource. It was suggested that eco-tourism could act as ambassador and therefore pass on crucial educational information to the public. One idea suggested was that the funds needed to regulate the industry could be part of the licensing fees and could also be used for education and enforcement (monitoring). Concern was expressed by some participants that there are just too many whale watching vessels (commercial) on the water.

### *Regulations for General Protection & Conservation*

A general consensus was reached that prohibitions should be in effect under Normal Life Process that includes swimming and diving with marine mammals and mandatory reporting of sick, injured or stranded animals, entanglements and collisions.

### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

Due to the fact that the meeting was over it was stressed that individuals that had thoughts on this topic should use the workbook to provide their views.

#### **4.5 Prince Rupert Meeting Summary - February 3, 2003**

The Prince Rupert meeting was attended by twelve people, primarily whale watching operators, Sports Fish Advisory Board members and a few members of the public. An in-depth review of why amendments are necessary was given in the hope of giving the community the opportunity to plan for and help shape the growing eco-tourism industry in Prince Rupert. The value of stewardship groups such as M3/Straitwatch/BCCSN that have partnered with DFO and the Vancouver Aquarium to develop educational tools was expressed.

Overall the group was in favour of the amendments and felt that they should be applied fairly with the ability to deal with unique area/species situations and those communities should have input into regulations that impact them locally. Licensing of the whale watching industry involved the most discussion and anxiety within the group, particularly in regard to potential licensing issues with the creation of the cruise ship facility. The group reiterated that more licenses were not the answer but community awareness and involvement needed to be the focus. It was noted by the group that DFO's enforcement resources are already understaffed and under-funded and people wondered whether there would be enough money available to support the program. It was suggested that those people making the decisions on the regulations should visit the area to see first-hand the issues raised by the participants.

North Coast SFAB invited the Marine Mammal Coordinator to give a presentation to their group and NCAB. It was agreed that a local committee could be established to work with the North Coast on issues such as industry certification and education and this would prompt the North Coast to have a voice on Regional Council. Education was felt as the best way to achieve awareness of marine mammal conservation.

#### *Applications and Definitions*

Overall the group was comfortable with the definitions.

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

Questions were raised about the wording of this section and what 'intent' implies when approaching marine mammals and what constitutes disturbance and/or harassing and how is this to be enforced. DFO clarified that the regulations were meant as an educational/awareness tool that could be used in the event of charges being laid.

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

The community felt that licensing needed to be area specific especially in the Prince Rupert region because of their 4 month viewing season and the potential of transient operators converging because of increased commercial gain with tourism from the cruise ship facility. Issues were raised over who qualifies for a license, how many will be issued and the fee to be charged. Examples were given of a popular channel (Work Channel) very close to Prince Rupert that currently is the habitat for various forms of sea life and marine mammals and contains 3 lodges/12 boats, a heli-logging operation and local sport fishing traffic. It was

asked how DFO proposes to monitor and enforce the existing facilities and any other future tourist amenities/attractions.

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

An easier way to report on animals in trouble was discussed and it was suggested that using Channel 16 or some other mode of communication that vessel operators already have access to would be beneficial. DFO advised that a logbook is available to keep a continuous record of sightings by public participants (B.C. Cetacean Network). Participants felt that all boaters should be educated about whale awareness in order to get certification. It was noted that DFO is currently working with the Office of Boating Safety on the possible implementation of this.

#### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

Group agreed that more control was needed and that a review process should be initiated to determine if the risk to marine mammals is justified.

#### **4.6 Saturna Meeting Summary - February 8, 2003**

Saturna Island was the seventh meeting scheduled and included representation from a diverse group of stakeholders, twenty-eight in all. They encompassed South Pender and Saturna Islands committees, Parks Canada, University of Washington specialist to the GSX project, an Island Times newspaper reporter and members of the public.

The community, as a whole, was interested in the regulatory process, in particular the interaction between the various branches of the government and between Canada and US on marine mammals. A general description of the processes critical to marine mammal regulations, enforcement, mandates, science, program development, implementation, staffing and responsibilities within the DFO was given by the Marine Mammal Co-ordinator.

This group was emphatic about the need to protect and conserve marine mammals now and there was a sense of urgency in getting the regulations passed before it's too late to be of any help to the whales. DFO expressed that there will be other opportunities to provide input and feedback into the process but that these meetings were designed to obtain information on local concerns and issues.

#### *Applications and Definitions*

Overall, the group was comfortable with the definitions.

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

The stress level of whales and the harm being done to marine mammal habitats were highlighted by the group which felt that consideration should be given to sanctuaries and channel closures as different species need different kinds of protection.

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

Many residents are concerned about licensing and how it will affect their industry. It was mentioned that Saturna is a smaller community that has a large density of whale watchers, therefore it was suggested that there should be a moratorium on the number of licenses in a given area. A comment from the floor suggested that in order to help enforcement people recognize legitimate operators, large sized license "plates" or numbers should be used on commercial whale watching boats. Recreational boaters and the general public need to be educated. It was suggested that enforcement of the proposed regulations would be most

cost effective through education and that in order to gain a boat operator's permit, one should be educated on the protocols on marine mammal viewing.

### *Regulations for General Protection & Conservation*

Saturna Sighting Network has documented serious infractions from commercial operators and feels that enforcement needs to be addressed. It was felt that a new kind of enforcement officer was needed who could take immediate action to impose penalties and that these regulations need to be clear and concise. Many formulas were discussed on how to alleviate the amount of viewing time and the associated stress on the whales caused by the whale watching community (see Record of Meeting for more detail).

### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

This topic was not discussed but participants were encouraged to submit feedback via the workbook.

## **4.7 Vancouver Meeting Summary - January 29, 2003**

The Vancouver meeting was the last in a series of public meetings. The forty-five stakeholders in attendance represented a large cross-section of various interest groups and, therefore, many differing opinions and perceptions were expressed.

Due to the similar stages of Canada and US regarding marine mammal viewing legislation and the trans-boundary nature of these animals, it was suggested by the group, that a bilateral subcommittee be created to ensure regulations are consistent not only across the Canada/US border but internationally. It was also felt that in order for regulations to be effective, they should be regional instead of national and enforcement should be clear, concise and immediate.

The impact of fish farms and commercial fisheries on marine mammal habit was a local issue and the Marine Mammal Coordinator responded by stating that DFO is moving away from single species management to multi-species models that addresses questions in terms of the whole ecosystem.

It was agreed that a subsequent meeting was needed and should be held in Vancouver since it is a central location and many NGO and other interest groups are located in the area.

### *Applications and Definitions*

There were concerns that the wording of the regulations are too vague and open to misinterpretation. Shipping lane traffic was also brought up as a concern for its impact on marine mammals.

### *Regulations Related to Marine Mammal Viewing*

In regards to marine mammal viewing and the enforcement thereof, it was asked if sea lions and seals are included in distance considerations and if different distances are being considered depending on the type of animal being viewed and the mode of conveyance/transport. In response, it was stated that Fisheries Officers' discretion allows for judgment of all the factors involved in a particular situation and that intent, reasonableness and common sense are evaluated.

Again, it was stated that education is fundamental and the regulations need to be easy to understand. A comment was made that the average person (recreational boater) does not

always judge distance on the water compared to commercial operators and therefore, viewing approach distances should be on the long side to prevent any close encounters.

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

Licensing was briefly touched upon and the group felt that the effects of licensing could only be realized when licensing regulations are in place. Licensing should cover multi-species and stipulate allowable viewing time per vessel.

### *Regulations for General Protection & Conservation*

Comments were made about the impact of fish farms on the habitat of marine mammals and about interference. Leftover food on ocean bottom, dead fish, predator control nets, marine noise and the shooting of seals were brought up and how would this be enforced and covered by regulations. In regards to marine mammal safety, the group felt it was important for stewardship programs to provide quick feedback to commercial operators on their behaviour in order to allow a quick remedy.

### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

Concern was raised about some science playback experiments on marine mammals and that these types of experiments can have a significant effect as demonstrated by John Ford's Ph.D. thesis work and should also require licensing.

4.8 Sidney Meeting Summary - February 20, 2003

A meeting of the Whale Watching Industry from Victoria and surrounding areas was held on February 20, 2003 at the Institute of Ocean Sciences in Sidney and was attended by nineteen commercial industry representatives. The group met to discuss general prohibitions, marine mammal viewing, rescue reporting and permits for research and media. Not all topics were discussed in detail as time was limited. Workbooks were handed out to people to facilitate discussions on specific questions related to the agenda.

The group generally agreed that approach distances are a cause for concern and there was anxiety over DFO stating specific distance guidelines and how it will affect their industry. It was felt that there is merit for two different sets of approach distances, one for commercial watchers and one for recreational boaters. The group also put forward that a combination of distance, species (transients) and area being viewed should be taken into consideration.

On the issue of licensing, industry was asked to submit their ideas since other regulatory models should/would be examined. Concern was expressed regarding funding and the ability of DFO to enforce, monitor and educate on the new amendments.

### *Applications and Definitions*

Generally accepted.

### *Regulations Related to Marine Mammal Viewing*

Approach distance was an area of great discussion, as well as how DFO regulations will affect the commercial whale watching industry. It was noted that the Whale Wise brochure states that no vessels shall be in front of the whales, but the industry feels there is an increase in the amount of vessels that are paralleling the whales; therefore, the industry has removed this provision from their guidelines. This ensued a debate as to whether it is better to parallel the whales or that pulling ahead of them and sitting and waiting with the engines off and out of the water is less invasive/intrusive.

The term "approach" should be clarified as to - the boat to the whale or to the whale approaching the boat. The distance between vessels should also be reviewed. Land approach distance of 100 yards was accepted but, based on the Saguenay-St. Lawrence Marine Park Regulations industry, there should be different regulations regarding the commercial and recreational watcher and as to the marine mammal species being viewed.

It was put forward that the Whale Wise brochure is a worthwhile public educational tool but that the association follows different guidelines and suggests the following recommendations: viewing times to be reduced from 2 hours to 30 minutes, slowing to reduced speeds and the increased use of hydrophones.

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

The industry representatives in attendance felt that there would be benefits to licensing. It was recognized that there would be increased professionalism and the industry would become a recognized entity and therefore be able to negotiate with the government as a group. Licensing would also cause an obvious differentiation between commercial watchers and recreational boaters. Questions were also raised as to the duration of individual licenses and if any privileges would be given to licensees in regard to approach distances.

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

Participants were concerned about toxins in the marine mammal environment and the cause and effect of this on the food chain in regards to the provision of food to ensure whale population survival and how this would be effectively enforced and monitored.

#### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

This topic was not covered but participants were encouraged to express their views by submitting a completed workbook.

### **4.9 Port McNeil Follow Up Meeting Summary - March 19, 2003**

A meeting was held with Aleria Ladwig and Todd Parker from DFO and nine members of the whale watching industry as a follow up to the January 8, 2003 Public Consultation meeting held in Port McNeil. The purpose of the meeting was to review Marine Mammal Workbook Sections 6.0 - 8.0 in detail, as these sections were not discussed in the initial meeting because of time constraints.

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

The group in attendance felt that regulatory measures should only be taken if they are "workable" and not just a "knee jerk" reaction to the amount of marine mammal viewing businesses currently operating. One member expressed concern that they were being singled out even though the operators have more knowledge in regards to marine mammal viewing than the general public. They felt that if regulations were to be used, they should be based on science, be area based and encompass approach distances.

It was agreed by all, that the definition of a marine mammal operator or vehicle should be: anyone who takes paying customers out on the water to view marine mammals even if it is not their primary purpose for being out on the water. Examples were given of recreational fishing guides, whale watching boats, eco-tour/kayaking companies' etc.

Many concerns were raised in the group regarding the licensing of commercial operators. It was expressed that no one has yet to prove that whale watching is harmful to whales and

therefore, a specific approach distance should be set for everyone, not just the commercial operators as this would be easier to enforce. It was questioned how DFO would differentiate between tourists/public who own their own boats and commercial operators when they are both partaking of the same activity. It was stated that if licensing were to happen there would have to be specific benefits to the commercial operators, perhaps in the form of limiting the number of licenses available, and those with a license should be allowed a closer approach distance. It was suggested that a graduated system of registering with DFO could be used as a first step. A question was raised about what the Americans are doing about licensing and that perhaps more information was needed in order to understand the potential impacts of licensing.

### *Regulations for General Protection & Conservation*

It was unanimous that there should be a general prohibition on feeding; touching and swimming with marine mammals but some felt that the definition of "life processes" is too vague. In regards to human impact on marine mammals, the group was concerned about toxins, fish farming, cruise ships and the exploitation of the marine mammal food supply.

The mandatory reporting of collisions, entanglements, stranded, injured or sick marine mammals was supported but it was felt that the commercial fishing fleet would have to be convinced to report such incidents and that there should be education on how to tell if an animal is in distress. Distribution to commercial operators of a contact list for the reporting of sick marine mammals was suggested.

### *Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes*

The group felt that filmmakers should be required to apply for a permit and that a "central bank" or archive could be established that contains information on footage that is already in existence to avoid duplication. It was suggested that John Ford and Graeme Ellis have the most experience on existing film footage and perhaps they could be in charge of this. One person felt that commercial operators should not have to apply for a permit and that all applications should be on a case by case basis. On the question of whether DFO should regulate rescue/rehabilitation groups, the response was that the question was vague and that more information was needed before answers could be given.

### *Conclusion*

The remainder of the meeting was dedicated to discussion of the Marine Mammal Advisory Council (MMAC) and the development of a local chapter. Aleria Ladwig reviewed the role of the MMAC and outlined the role of a local chapter and distributed the Draft Terms of Reference for the MMAC. It was made clear that this was only in draft form and was subject to change and that it was only intended to provide participants with more details on the process. The first North Island MMAC meeting will be organised for late June on a weekday evening. Comments were as follows:

- Meeting once or twice a year would be fine. It would be good if we could hold the meeting(s) on the shoulder of the commercial whale watching industries field season.
- Attendees agreed that for the North Island local chapter, the meetings should be open and not restrictive in their membership. Membership should include operators working on the North Island, not just people living on the North Island (i.e. the Oak Bay Marine Group would rather participate in the North Island chapter rather than a mid-island chapter because this is where they operate). The chair should be elected.

- The role of the local DFO representative should be to co-chair and assist the chair in administrative responsibilities. Should also provide funds for meetings.
- Local Terms of Reference should be developed.

## 5.0 CONSULTATION WORKBOOK SUMMARY

The following is a summary of the responses received from the Marine Mammal Consultation Workbooks that was given out at Public Meetings held between January 8 - February 20, 2003 and available online on the DFO website. A total of 34 responses were received, 26 were submitted in the standard workbook format and the remaining 8 were answered in various other forms. The respondents who submitted workbooks were approximately 50% eco-tourism/commercial whale watchers and general public and the other 50% being non-governmental organisations. Submissions were received from various places around the world including Vancouver Island, the lower mainland, BC Interior, Ontario and as far away as Scotland and England.

Individual responses varied with people giving one-word answers to those giving detailed information and attaching addenda and documents, to citing and including copies of various marine mammal research studies that have been conducted. It was obvious that some people had taken a lot of time to complete the workbook and put forth many constructive ideas. Overall the concepts discussed in the workbook were generally accepted and various individuals gave kudos to DFO for initiating such a project to save our marine mammals before they are listed as endangered or extinct. The licensing of commercial whale watch operators caused the most dissension and discussion among the respondents but the majority accepted that something should be done to monitor the industry. As one individual pointed out "Therefore lays the challenge to be precautionary for conservation measures but yet not be unrealistic so that eco-tourism operators can still earn a livelihood...first step in conservation for threatened marine mammals".

Education, enforcement and monitoring were the key issues that were gleaned from the feedback. Many felt that there was a need to educate the public and commercial whale watch operators and to establish marine mammal protected areas. While there were concerns around enforcement and implementation and the funding thereof, the majority of the respondents supported the concepts of specific regulations to protect marine mammals.

This section provides a summary of details and trends from the workbook that will be used by the drafting team in considering and developing specific regulations. Ongoing consultations with various stakeholders will be conducted as regulations are developed. The Consultation Workbook will be available on the DFO website for more detailed review.

### 5.1 Applications and Definitions

The respondents generally agreed with the definitions. It was noted that the following should be included under vehicle, whether it is commercial or recreational, and non-motorised modes of transportation should also be included. The following types of crafts/vessels/activities/conveyances have been noted in the feedback to engage in marine mammal viewing:

- ROV's, swimmers, scuba divers, all floating vessels, jet skis, personal water crafts, underwater mechanised vehicles, water skiers, para skiers, wind surfers, surf boarding and paddling, air mattresses, small blimps, kayaks, canoes and beach walkers.

The *definition of marine mammals* does not adequately cover Canada's marine mammals and it was felt that other species i.e.; river otter, marine birds, gill sharks, white sturgeon, and turtles should be included. It was noted that the general public would not know what "cetaceans or pinnipeds" are so the wording should be specific by giving examples of all the marine mammals intended to be included in the definition. This would hopefully mitigate any problems of someone approaching a sea lion because of the lack of education. A question was raised as to whether all species of bear, which forage in the inter-tidal zone should be included.

*Normal Life Processes* should be more detailed and include: hunting prey, navigating, foraging (linked to but different from feeding), avoiding predators, care-giving behaviour for young/sick/injured group members, change in breathing pattern, swimming, travelling, diving, recreating (entertaining), vocalising and marine mammal interaction with the physical environment (beach rubbing). It was asked whether regulations should only be applied to endangered and threatened species, but overall most felt that public education is very important and needed on what comprises normal behaviour in a marine mammal.

## 5.2 Regulations Related to Marine Mammal Viewing

Regulating approach distances would be an effective conservation measure if they were to be enforced on a regular basis and a consensus is reached with all stakeholders and other interested parties as to what these distances would realistically be. Commercial operators felt that they are generally self-policing, but should work together to set an example to those unfamiliar with the conservation of marine mammals on ethical viewing guidelines. One individual suggested that viewing opportunities could be divided into categories: opportunistic/spontaneous encounters, commercial, research, transportation and/or recreation.

A *combination of species and/or area specific* restrictions was felt to be acceptable by a majority of those persons who responded to the workbooks because of the varied regions in Canada, as the Arctic, Pacific, Atlantic regions encompass different species, weather conditions and social/economic pressures. Those respondents who advocated a more species/area approach to regulating distances mentioned that the physical size of the marine mammal(s) being viewed could be taken into account when considering appropriate viewing distances. Smaller species are harder to see from a long distance away, be it on land or sea, while larger species are not. Perhaps a graded scale of distances for specific species would be suitable. The creation of 'caution or buffer zone' areas was indicated in the feedback to ensure mariners adequate response time to adjust to slower speeds and approach distances. In addition to approach distances having restricted areas like Robson Bight, more sanctuaries (no-go zones) and area closures where all marine mammals would be protected and not disturbed, was suggested by many respondents as additional conservation measures.

It was felt that eco-tourism operators and scientific researchers have more experience with on-water viewing distances and species differentiation than recreational boaters. Therefore, it was emphasised that the general public would have to be educated on this in order for the regulations to be effective and enforceable. The regulations should not be complicated or confusing and state sensible broad guidelines for all that could be easily

enforced, augmented by a few well-chosen species/location, specific approach distances. This would recognise the special needs of various species and it was suggested that perhaps a brochure could be created in a tabular format easy to read by species and area. By being user friendly, it would avoid any misunderstanding by the public.

Input on suggested appropriate *viewing distances* seemed to reach a consensus of 100m by sea, as this has been the wildlife norm established by prior guidelines and agreements, and a distance of 100m between boats to promote less congestion for whales and boats. However there were some variations suggested that could be considered. For example; a general rule of 50m for dolphins/porpoises, 100m for orcas and larger whales and 400m or greater for endangered or threatened species. Breeding, feeding and resting areas would require greater approach distance. One suggestion was that distance finders should be on all commercial boats to ensure accurate distances. In the feedback section some individuals gave examples of areas, particularly in the waters of the Strait of Juan de Fuca and Hare Strait where strict governance of marine mammal viewing is needed. In contrast, other species like the Harbour Seals on Stephanson Islands of Johnstone Strait can be approached within a few meters without disturbance. Cruise ships, because of their size and engine noise, should remain 300 - 400m from all cetaceans at all times.

Shore-based viewing should be reasonable and some felt that it could be conducted at a closer range for cetaceans than for pinnipeds because of their location in the water. An example was given of 100m from tidal edge, cliff edge or high water mark. Sea distances can be distorted, but on land there must be sufficient distance guidelines to avoid startling animals and far enough to prevent thrown objects from hitting them - barriers may be needed.

It was unanimously stated that no *helicopters or aircraft* of any kind should be used to view marine mammals and that no aircraft should be allowed to dive low over whales or seals when taking off and landing. The noise factor and vibration of such conveyances was noted as being stressful to all marine mammals. In particular, floatplanes were mentioned to be a hazard to marine mammals as it is hard for the species to distinguish vessels moving on the surface of the water (when coming up from a dive) and subsequently cannot predict the landing of an aircraft. The landing and taking off procedures of a floatplane cause sudden changes to the surface situation, which can startle and confuse an animal. This is a particular disturbance to cetaceans and can promote a collision during take off/landing, which poses a safety risk to both passengers and marine mammals. It was suggested that viewing distance from the air should be a minimum of 300m and only in designated areas and by license. Taking off and landing should be at a minimum distance of a 1 km and floatplane engines should be shut off upon landing to cut engine noise. One respondent indicated that they had evidence of Harbour Air landing in the middle of a travelling pod and when the orcas passed the seaplane the plane "jumped" over to another pod.

The response to the number of *vessels viewing* at one time and stand off distance were as varied as the group was diverse. The suggested range went from 2 to 30 vessels viewing at one time with a stand off distance of 25m to 500m to one person stating in their feedback that they have actual evidence of 50 to 94 vessels viewing orcas at one time. A key factor noted was the need for some form of guideline or protocol on viewing times so that all vessels have a fair viewing opportunity, especially if other vessels are waiting. Fifteen to twenty minutes was suggested as a fair viewing period for a group of vessels and a maximum of thirty minutes for a lone vessel. One suggestion was that vessels carrying 12 or more passengers should have more time as they are lessening the impact of boats on the water. A

question was raised as to whether kayaks or ocean canoes could be allowed an extended viewing time since noise is a key factor and they are very quiet. This viewing "window" should encompass all research, government, commercial vessels and persons who proclaim special status.

It was thought that if everyone has the same rules to obey in distance regulations, that switching positions of vessels (leapfrogging to the front of the line) would be eliminated and would not cause a disturbance to marine mammals. It was acknowledged that a "courtesy time limit" and the problems of how to track whom came first to view would be difficult to enforce, so perhaps should stay at a guideline level and if possible be regulated by the eco-tourism industry itself as they tend toward self policing. Education of all mariners on a viewing time limit, provision of an "escape route" for marine mammal safety and of noise restriction be in place when standing off. Groups of vessels viewing close to each other makes it easier for marine mammals to use evasive tactics and does not force them to approach close to vessels and therefore, has less impact. It was pointed out that this should become an industry standard with offenders fined or prosecuted and the funds derived from this could be directed to conservation with rewards for convictions somewhat like Crime Stoppers and Neighbourhood Watch.

Additional comments were given on how to *approach marine mammals*. It was suggested that it should be done slowly, should parallel the animals at 100m and boaters should avoid sudden changes in speed and direction and never intentionally park in front of the whales. Also vessels should maintain VHF radio contact at all times to facilitate notification of safe operating procedures and to advise of any inappropriate behaviour seen on the water.

There should be absolutely no approach to a marine mammal if it is using a rubbing beach, has young, is resting or feeding and approach distances should always err on the side of the marine mammal to give ample distance and time to change direction and avoid contact. Some consideration or allowance should be given if the animal(s) choose to approach the vessel; at this point all vessel motion should be stopped unless safety is an issue. Everyone should be guided by the behaviour of the group of marine mammals and allow the animals to remain together to alleviate stress. It was felt that cruise ships and ferries are not maintaining distances and that pocket cruisers should be added as they are large vessels that use 100m as a distance but often leave their engines on and noise and vibration are a disturbance to all marine mammals. Jet skis were seen as a safety hazard to both marine mammals and the users and should always stay a minimum of 300m away at all times.

It was generally agreed that *regulating speed and direction* was an effective conservation measure, particularly for the slower swimming species. It should be monitored and enforced with perhaps fines being given but should include exceptions in cases where there is a navigational impairment or emergency situations. One person stated that this regulation should only pertain to vessels actively involved in marine mammal viewing and not to become standard for other vessels engaged in peaceful passage which is already subject to International Regulations for the Prevention of Collisions at Sea. Speed and sudden changes in direction were often mentioned as an important factor as there has been a demonstrated direct link between vessel speed and severe/fatal injuries to cetaceans. Many individuals felt this was an essential precautionary conservation measure as it would provide safety for all involved and more shore based viewing could be encouraged.

The *Be Whale Wise* brochure guidelines were generally supported but other variables that should be considered are: angle of approach (erratic movements), how to handle the boat if a cetacean approaches a vessel and how to deal with unexpected meetings i.e. whale

surfaces next to boat after a dive. The guideline could read as; if approached by marine mammal(s) the following rules should apply: dead in the water/quiet (no shouting or talking) and wait until the marine mammals are 300m away and do not follow. One additional guideline was suggested: Do not operate your vessel within 100m of marine mammals and if possible shut down engines. Some responses were very detailed on various approach methods.

Other *effective measures* that were mentioned were noise restrictions for land dwelling marine mammals (i.e.: ghetto blasters etc.). Propulsion technology restrictions to reduce engine noise, vessels position downwind to avoid engine fumes wafting, no dumping of sewage, fuel, oil and litter into the sea and that all vessels engaged in marine mammal viewing should be subject to these guidelines. One person suggested that marine engine manufacturing companies be encouraged to design an engine that would comply with specific noise level regulations as this would provide them with a competitive edge and in turn be environmentally friendly to marine mammals. Enforcement and education, with imposed penalties and the mandatory training in identification of species and behaviours for commercial operators in order to set examples for general population and to help in their role of educating the public was recommended.

It was felt that a general broad based regulation statement would be difficult to enforce and would be open to interpretation and, therefore, if instituted, it should be explicit and concise. One respondent mentioned that in order to be effective in law, intent must be proven to hold a person guilty of an offence, therefore it must clearly define disruption of life processes for public education and enforcement and conceivably should be reworded to read intentionally disrupt.... It should not only cover eco-tourism operators but also recreational viewers, scientists, movie industry companies, ferries and even barges.

Many other thoughts and advices on vehicle operation were given; one being that the regulations should not say "vehicle", since "vessels" is the correct word. Boat noise and vessel maintenance need to be addressed to lessen impact on marine mammal habitat. For example, no oil leaks dripping into the water, clean hull to reduce drag which in turn reduces engine strain, which in turn leads to a reduction in noise volume. Area closures should be considered, limiting the number of hours per day, days per year for marine mammal viewing which could be negotiated with scientists and whale watch operators, for example a closed season in the winter, open in the summer. Also a suggestion was given of erecting signage posts, much like what we have on our streets, stating speed limits and marine mammal right of ways posted in narrow channels.

### 5.3 Regulation of Commercial Marine Mammal Viewing Businesses

A large majority of the feedback supported the implementation of specific measures pertaining to the marine mammal viewing industry, but questions were raised on the inherent problems of: funding, education, enforcement/monitoring, management and control of operators. It was stated that any actions taken would be positive and in turn creates accountability within eco-tourism and could provide an opportunity to educate all mariners on ethical viewing practices and species behaviours. It was questioned on how DFO will define a vessel is being used for marine mammal viewing and how DFO will verify/enforce this in regards to commercial or recreational vessels. It was mentioned by one person that those vessels already are defined under the Canada Shipping Act as passenger vessels and that those over 15 tons already pay a marine service fee to DFO. A concern was raised that regulations will be looked at by the marine passenger industry as a cash-grab but

that any revenue generated should be used to enhance marine mammals habitats for future generations.

The *definition of commercial marine mammal operator* or vehicle should also include aircraft and be worded to include anyone with specific intent to receive an income/fee from viewing marine mammals in their natural habitat and should embody profit and not for profit ventures. An example of an in-depth definition has been taken from one of the workbooks.

“A commercial marine mammal viewing vehicle is one that carries paying passengers and changes course to approach rather than avoid marine mammals, or cause marine mammals to approach it. This is intended to exclude vessels that transit through an area while on other business, unless they advertise marine mammals viewing or other roughly synonymous activity (e.g. wildlife viewing). This would include fishing charter vessels that opportunistically approach mammals (even though their primary activity is unrelated). This would exclude passenger ferries and cruise ships that never change course, but include such vessels that sometimes change velocity to better observe marine mammals. A commercial person, business, or non-profit organisation that owns a marine mammal viewing vehicle, or is employed by, contracting with or volunteering for an owner.”

*Licensing as a regulatory measure* for commercial whale watching operators was generally accepted by respondents. It was seen as a useful tool, provided that the fee charged is not prohibitive and terms are equitable. The one fee structure that was provided by an individual was that the license fee should be \$1000 for each power vessel and \$100 for any business advertising marine mammal watching as part of a tour package i.e.: kayak tours. Some concerns were raised regarding licensing being instituted only as an income-generating tool. It was pointed out that the monitoring of commercial operators is already being done by M3 and Soundwatch and it was questioned as to what specific benefits to marine mammals could be identified with regulating the commercial whale watching industry.

Operator licensing needs to be regional i.e. coastline specific and a question was raised as to whether the regulations should include USA craft in Canadian waters. The benefits of licensing given in the workbooks were many. The use of permits or licenses would be helpful in managing the industry and to give an accurate account of how many vessels/companies are participating in this activity. It would also be an informational tool for mandatory data collection (days at sea, number of passengers, number of and location of marine mammal sightings) which could help determine potential effect on species. Other benefits would be that operators can be contacted easily with changes and can provide education to people and communities to help in conservation and be included as a group in management process/discussions. It was suggested by some that all operators and staff should fulfill a minimum training course in marine mammal identification and behaviour, which would include different scenarios on marine mammal encounters followed by an examination. Upon completion of the training, it was suggested by one individual that an Ethical Certificate of Operation could then be issued giving a “Whale of Approval” for the operator. It was felt that any revenue generated should be used to fund conservation and research projects, to aid in enforcement and monitoring and for the creation of education tools and programs.

It was suggested that the *number of licenses* should be limited in order to keep the industry at a sustainable level with licenses issued either annually or for a set time period of perhaps 2-5 years with reapplication at the end of the term. This would solve the problem of “weekend viewing vessels” that do not declare themselves. A provision should be made by the DFO that if standards are not met, the license can then be revoked or fines instituted.

The feedback regarding *commercial operator viewing restrictions* had three separate viewpoints. One group felt that restrictions should be the same for all to be fair, otherwise it would lead to injustices, be hard to enforce and that the industry could lead by example and help enforcement by policing other boaters and noting violators by name or registration of vessel. While others felt that, since the industry is directly benefiting in a monetary way, they should have more restrictions and pay a higher fee that would then go towards research/protection/conservation programs and education. Thirdly, other comments suggested different restrictions because commercial operators are viewing marine mammals for extended periods of time while the public and other stakeholders view for shorter periods of time.

Additional comments regarding commercial licensing stressed that it would be hard to enforce and how will DFO determine who should be licensed? i.e.: commercial sport fishermen and dive operators. Also, some form of easy identification of vessels by the monitors is required so that names/numbers that can be seen easily to report infractions.

#### 5.4 Regulations for General Protection & Conservation

The feedback from the workbooks felt that the wording of the question regarding a *general prohibition* to disturbing the life processes as an effective conservation measure was too vague/broad and open to misinterpretation. The wording should be clear and specific because, in law, intent must still be demonstrated and the onus would be on the DFO to prove life processes are being disrupted. The many examples of life processes are good but should not be limited to the examples given.

A *general prohibition on feeding, touching and swimming* with marine mammals was seen as a necessary and effective conservation measure. Contact with humans may cause disease and encourage marine mammals to habituate which in turn is destructive to their life process, as these animals become a danger to themselves and boaters and eventually may have to be destroyed. It was noted that any methods of “attracting” marine mammals should also be prohibited with enforcement consequences for violators. A very few individuals gave feedback regarding animals in captivity i.e. Vancouver Aquarium, where the public is encouraged to feed and pet marine mammals. This was noted as being in direct contrast to effective wildlife conservation efforts as the public may perceive that anthropomorphizing (the giving of human form and personality attributes to animals) with wild animals is acceptable.

Many *human activities* posed concerns for those who submitted workbooks, in particular, any form of pollution (which pollutes the marine ecosystem) not covered by CEPA. These include resource extraction, oil and gas exploration, drilling and pipelines, which have the potential for manmade disasters in the form of oil spills. Also, ocean dumping of raw sewage from Victoria and Prince Rupert, shipping lane waste, garbage, bilge and ballast pumping and the transportation of cargoes containing toxic/biohazardous substances in unsafe containers which promote the release of bio-accumulating toxins that marine mammals would not generally be exposed to. Other concerns mentioned were aquaculture, military operations, the sport and commercial fishing and shipping industries, population and tourism impacts, poaching and direct human interaction.

Aquaculture (fish farming) on the BC Coast is seen as altering existent ecosystems by occupying sheltered coves and bays used by some marine mammals as their natural habitat. A few felt that fish farming poses a threat to wild fish populations, which in turn affect the

food chain, and hence the prey other marine mammals rely upon, thus these animals then become a nuisance, resulting in lethal actions against them.

Military operations, which include underwater explosives, weapons testing, DND blasting practices at Race Rocks, national and international defence manoeuvres and submarine testing (US), all impact the natural habitat of marine mammals. Also, undersea seismological exploration impacts, acoustical underwater testing, construction and exploration, inland and coastal development which degrades natural habitats and the use of low flying aircraft were felt to impact marine mammals and should be considered.

Sport and the commercial fishing industry pose other threats to marine mammals such as perceived over fishing, entanglements in fishing nets and lines causing mortality and the random shooting of predators (hunting, illegal and legal) and poaching by fishermen. Recreational boating and fishing, and the building of marinas which cause pollution, and the alteration, destruction and elimination of natural habitat. In regards to the commercial shipping industry, the feedback indicated that guidelines were needed on how to report or deal with accidental encounters and collisions of cetaceans with ferries, cruise ships, tugs and freighters. In addition, it was felt by a few that some form of regulation was needed to deal with the noise pollution of these large vessels.

Population and tourism increases are seen to put more pressure on the marine mammal's natural environment as well as water management practices that cause marine mammals to be caught in locks, floodgates and watersheds. A concerned individual mentioned climate alteration (global warming) caused by humans resulting in changing ocean currents effecting marine mammal productivity. Other human activities that impact marine mammals are scientific research activities of an intrusive nature like radio tagging and the obtaining of flesh and milk samples. The capture of marine mammals for marine exhibits, educational filming and people on the beach and marinas picking up seal pups without phoning a rescue operation first were also mentioned.

Additional comments on general prohibitions included that regulations should be written so that DFO can enforce them and they must be clear and concise and enforced quickly and effectively with the welfare of the animals in mind. One individual responded that DFO should take responsibility for wild and captive marine mammals, as once an animal is placed in captivity they seem to fall through the "cracks" and Provincial and Federal governments do not list these marine mammals under the protection of a Wildlife Act. The inclusion of significant financial deterrents to allow for immediate fines and perhaps the confiscation of all boats and gear involved, which in turn can be auctioned off to support the conservation of the species involved was suggested.

To deal with broad indirect impacts, it was suggested that DFO should spend money on education, monitoring, enforcement and prosecution and recommend international standards for freight vessels seaworthiness that have impact on our oceans. Broader scale activities such as over fishing, degradation of spawning habitats and pollution were noted as not addressed in regulations, as well as the effects of noise on life process and the food chain - diminishing stocks of salmon and herring, sea lice and the impact of PCBs.

The *mandatory reporting* of collisions or entanglements, of sick, injured or stranded animals was unilaterally supported. It was suggested by one person that once a collision/entanglement report has been made, all obligation is deemed to have been met and the vessel involved may continue on its way. The creation of a "marine hotline" to get fast response to situations with an easy to remember number like "1-800-whale" was

suggested or a central register to facilitate rescue response that would ensure latest techniques to be used. It should be noted here that public education and development of rescue protocols and adequate training of personnel were recognised as being required, ascertaining if an animal really needs assistance. The information gathered could be used for compilation of data with details on how many, why, where, when and what species involved and to reporting for migrations to avoid unnecessary collisions and accidents. Administrative and field support funding for the collation of data for analysis and archival was recognised as needed.

### 5.5 Regulations for Scientific Study, Rehabilitation, Filming or Education Purposes

The respondents agreed that *researchers and film makers* need to be regulated with unilateral comprehensive permit requirements - no special privilege, permissions or other status presumed - the same for all. The formation of an ethics committee or scientific panel could be established prior to granting permits to ensure no duplication of studies and film footage and perhaps a form of co-ordination with other countries for transboundary species. The group felt that research and filming programs needed to be evaluated as to their validity and educational merit and strictly regulated as any contact generally means more disturbances to marine mammals. One person felt that all applications should undergo a 30 day Public Consultation Period and that research vessels should display signs at all times.

Film makers should be required to obtain funding for an onboard observer hired by the DFO to report and ensure compliance to regulations/guidelines or else marine mammals may be exploited for the perfect shot. One individual also felt that research/film permit holders must not be observed breaking the regulations in front of others for fear of the onlookers breaking the rules as well. Filmmakers should be charged a fee for filming which could be used towards education, enforcement and conservation of marine mammals. Instituting these regulations would also prevent filmmakers from coming to Canada because of less stringent regulations compared to the US and a co-ordinated effort with both countries on permitting to prevent marine mammal harassment.

DFO should regulate *rescue/rehabilitation* groups to establish bona fides of such groups. They should be inspected and monitored for the appropriate use of resources and DFO should develop rehabilitation guidelines in consultation with knowledgeable rehabilitators. The issuance of permits every 2-5 years, which could be revoked if conditions are not met, and some form of internship or training program at an approved facility already in operation would be beneficial. An affiliation or membership with a professional organisation would be feasible to maintain standards and to promote communication. One person felt that over regulation by DFO may lead to increased suffering and mortality of marine mammals because people may not want to intervene.

The *only disturbances* of marine mammals that are justified is the aiding of mass/single strandings, wayward, lost, sick, or disoriented animals and the freeing from net or line entanglements. Qualified individuals should only do rescue attempts and guidelines be set to minimise well meaning, but sometimes harmful public actions. DFO should have contingency plans in place for dealing with oil spills, industrial accidents and the relocation of marine mammal outside their normal range and to plan with other countries when transboundary is an issue. Thought should be given as to why the marine mammal(s) are abandoned, isolated or orphaned as it may not be clear to humans, intervention is not always appropriate and protocols must be defined to allow for minimal disturbance of these marine mammals. One other situation that was cited was when the population of a species has a detrimental impact on the food chain that in turn causes other marine mammals to be

endangered, then some form of intervention may be appropriate. An animal's best interest should always be kept in mind and a thought was expressed that research should be conducted only when animals are in rehab or during post release studies.

## 5.6 General Feedback

### *Education*

Many individuals felt that there was a critical need for environmental education of recreational users, tourists, communities, corporate interests and governments in marine mammal viewing protocols. One individual recommended that commercial tourism operators should have front line staff that has been formally or informally educated in marine studies as well as having taken various training courses and examinations (Adventure Guides, Natural History Interpreter, Heritage Interpreters, EcoInterpreter Guides). As well the operators, in co-operation with a monitoring agency, should develop appropriate Natural History Interpretation media for distribution to the public and whale watch tourists to facilitate the educational process.

By training eco-tourism operators in new regulations it was hoped that they in turn would be able to provide educational packets to their patrons. As well, all marina operators and boat owners/renters/recreational outfitters would be able to access the informational tools as well. It was even suggested that a "Marine Mammal Access Permit" be developed as part of a departure/tour/admission fee, very much like a Sport Fishing license and that Youth and Residence permits would be available at no cost upon prove of residency and age.

### *Sanctuaries*

A few individuals mentioned that there was a definite need for more marine protected areas, sanctuaries or "no go" zones for all marine mammals where they can go and not be bothered by constant human interaction. Areas like Robson Bight and the Michael Bigg Ecological Reserve were seen as vital conservation areas where whales spend a lot of time feeding and resting. It was also felt that Active Pass should become a sanctuary and land based whale watching should be promoted.

### *Enforcement*

Fishery Officer, RCMP, Coast Guard, Military Police should have the right to take immediate action and DFO needs the authority to lay charges. Fisheries Officers need expanded powers, which would include enforcement personnel in both plainclothes to randomly check operators on compliance and in uniform to be visible and to give out information pamphlets to the public. As well, wardens should be placed in high traffic areas and be equipped with the necessary cameras and tools (laser rangefinders/binoculars, video cameras) to identify violators. DFO should follow its mandate and there should be co-ordination between agencies and governments in monitoring and enforcement. An individual mentioned that M3 and Soundwatch keep records of marine mammal incidents and DFO can use this resource.

The majority of respondents felt that regulations have an important value as a deterrent to bad behaviour but efforts may be weakened if it is perceived that there is a lack of enforcement. Many strategies were given on the development of effective deterrents to offences. One suggestion stated that offences should be in the form of categorised violations as this was felt would educate the public in understanding and complying with regulations. The offences could then be categorised as follows: Flagrant violations showing

intent, with witnesses, should be dealt with immediately and prosecuted fully with publication. It was felt that this would send a clear message and aid in the education process. The “grey” area of incidents that do not show clear intent and can be defended, should result in recorded warnings and if it continues - prosecution. An alternative to fines could be the participation in habitat protection and restoration (community service).

A few felt that for the ease of enforcement/monitoring, regulations would not be needed but that a guideline or warning method be used instead of prosecution which hopefully would not be needed if vessel operation regulations cover disruptive behaviour. Enforcement measures should only be taken for harassment and blatant disrespect for the wildlife viewing environment and habitat. This should then include heavy fines and confiscation, suspension of license and encompass all commercial and recreational vessels.

One individual questioned the Code of Ethics of whale watchers and the self-policing of the industry. The person felt that the only reason it is self policed is because of the lack of enforcement by DFO and that scientific research should decide on viewing distant etc. not the public or whale watchers. This individual further mentioned that all whale watching companies should be legally required to donate a portion of their revenue to education, research and the protection of this income generating resource.

## 5.7 Conclusion

The following additional comments were derived from the workbooks and the three most important items are to be education, enforcement and the funding of such so that the protection of the oceans’ natural resources and ecosystems can be depended on for perpetuity.

Education was considered vital with the main question being raised as to whether DFO has the resources/funding to provide the necessary education and enforcement of these regulations. It was generally agreed that new regulations are important but that the co-operation of all parties involved is needed, otherwise they will mean nothing.

It was stated that DFO needs to support the development of nets and other equipment to allow easy release of marine mammals and DFO should have increased involvement with eco-tourism, rehabilitators and naturalists in planning. Respondents felt that the significant increase in commercial operators over the last five years has completely and negatively changed the orca habitat and observations of daily inappropriate behaviour toward marine mammals have been seen from June to September off Pender Island. While there were questions and concerns around enforcement and implementation, the majority of respondents supported the concept of specific regulations to protect marine mammals.

## 6.0 SUMMARY & CONCLUSIONS

The public consultation efforts were well received and elicited excellent input at public meetings and through workbooks. Overall support for amending the current regulations was strong, and many suggestions were provided for more appropriate and specific regulations and measures important to protecting marine mammals.

In general, the following common themes emerged:

- strong public interest in protecting and conserving marine mammals

- stewardship, training and public education awareness programs are important tools
- concern regarding the application and enforcement of new regulations
- concern whether DFO would have the resources to support these key measures

Approaches to new regulations that resemble the current marine mammal viewing guidelines were generally found acceptable. On the issue of regulating the commercial marine mammal viewing industry, it was felt that this might have merit but further discussion among stakeholders, particularly the marine mammal viewing industry was required.

## 6.0 NEXT STEPS

These initial consultations will be provided for use in conjunction with similar consultations conducted in other regions of Canada to develop draft regulations. These draft regulations will be brought back to the Regions for further consultations prior to Gazetting.