

Ottawa

Room 349, Confederation Building
Ottawa, Ontario K1A 0A6
Tel.: 613-996-1119
Fax: 613-996-0850



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Ottawa

Pièce 349, Édifice de la Confédération
Ottawa (Ontario) K1A 0A6
Tél. : 613-996-1119
Télec. : 613-996-0850

Constituency

9711 Fourth Street Suite 1
Sidney, British Columbia V8L 2Y8
Tel.: 250-657-2000
Fax: 250-657-2004

Elizabeth May

Member of Parliament / Député(e)
Saanich — Gulf Islands

Circonscription

9711, rue Fourth suite 1
Sidney (Colombie-Britannique) V8L 2Y8
Tél. : 250-657-2000
Télec. : 250-657-2004

Sent to: DFO.NCRFMMMRconsultation-consultationRMMGPRCN.MPO@dfo-mpo.gc.ca

September 3, 2024

Re: Proposed Marine Mammal Regulations Amendments

To Fisheries and Oceans Canada,

I appreciate the opportunity to participate in the consultation on the proposed amendments to the Marine Mammal Regulations. My comments focus on long-term planning for Southern Resident Killer Whale (SRKW) protection and recovery and proposed administrative amendments.

I have provided several recommendations below addressing the survey questions presented by DFO. Southern Resident Killer Whales (SRKWs) face a suite of threats from aquatic contaminants, freighter anchorages, the expansion of TMX and the approval of Roberts Bank Terminal 2, high levels of recreational and commercial marine traffic and the continued presence of open-ocean net-pen toxic fish factories that harm the wild chinook salmon population.¹ While this consultation does not delve into all of these threats facing SRKWs, taking comprehensive action on every issue is essential to the long-term viability of the SRKW population.

I am always available to discuss this issue further. I echo the calls for action from the large number of community organisations that are dedicated to protecting SRKWs. My recommendations below draw upon their research and work. I am grateful for their advocacy.

¹ <https://www.pac.dfo-mpo.gc.ca/fm-gp/mammals-mammiferes/whales-baleines/srkw-mesures-mesures-ers-eng.html>; <https://www.raincoast.org/reports/salmon-oil-pipeline/>



Distance

The current approach distance for SRKWs around the Southern Gulf Islands is 400m. In contrast, Washington State has pledged to require all boaters to keep 1000 yards away from SRKWs as of January 2025.²

By maintaining different minimum approach distances for different types of cetaceans (e.g., Humpbacks, SRKWs, Northern Resident Killer Whales, Transient/Bigg's), there is a reduced understanding of how to comply with the regulations among boaters. Canada must establish a 1000 metre buffer around all Resident Killer Whales off the Pacific coast for both recreational and commercial traffic. Along with ensuring consistency with the measures in Washington State, it will be easier to communicate these rules to the boating public and increase their levels of compliance. This should be paired with a minimum approach distance of 200 metres from all cetaceans.

Use of term 'approach distances'

The use of the language of 'approach distances' under the regulations at present is limited to one preset distance between boaters and SRKWs. It does not factor in noise pollution and variability in underwater noise levels. 'Approach distances' does not account for differently-sized vessels or for different behavioural patterns of SRKW pods. As well, 'approach distance' implies a gap in the regulations where vessels can park and position themselves in the path of SRKWs intentionally without violations. Lastly, it is reported that some boaters are 'leap-frogging', which is speeding ahead of the SRKWs and then putting themselves in the whales' path, and 'herding', which is following SRKWs and pushing them closer to shore outside of the sanctuary zone.

The term 'approach distances' is satisfactory, but it requires a lengthier definition in the regulations to properly address these gaps. These disturbances harm the ability of SRKWs to live in quieter habitats and threatens the species as a whole.

Prohibition of vessels positioning themselves in the path of SRKWs

I strongly support making permanent the current Interim Order from Transport Canada that prohibits vessels from positioning themselves in the path of SRKWs.

Beyond this, DFO should incorporate these management measures into the Marine Mammal Regulations to apply not only to SRKWs, but to all cetacean species. The Marine Education and Research Society surveyed 3953 boaters in BC and found that the top barrier to adhering to these management measures was "difficulty remembering the

2

[https://www.bewhalewise.org/#:~:text=REMINDER:%20Distance%20regulations%20will%20increase%20to%201,000%20yards%20\(1/2%20nm\)](https://www.bewhalewise.org/#:~:text=REMINDER:%20Distance%20regulations%20will%20increase%20to%201,000%20yards%20(1/2%20nm))



laws for different species, vessel types, and/or areas (35%).” A standardised approach will leave less room for subjective decision-making by boaters.

The above-noted Society also found in its survey that there is a strong misconception that if the whales “come to you,” this does not violate minimum approach distances. DFO needs to update these regulations with a clear prohibition on vessels positioning themselves in the path of SRKWs.

Ecotourism and Commercial Whale Watchers

I recommend implementing a licensing system with mandated numbers of boats, times and distances across the Salish Sea. Many boaters remain unaware of the meaning of flags indicating “authorised vessel,” “research,” and “whale warning”, believing they are also allowed to approach SRKWs beyond the required distance for recreational boaters. DFO has a responsibility to clarify and reference all flags in the regulations.

The minimum avoidance distance for SRKWs should be the same as it is for other cetaceans. Otherwise boaters put other killer whales and cetaceans at risk by ignoring minimum distance requirements simply because they are not endangered. Despite not being classified as endangered, Northern Residents remain at risk from many of the same threats impacting Southern Residents.³ This will only increase as the federal government has approved Roberts Bank Terminal 2 and the TMX expansion, both of which will drastically increase freighter traffic in the Salish Sea.

Canada should also move to a system of whale watching licensing that includes mandatory training for all vessel captains on SRKW behaviour. This will ensure that continued whale watching is done with an understanding of how to best safeguard the SRKWs and all cetaceans in BC.

Aircraft

Noise pollution from aircraft is harmful to SRKWs as well as coastal communities, whether it be large passenger planes or smaller-sized drones. I support the DFO clarifying its definition of “aircraft” to be inclusive of drones and remotely piloted aircraft systems.

The Marine Mammal Regulations state that it is illegal for aircraft including drones to “approach a marine mammal at an altitude of less than 305 m (1,000 ft) within 926 (0.5 nautical miles/3038 m) of a marine mammal.”⁴ On top of this, Transport Canada

³ <https://waves-vagues.dfo-mpo.gc.ca/library-bibliotheque/41076680.pdf>

⁴ <https://orcalab.org/blog/island-of-the-sea-wolves-production-company-fined-for-illegally-flying-a-drone-over-orcas-at-rubbing->



already prohibits flying a drone above 122 (400ft) without a Special Flight Operations Certificate. These regulations combined already leave little space for drones to fly near marine mammals without a DFO research/filming license being issued. I support these restrictions and encourage DFO to make this a clear prohibition in the regulations.

Compliance, Violations and Reporting

DFO must take initiative to change the Fisheries Act regarding the penalty process for marine mammal violations. Far too often citizen activists see and report violations, but are told that Fisheries Officers cannot take violators to court and can only make recommendations to the Public Prosecution Service of Canada (PPSC). The PPSC places the burden of proof on those making the report, rather than those accused of the violation.

There needs to be an effective avenue to report violations and charge violators with penalties. Fishing violations under the Fisheries Act have a simple ticketing process, in contrast, that could be adapted to report violations of the Marine Mammal Regulations. I recommend developing an enforcement and compliance policy that sets out this new ticketing regime. Offences deemed appropriate for ticketing would need to be designated as contraventions under the Schedule to the Contraventions Act.

Public Engagement

While I appreciate this consultation and previous public engagement sessions by DFO regarding the long-term sustainability of the SRKW population, DFO can do much more to meaningfully engage on-the-ground community groups in the policymaking and amendment processes.

Given their expertise and wealth of research and knowledge on SRKWs, I strongly recommend that DFO meet with representatives of these groups to hear their perspectives in depth before moving forward with amendments to these regulations. I am happy to coordinate a meeting between DFO and any number of these groups.

Other Comments

DFO currently allows exemptions to be issued under the regulations for an "authorisation of marine mammal disturbance." I recognise there are instances that DFO should grant exemptions, including for research, filming, rehabilitation, euthanasia, assisting a stranded marine mammal and freeing marine mammals from

[beach/#:~:text=%E2%80%9CUnder%20the%20national%20Marine%20Mammal%20Regulations,%20it%20is%20illegal%20for](#)



entanglement and entrapment. However, the requirements for an exemption should not go beyond what is needed for the purposes of conservation.

I support changing the terminology of “authorization of marine mammal disturbance” to “Authorization of exemption from the Marine Mammal Regulations for the purposes of conservation.” This will ensure any exemption must be justified as being for the purposes of conservation.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth May". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elizabeth May, O.C.
Member of Parliament
Saanich-Gulf Islands

