

LAWS AND REGULATIONS PROTECTING MARINE MAMMALS AND SOUTHERN RESIDENT KILLER WHALES

UNITED STATES

Endangered Species Act (ESA)

Congress passed the ESA in 1973 and it provides for the conservation of species that are endangered or threatened, and the conservation of the ecosystems on which they depend. The listing of a species as endangered makes it illegal to “take” that species. Similar prohibitions usually extend to threatened species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(Note: under the ESA there are no specific definitions of harass or pursue.)

<http://www.nmfs.noaa.gov/pr/laws/esa/>

Marine Mammal Protection Act (MMPA)

All marine mammals are protected under the MMPA of 1972. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA defines “take” to mean “to hunt harass, capture, or kill” any marine mammal or attempt to do so. “Take” also includes the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal and feeding or attempting to feed a marine mammal in the wild. The term “harassment” means “any act of pursuit, torment, or annoyance which- 1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or 2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).”

<http://www.nmfs.noaa.gov/pr/laws/mmpa/>

*a proposal for vessel regulations to protect killer whales in Washington State waters under both the ESA and MMPA is currently in development (see *Federal Register* Advance Notice of Proposed Rulemaking)

<http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Killer-Whales/ESA-Status/Orca-Vessel-Regs.cfm>

Washington State

In 2008 the State of Washington enacted RCW 77.15.740 which makes it unlawful to:

- (a) Approach, by any means, within three hundred feet of a southern resident orca whale (*Orcinus orca*);
- (b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;
- (c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;
- (d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or
- (e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.

There are exemptions for safety, commercial fishing, official vessels, and permitted activities.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=77.15.740>

San Juan County

In 2007 San Juan County enacted a county ordinance to protect the whales; however, this ordinance is no longer in effect and was subsumed by the state regulation.

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CANADA

Species at Risk Act (SARA)

SARA became law in 2003, and the prohibitions under the Act went into effect in June 2004. Once a species is listed under the Species at Risk Act, it becomes illegal to kill, harm, harass, capture or take an individual of a listed species. No person shall destroy any part of the critical habitat of any listed species.

http://www.sararegistry.gc.ca/default_e.cfm

Fisheries Act

Within Canada, the Fisheries Act (R.S., 1985, c. F-14) includes the Marine Mammal Regulations (MMR, SOR/93-56) which prohibit the disturbance of marine mammals.

<http://laws.justice.gc.ca/en/F-14/SOR-93-56/index.html>

*DFO has proposed to amend the existing Marine Mammal Regulations and has gone through public consultations on the Draft Amendments

http://www-comm.pac.dfo-mpo.gc.ca/pages/consultations/marinemammals/default_e.htm

STATUS OF KILLER WHALES

Southern Resident killer whales – listed as **ENDANGERED** under the ESA and SARA

Northern Resident killer whales- listed as **THREATENED** under SARA

Transient killer whales- listed as a **THREATENED** under SARA

Offshore killer whales- listed as a **Species of Special Concern** under SARA

All killer whales in Washington State waters are listed as endangered and protected under RCW 77.15.120.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=77.15.120>

REPORT STRANDINGS AND HARASSMENT OBSERVATIONS

UNITED STATES

Report marine mammal strandings and possible infractions of the Endangered Species Act, Marine Mammal Protection Act, or the Washington State Regulations in the United States to NOAA Fisheries at 1-800-853-1964

CANADA

Report marine mammal strandings and possible infractions of the Species at Risk Act or Fisheries Act in Canada to Fisheries and Oceans Canada at 1-800-465-4336



GUIDELINES FOR VIEWING OR BOATING NEAR MARINE MAMMALS & SOUTHERN RESIDENT KILLER WHALES

US AND CANADA NORTHWEST/PACIFIC REGION UNIFIED GUIDELINES

Be Whale Wise Marine Wildlife Guidelines for Boaters, Paddlers and Viewers (2006)

In 2002, the US and Canadian governments, non-governmental monitoring groups and the whale watch association worked together to develop a single set of voluntary guidelines that were more explicit than previous regional guidelines and addressed localized whale watch concerns. The Be Whale Wise Guidelines for Marine Wildlife are now the regional guidelines in the US and Canada and are periodically evaluated and revised as needed. Many species of marine wildlife, such as the endangered southern resident killer whales are showing signs of vulnerability. Meanwhile, vessel traffic in our waters is steadily increasing, placing added pressures on marine animals and their habitats. The Be Whale Wise guidelines are designed to help people enjoy wildlife encounters, and reduce the risk of disturbing marine wildlife.

http://www.nmfs.noaa.gov/pr/pdfs/education/bewhalewise_brochure.pdf

Pacific Whale Watch Association, (formerly Whale Watch Operators Association Northwest)

Guidelines and Best Practices for Commercial Whale Watch Operators

The Pacific Whale Watch Association/Whale Watch Operator's Association Northwest is a membership association of US and Canadian commercial whale companies operating in the Washington State and Southern Vancouver Island region. The association maintains an annual set of guidelines that are as restrictive as the regional federal guidelines as well as addressing specific actions for specific species, areas and situations relevant to the more experienced commercial whale watcher. Look for 2009 updates.

<http://www.nwwhalewatchers.org/guidelines.html>

GUIDELINES FOR VIEWING OR BOATING NEAR MARINE MAMMALS AND SOUTHERN RESIDENT KILLER WHALES (SPECIFIC LOCATIONS)

CANADA

Fisheries and Oceans Canada is responsible for the conservation and protection of Canada's marine resources, including marine mammals under the Marine Mammal Regulations of the Fisheries Act. Regulations, policies and management plans, and education are the tools of protection. The Fisheries and Oceans Canada Pacific region has adopted the Be Whale Wise Guidelines as the Pacific Regional Guidelines.

<http://www.pac.dfo-mpo.gc.ca/fm-gp/species-especes/mammals-mammiferes/index-eng.htm>

<http://www-comm.pac.dfo-mpo.gc.ca>

UNITED STATES

NOAA Fisheries Office of Protected Resources is responsible for protecting marine mammals and works to conserve, protect, and recover species under the Endangered Species Act and the Marine Mammal Protection Act in conjunction with Regional Offices, Science Centers, and various partners. Watching marine animals in their natural habitat can be a positive way to promote conservation and respect for the animals and the marine environment. However, irresponsible human behavior can disturb animals, destroy important habitats, and even result in injury to animals and people. <http://www.nmfs.noaa.gov/pr/education/viewing.htm>

NOAA Fisheries Northwest Regional Guidelines

The Northwest Region of NOAA Fisheries promotes broad regional guidelines to avoid harassment of marine mammals by boat, plane or individual actions while whale watching or viewing other marine mammals from sea or land. People should not perform any negligent or intentional action that disrupts the normal behavior of a marine mammal including not approaching within 100 yards, not herding, chasing or separating groups of marine mammals, not putting people into the water with marine mammals, avoiding flying lower than 1,000 feet, circling or hovering over marine mammals.

http://www.nmfs.noaa.gov/pr/pdfs/education/viewing_northwest.pdf

SAN JUAN ISLAND, WA, SPECIFIC KILLER WHALE GUIDELINES

San Juan County Marine Stewardship Area

San Juan Island Voluntary No Motor Boat Zone

Haro Strait Voluntary No Motor Boat Zone for Whales is a voluntary whale protection zone for Orcas when they are present along the western shoreline of San Juan Island, Washington. An additional 2-mile area around Lime Kiln Washington State Park / Whale Watch Park from the shore out to ½ mile (880 yards) provides a motor-boat free area for park visitors viewing whales from shore. This zone was a collaborative effort lead by the Soundwatch Program and adopted by Whale Watch Operators Association Northwest in 1996. In 2004, San Juan County included this zone as part of the countywide Marine Stewardship Area.

http://www.sjcmrc.org/programs/stewardship_MPAs.html

K.E.L.P. Responsible Kayakers Code

San Juan Island Specific Kayaker Guidelines adopted by San Juan Island commercial kayak companies and promoted by the Soundwatch Program.

In addition to the Be Whale Wise Guidelines:

- Have a trip plan: know your routes, public landing areas, and sensitive wildlife areas.
- Position kayaks inshore of whales along shorelines and in kelp beds, group together kayaks to appear as one vessel, stop paddling and let whales pass.
- Paddle wide arc around marine mammal haul out areas.

http://www.whalemuseum.org/images/misc/KELP_Code_Poster.gif

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U.S. Department of Commerce



Northwest Regional Office

NOAA Fisheries

National Marine Fisheries Service

