



**SOUTHERN GULF ISLANDS  
WHALE SIGHTING NETWORK COMMENTS  
PROPOSED MARINE  
MAMMAL REGULATION  
AMMENDMENTS**

The Southern Gulf Islands Whale Sighting Network (SGIWSN) is a volunteer organization, representing over 100 citizen scientists and cetacean researchers, dedicated to monitoring and gathering field data on whale movements around Saturna, Pender, Mayne and Galiano Islands. The responses below are drawn from our observations and evidenced-based research.

**Question 1** - Do you have comments or considerations regarding the proposal to amend the current approach distance (200 m) for Pacific killer whales?

Potential considerations may include:

- Approach distance recommendations related to the distance (e.g., 200 m; 400 m; 1000 m; other) or where it applies (e.g., southern B.C. coastal waters and proposed boundaries, coast-wide, etc.) and supporting rationale.
- Socio-economic impacts or benefits to yourself or your community, on-water safety or logistics, recommended specifications, etc.
- Protection benefits for species.

It is noteworthy that the questions in the survey are just about Pacific Killer Whales. It is the view of the Southern Gulf Islands Whale Sighting Network (SGIWSN) that any new regulations will have an impact on all the whales that frequent the Salish Sea and our recommendations below speak to this.

## **Background**

In the Southern Gulf Islands of British Columbia, the current approach distance for all killer whales is 400m. However, eco-tourism and whale watching boats that have a special dispensation from Transport Canada to watch Biggs at 200 m if they commit to no viewing for the Southern Resident Killer Whales (SRKW).

SGIWSN land-based observations regarding commercial eco-tourism and whale watching vessels confirm that, by in large, these measures have been relatively successful for SRKW in Canadian waters, but these rules also have put excessive pressure on the other cetaceans that frequent the waters around the Southern Gulf Islands.

Moreover, given the popularity of recreational boating in the region, there also is a need to better communicate as well as be clear about rules for this type of vessel viewing of the SRKW (based on the observations from the Southern Gulf Islands Whale Sighting Network - SGIWSN- 2020-2023)

As of January 2025, the State of Washington will require all boaters to keep 1000 yards away from the SRKW.

Scientists from the State of Washington, Department of Fish & Wildlife (Jan 2023) have documented:

- SRKW, especially females, reduce foraging effort and have less successful prey capture when vessels are closer than 400 yards.
- Vessels traveling within 1640 yds, even at 1-2 knots, decrease SRKW foraging success.
- When vessels are closer, SRKW dive more steeply, and they increase energetically costly surface behaviors. Recent NOAA research found that moving vessels within 1.5 km (1,640 yards) of Southern Residents impacted their chances of prey capture and caused other behavioral

disturbances. The chance that a female orca was successful in catching its intended prey when no moving vessels were in that range was nearly 50%; that dropped dramatically, to about 35% when vessels were moving at an average of just 1-2 knots, and to only about 10% when vessels were moving at 5-6 knots.

## **Recommendation**

**There is an urgent need to establish regulatory harmonization between the US and Canada for viewing the endangered Southern Resident Killer Whales. The State of Washington has already established a 1000-yard approach distance from SRKW for all boaters that will come into effect in 2025. This is supported by the best available science. Canada, in 2025, also needs to establish a 1000 metre buffer around the Southern Resident orcas for all boaters (retaining existing exemptions for First Nations and legitimate researchers with permits).**

**Establishing consistency with US regulations will provide one set of rules for all boaters in the Salish Sea. This consistency will be easier to communicate to the boating public, will likely increase boater compliance, and because there is consistency, enforcement in Canadian waters should be easier to manage.**

**Question 2** - As part of the amendment process, the Government of Canada is seeking input on the use of the term 'approach distances' under the Marine Mammal Regulations.

Do you have comments or considerations regarding the language used for this prohibition? E.g. are the terms clear, are some terms more effective than others, 'approach' distance vs 'avoidance' distance vs another alternative?

Potential considerations may include:

- Education, outreach, compliance impacts, socio-economic impacts or benefits to yourself or your community, on-water safety or logistics.
- Protection benefits for species.

## **Background**

The impact of vessel-based activities on cetaceans is the result of factors such as vessel type, variability in underwater noise levels, behavior (speed, direction) and the whales themselves (species, behavior, demographic factors). Because of these variables, it is essential to include other vessel behaviors, as outlined in Question 3 below, in addition to approach distances.

## **Recommendation**

**The word “approach” is appropriate because the intent of the word is the action of getting closer to or moving towards. Additionally, while the word “approach” may be adequate, there also needs to be something in the text that describes “positioning alongside” or “in the path of” meaning parking or intentionally positioning a vessel in the path of whales.**

**Whatever the term used, the intent of this rule must be clear: This is not a guideline but a mandatory directive (with penalties for non-compliance) to ensure protection for these species.**

**Question 3** - Through the current Interim Order, Transport Canada prohibits vessels from positioning themselves in the path of a killer whale in southern B.C. coastal waters.

Do you have comments or considerations regarding this prohibition?

Potential considerations may include:

- Socio-economic impacts or benefits to yourself or your community, on-water safety or logistics, recommended specifications.
- Protection benefits for species.

**Background**

In a 2022 research paper, DFO scientists warned that “[t]he enduring presence of [the Southern Residents] in areas of elevated vessel traffic should not necessarily be taken as evidence of tolerance of, or acclimation to disturbance, but instead as a measure of the vital importance of these locations to the needs of the population. In other words, the Southern Residents’ critical habitat is so important to their survival they are returning despite untenable conditions.”

## **Recommendation**

**The types of behaviors outlined in Question 3 must be prohibited in addition to establishing an “approach distance.” A quieter habitat is essential for the survival of these species and disallowing these behaviors will contribute to less underwater noise and disturbance. In addition, other boater behaviours such as “leap-frogging” meaning boats speeding ahead of the whales and then putting themselves in the path of whales, and “herding” meaning following whales and ‘pushing them closer to shore ’just outside the sanctuary boundaries also need to be prohibited.**

**As noted above in the response to Question 2, the rule must be clear and state that it is mandatory (with penalties for non-compliance) to ensure protection for these species.**

**Question 4** - Transport Canada's Interim Order allows the Minister of Transport to authorize whale watching and ecotourism companies to view non-Southern Resident Killer Whales at a distance of between 200 m and 400 m. These companies must apply for such an authorization and are subject to conditions – failure to comply may result in suspension or revocation of the authorization. These conditions require companies to not follow Southern Resident Killer Whales, and they must not offer, plan or promote excursions based on the viewing of Southern Residents.

As part of the transition to longer-term regulatory amendments to the Marine Mammal Regulations, the Government of Canada is seeking comments or considerations on the continuation of specified conditions for different Pacific killer whales (Southern Residents vs non-Southern Resident Killer Whales) and/or ocean users (e.g., commercial whale watchers/ecotourism companies) under the Marine Mammal Regulations. Do you have comments or considerations concerning this?

Potential considerations may include:

- Socio-economic impacts or benefits to yourself or your community, on-water safety or logistics, recommended specification.
- Protection objectives/benefits for species.

## **Background**



The science is clear: Noise and physical disturbance affects all cetaceans. Both need to be reduced if cetaceans are to thrive in the Salish Sea.

Observations from the SGIWSN (2019-2023) document the problem: Regulating approach distances from whales, with no viewing of SRKW, creates excessive pressure from whale watching and ecotourism companies on non-SRKW cetaceans in the Salish Sea.

In addition to observations, preliminary data from a 2024 pilot study suggests this pressure comes from the numbers of whale watching vessels that follow a whale or pod, the amount of time each boat and/or company spend each day with these whales, as well as the distance from these whales. Further, SGIWSN observations suggest that guidelines, agreements and self-governance do not work. Regulations are needed with incentives for good behavior and penalties for non-compliance.

## **Recommendation**

**It is recommended the Canadian government establish a licensing system with clear limits on whale watching activities. This licensing system will need to regulate the number of boats, length of viewing times, and number of viewing days, as well as establish approach distances for**

**all cetaceans in the Salish Sea to ensure their protection and minimize disturbance. Specifically, this would include:**

- **Establishing a limit on the number of commercial eco-tourism or whale watching companies who view Bigg's killer whales and Humpback whales at one time (this would include multiple boats from the same company).**
- **Establishing the number of days and the number of hours that ecotourism and whale watching companies can view cetaceans.**
- **Requiring that all eco-tourism boats have AIS on vessels and that it be used at all times.**
- **Establishing a mandatory whale watching licensing system that creates incentives for compliance and enforceable penalties for non-compliance. An Enforcement and Compliance Policy must be an integral part of this licensing system, one that is publicly available and with clear criteria for each response.**
- **Creating larger and contiguous spaces where whales can be free from vessel disturbance and where whale watching activities are not allowed.**

**Question 5** - At present, there is uncertainty among the public and resource users about whether the Marine Mammal Regulations apply to the use of drones. Therefore, DFO is exploring the inclusion of updated terminology to clarify and

confirm that the term “aircraft” is inclusive of drones, or remotely piloted aircraft systems.

Do you have comments or considerations regarding the proposed clarification in relation to the use of aircraft, including drones, within proximity of marine mammals?

## **Background**

If the SRKW are to survive we have an obligation to reduce all forms of noise. We support regulation of drones.

## **Recommendation:**

**Drones should only be allowed with research permits issued by Fisheries and Oceans. Drones are a less invasive way to study and monitor the body condition of killer whales while still gathering data to inform fisheries management and assess other recovery measures.**

**Question 6** - Do you have any other comments or considerations you would like to share with the Government of Canada regarding potential amendments to the Marine Mammal Regulations?

## **Background**

Enforcement of the Marine Mammal Regulations is currently inadequate to protect marine mammals, especially for endangered and threatened species at risk. The burden of proof for enforcing a marine mammal violation under the existing regulations in *the Fisheries Act* is excessive and expensive in terms of time and money for all parties involved and appears to do little to improve compliance.

At present, DFO is required to create a report to crown council to bring offenders to court whereas a ticketing system has been devised for fishing violations. It is instructive that the information required for prosecuting a marine mammal violation and a fishing violation is similar, but the burden of proof is not. Further, Fisheries Officers can only recommend charges to the Public Prosecution Service of Canada (PPSC). It is PPSC that decides if the evidence is strong enough or if it is in the public interest to proceed. As a result, the existing system is designed to favour the transgressors instead protecting marine mammals in that only the most egregious of violations go to court.

## **Recommendation**

**To better protect all cetaceans in Canada, a ticketing regime—like those in place for other Fisheries Act**

**regulations—should be instituted for violations of the Marine Mammals Regulations that can be easily documented by witnesses, photos, videos, or rangefinder data. This is particularly important if a licensing system with mandated numbers of boats, times, and distances is implemented in the Salish Sea. In this regard, Fisheries and Oceans also needs to be able to create an Order to Protect for a vulnerable group, population, or even an individual, for special protection.**

**Establishing a ticketing regime would first require development of an enforcement and compliance policy for the Marine Mammals Regulations that would set out the policies and criteria for the ticketing regime as well as incentives to encourage compliance. Secondly, offences under the Marine Mammal Regulations appropriate for ticketing would need to be designated as contraventions under the Schedule to the Contraventions Act.**

**Finally, if the public is to have trust in the development of new marine mammal regulations, whether it is for “approach distances,” the development of a whale watching licensing system, and/or a departmental compliance and enforcement policy, the public must be**

**actively involved (more than through survey responses) during the developmental phase so that all parties have ownership in the changes to the marine mammal regulations for the Salish Sea.**