

Marine Mammals Protection Regulations 1992

(SR 1992/322)

PURSUANT to section 28 of the Marine Mammals Protection Act 1978, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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These regulations are administered in the Department of Conservation.

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1 Title and commencement

- (1) These regulations may be cited as the Marine Mammals Protection Regulations 1992.
- (2) These regulations shall come into force on the 1st day of January 1993.

2 Interpretation

In these regulations, unless the context otherwise requires,—

The Act means the Marine Mammals Protection Act 1978

Commercial aircraft operation means a commercial operation using any aircraft (as defined in section 2 of the Civil Aviation Act 1990)

Commercial operator means a person who carries on a commercial operation

Commercial operation or **operation** means an operation carried on for any form of hire or reward in which persons are

transported, conveyed, conducted, or guided where a purpose is to view or come into contact with any marine mammal in New Zealand or in New Zealand fisheries waters

Commercial shore-based operation means a commercial operation that does not use any aircraft or vessel

Commercial vessel operation means a commercial operation using any vessel (being a ship as defined in section 2(1) of the Shipping and Seamen Act 1952) or hovercraft

Contact, in relation to a marine mammal, includes any interaction involving a person and the mammal that is likely to produce an effect on the mammal

Director-General means the Director-General of Conservation

Dolphin means-

- (a) All species commonly known as dolphins; and includes dusky dolphins, common dolphins, bottlenose dolphins, and Hector's dolphins; but
- (b) Does not include the species known as killer whales and pilot whales:

Harass includes to do any act that-

- (a) Causes or is likely to cause injury or distress to any marine mammal; or
- (b) Disrupts significantly or is likely to disrupt significantly the normal behavioural patterns of any marine mammal:

Permit means a permit issued under regulation 12 of these regulations

Seal means all species commonly known as seals and sea lions; and includes New Zealand fur seals, leopard seals, southern elephant seals, and Hooker's sea lions

Whale means all species commonly known as whales; and includes baleen whales, sperm whales, beaked whales, killer whales, and pilot whales

Working day means any day except-

- (a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

- (b) A day in the period commencing with the 20th day of December in any year and ending with the 15th day of January in the following year.

3 Application

- (1) These regulations shall apply throughout New Zealand and New Zealand fisheries waters.
- (2) Nothing in these regulations applies in respect of any fishing vessel while the vessel is engaged in commercial fishing (as defined in section 2(1) of the Fisheries Act 1983), unless—
 - (a) The vessel is also engaged in a commercial operation; or
 - (b) The vessel deviates off course to engage in recreational viewing of marine mammals.

4 Purpose

The purpose of these regulations is to make provision for the protection, conservation, and management of marine mammals and, in particular,—

- (a) To regulate human contact or behaviour with marine mammals either by commercial operators or other persons, in order to prevent adverse effects on and interference with marine mammals;
- (b) To prescribe appropriate behaviour by commercial operators and other persons seeking to come into contact with marine mammals.

Part 1

Requirements relating to permits

5 Commercial operations carried on without permit prohibited

No commercial operator shall carry on any commercial operation, except pursuant to a permit issued by the Director-General under regulation 12 of these regulations.

6 Criteria for issuing permits

Before issuing a permit, the Director-General shall be satisfied that there is substantial compliance with the following criteria:

- (a) That the commercial operation should not be contrary to the purposes and provisions of the Act:
- (b) That the commercial operation should not be contrary to the purposes and provisions of general policy statements approved under section 3B of the Act, conservation management strategies approved under section 3C of the Act, or conservation management plans approved under section 3D of the Act:
- (c) That the commercial operation should not have any significant adverse effect on the behavioural patterns of the marine mammals to which the application refers, having regard to, among other things, the number and effect of existing commercial operations:
- (d) That it should be in the interests of the conservation, management, or protection of the marine mammals that a permit be issued:
- (e) That the proposed operator, and such of the operator's staff who may come into contact with marine mammals, should have sufficient experience with marine mammals:
- (f) That the proposed operator, and such of the operator's staff who may come into contact with marine mammals, should have sufficient knowledge of the local area and of sea and weather conditions:
- (g) That the proposed operator, and such of the operator's staff who may come into contact with marine mammals, should not have convictions for offences involving the mistreatment of animals:
- (h) That the commercial operation should have sufficient educational value to participants or to the public.

7 Requirements to be satisfied before permit for commercial vessel operation issued

Every applicant for a permit for a commercial vessel operation shall submit to the Director-General for approval an application in writing setting out the following:

- (a) Details of the proposed operation, including-
 - (i) The type and number of vessels intended for use; and

- (ii) Any known information relating to the noise level of each vessel both above and below the sea; and
- (iii) The proposed area of operation, including a map showing the boundaries of the proposed area of operation and, where appropriate, the specific locations where contact with marine mammals is proposed:
- (iv) The maximum number of vessels the operator proposes to operate at any one time:
- (v) The proposed base of operation:
- (vi) The duration of trips proposed:
- (vii) The frequency of trips proposed:
- (viii) The proposed kind of contact with marine mammals:
- (ix) The maximum numbers of passengers intended to be taken at any one time:
- (x) The species of marine mammals with which the operation will have contact:
- (xi) The masters proposed to be engaged in the commercial operation:
- (b) The experience with marine mammals of the proposed operator and such of the operator's proposed staff who may come into contact with marine mammals:
- (c) The knowledge of the local area and sea conditions of the proposed operator and such of the operator's proposed staff who may come into contact with marine mammals:
- (d) The details of any convictions of the proposed operator and of those employees of the operator who may come into contact with marine mammals, for offences against the Act or any other Act involving the mistreatment of animals:
- (e) The details of any educational material to be provided or educational aspects of the proposed operation.

8 Requirements to be satisfied before permit for commercial aircraft operation issued

Every applicant for a permit for a commercial aircraft operation shall submit to the Director-General for approval an application setting out the following:

- (a) The details of the proposed operation, including-
 - (i) The type and the number of aircraft intended for use; and
 - (ii) Any known information relating to the the noise level of each aircraft both above and below the sea; and
 - (iii) The proposed area of operation, including a map showing the boundaries of the proposed area of operation and, where appropriate, the specific locations where contact with marine mammals is proposed;
 - (iv) The maximum number of aircraft proposed to be operating at any one time;
 - (v) The proposed base of operation;
 - (vi) The duration of trips proposed;
 - (vii) The frequency of trips proposed;
 - (viii) The maximum number of passengers to be carried on the aircraft at any one time;
 - (ix) The species of marine mammals with which the operation will have contact;
 - (x) The names of the pilots proposed to be engaged in the commercial aircraft operation;
- (b) The experience with marine mammals of the proposed operator and such of the operator's proposed staff who may come into contact with marine mammals;
- (c) The knowledge of the local area and weather conditions of the proposed operator and such of the operator's proposed staff who may come into contact with marine mammals;
- (d) The details of any convictions of the proposed operator and of those employees of the operator who may come into contact with marine mammals, for offences against the Act or any other Act involving the mistreatment of animals;

- (e) The details of any educational material to be provided or educational aspects of the proposed operation:
- (f) The number of the air service certificate or other aviation document under which the aircraft will be operating.

9 Requirements to be satisfied before permit for commercial shore-based operation issued

Every applicant for a permit for a commercial shore-based operation shall submit to the Director-General for approval an application setting out, where applicable, the following:

- (a) The details of the proposed operation, including:
 - (i) The type and number of vehicles intended to be used; and
 - (ii) The proposed area of operation, including a map showing the boundaries of the proposed area of operation and, where appropriate, the specific locations where contact with marine mammals is proposed:
 - (iii) The proposed guides:
 - (iv) The maximum number of vehicles the operator proposes to operate at any one time:
 - (v) The proposed route of persons to be guided to the colony of marine mammals:
 - (vi) The proposed base of operation:
 - (vii) The duration of trips proposed:
 - (viii) The frequency of trips proposed:
 - (ix) The proposed kind of contact the operation will have with marine mammals:
 - (x) The species of marine mammals with which the operation will have contact:
 - (xi) The maximum number of persons intended to be taken at any one time:
- (b) The experience with marine mammals of the proposed operator and such of the operator's proposed staff who may come into contact with marine mammals:
- (c) The details of any convictions of the proposed operator and of those employees of the operator who may come into contact with marine mammals, for offences against

the Act or any other Act involving the mistreatment of animals:

- (d) The details of any educational material to be provided or educational aspects of the proposed operation.

10 Requirements to be satisfied before permit issued

- (1) Before issuing a permit, the Director-General shall determine whether or not the application by the proposed operator is acceptable to him or her and the Director-General may require the application to be amended by the proposed operator to incorporate such matters as the Director-General may specify in writing.
- (2) Once the application is approved, it shall be deemed to form part of the permit issued in respect of the application and shall be complied with accordingly.

11 Advertising applications

- (1) Before granting a permit for a commercial operation, the Director-General shall require the applicant, at the applicant's own expense, to advertise details of the application in a form agreed by the Director-General and in such newspapers as may be agreed by the Director-General.
- (2) The advertisement shall set out such details of the proposed operation as required by the Director-General, the name and address of the applicant, and shall call for submissions within 20 working days after publication of the notice.
- (3) Submissions shall be sent to the Director-General at such place as the Director-General may specify in the notice; and the Director-General shall send to the applicant a copy of every submission received in respect of the applicant's proposed operation.
- (4) The applicant shall make any comments on the submissions to the Director-General within 10 working days after the receipt of submissions.
- (5) Before deciding whether or not to grant a permit for any commercial operation, the Director-General shall consider every submission received under this regulation in respect of the pro-

posed operation and the comments received under subclause (4) of this regulation.

12 Permits

- (1) Subject to these regulations, the Director-General, on receiving an application made in writing, may issue a permit authorising any commercial operator to carry on any specified commercial operation.
- (2) Every permit issued to a commercial operator shall, where appropriate, specify the following:
 - (a) The type of aircraft and vessels to be used by the operator:
 - (b) The names of the pilots of aircraft, the masters of vessels, and guides engaged in the commercial operation:
 - (c) The land and any area of water to which it relates:
 - (d) That all aircraft and vessels operated under the permit, and their pilots and masters, respectively, must meet the statutory requirements relating to the licensing and safety of the aircraft and vessels and the qualifications and licensing of the pilots and masters, as the case may require.
- (3) The Director-General shall not issue a permit unless he or she is satisfied-
 - (a) That the proposed commercial operation will not have or be likely to have any adverse effect on the conservation, protection, or management of marine mammals; and
 - (b) That the criteria specified in regulation 6 of these regulations have been substantially complied with; and
 - (c) That sufficient information has been received by the Director-General in respect of the application under regulation 7 or regulation 8 or regulation 9 of these regulations.
- (4) The Director-General may issue a permit for any period of time not exceeding 10 years and may renew the permit from time to time.
- (5) The Director-General shall, where appropriate, issue to every commercial operator issued with a permit a label identifying each aircraft or vessel as operating under a valid permit. Each

label shall be affixed at all times to the aircraft or vessel, as the case may be.

Part 2
**Suspension, revocation, restriction, or
amendment of permits**

- 13 Suspension, revocation, restriction, or amendment of permits**
- (1) The Director-General may at any time suspend or revoke any permit, or restrict the operation authorised by any permit, where the holder-
- (a) Is convicted of any offence against the Act or is convicted under any other Act of any offence involving the mistreatment of animals; or
 - (b) Contravenes or fails to comply with any statutory requirement relating to the licensing, operation, and safety of any aircraft or vessel used by the person carrying on the commercial operation; or
 - (c) Carries on a commercial operation without an appropriately licensed aircraft pilot or crew, or certificated master; or
 - (d) Contravenes or fails to comply with any condition or requirement specified or notified under Part 3 of these regulations or specified in the permit.
- (2) Where the Director-General believes on reasonable grounds that it is necessary for the protection, conservation, or management of any marine mammal or marine mammals of any class, he or she may-
- (a) Suspend, revoke, or amend (in a manner not inconsistent with Part 3 of these regulations) any permit or permits:
 - (b) Restrict in whole or in part the operation authorised by any permit or permits.
- (3) Where any person ceases to be a commercial operator, the Director-General may suspend or revoke that persons's permit.
- (4) Every suspension of a permit under this regulation shall be for such period as the Director-General specifies by notice in writing to the holder.

- (5) The Director-General may, at the request of the commercial operator and if he or she is satisfied that the criteria specified in regulation 6 of these regulations have been substantially complied with, amend a permit to allow a change of aircraft or vessel or a change of pilot, master, or guide, as the case may be.
- (6) A permit holder shall comply with the advertising requirements in regulation 11 of these regulations with appropriate modifications, where, in the opinion of the Director-General, a major amendment to the permit is sought by the holder.

14 Transfer of permits

- (1) No permit for any commercial operation may be transferred from the holder of the permit to any person without first obtaining the consent in writing of the Director-General.
- (2) The Director-General may-
 - (a) Refuse to consent to the transfer of a permit; or
 - (b) Consent to the transfer of a permit either with or without conditions.
- (3) Where the holder of a permit is a body corporate, the transfer of control of the management of the holder in whole or in part to another person shall be deemed to be a transfer of the permit.
- (4) In considering whether or not to consent to a transfer of a permit the Director-General, shall have regard to the applicable matters contained in regulations 6 to 9 of these regulations.
- (5) No permit shall be deemed to allow any person other than the operator specified therein to carry on the commercial operation authorised by the permit.

15 Director-General may decline to grant permits during specified period

- (1) Where the Director-General believes on reasonable grounds that it is necessary for the protection, conservation, or management of any marine mammals or any class of marine mammals, he or she may, by notice published in-
 - (a) The *Gazette*; and
 - (b) Newspapers circulating in the locality,—

declare that no new permits shall be granted in respect of specified commercial operations during the period specified in the notice.

- (2) In considering whether or not to give notice under subclause (1) of this regulation, the Director-General shall have regard to-
 - (a) The number and effect of existing commercial operations; and
 - (b) Whether or not it is in the interests of the conservation, protection, or management of marine mammals to grant further permits.
- (3) A notice under subclause (1) of this regulation may in like manner be amended or revoked.

16 Rights of appeal

- (1) Any commercial operator who makes application to the Director-General for a further permit to renew an existing permit on substantially the same terms and conditions may appeal to the Minister of Conservation against any decision of the Director-General to decline to grant that person a permit; and the Minister may confirm, reverse, or modify the decision appealed against.
- (2) Any person may appeal to the Minister of Conservation against the decision of the Director-General to suspend, revoke, restrict, or amend that person's permit; and the Minister may confirm, reverse, or modify the decision appealed against.

Part 3

Behaviour around marine mammals

17 Application of this Part

Nothing in regulation 18 or regulation 19 or regulation 20 of these regulations shall apply to persons, vessels, aircraft, or vehicles rendering assistance to stranded or injured marine mammals.

18 Conditions governing commercial operations and behaviour of all persons around any marine mammal

Every commercial operation, and every person coming into contact with any class of marine mammal, shall comply with the following conditions:

- (a) Persons shall use their best endeavours to operate vessels, vehicles, and aircraft so as not to disrupt the normal movement or behaviour of any marine mammal:
- (b) Contact with any marine mammal shall be abandoned at any stage if it becomes or shows signs of becoming disturbed or alarmed:
- (c) No person shall cause any marine mammal to be separated from a group of marine mammals or cause any members of such a group to be scattered:
- (d) No rubbish or food shall be thrown near or around any marine mammal:
- (e) No sudden or repeated change in the speed or direction of any vessel or aircraft shall be made except in the case of an emergency:
- (f) Where a vessel stops to enable the passengers to watch any marine mammal, the engines shall be either placed in neutral or be switched off within a minute of the vessel stopping:
- (g) No aircraft engaged in a commercial aircraft operation shall be flown below 150 metres (500 feet) above sea level, unless taking off or landing:
- (h) When operation at an altitude of less than 600 metres (2000 feet) above sea level, no aircraft shall be closer than 150 meters (500 feet) horizontally from a point directly above any marine mammal or such lesser or greater distance as may be approved by the Director-General, by notice in the *Gazette*, from time to time based on the best available scientific evidence:
- (i) No person shall disturb or harass any marine mammal:
- (j) Vehicles must remain above the mean high water spring tide mark and shall not approach within 50 metres of a marine mammal unless in an official carpark or on a public or private slipway or on a public road:

- (k) No person, vehicle, or vessel shall cut off the path of a marine mammal or prevent a marine mammal from leaving the vicinity of any person, vehicle, or vessel:
- (l) Subject to paragraph (m) of this regulation, the master of any vessel less than 300 metres from any marine mammal shall use his or her best endeavours to move the vessel at a constant slow speed no faster than the slowest marine mammal in the vicinity, or at idle or “no wake” speed:
- (m) Vessels departing from the vicinity of any marine mammal shall proceed slowly at idle or “no wake” speed until the vessel is at least 300 metres from the nearest marine mammal, except that, in the case of dolphins, vessels may exceed idle or “no wake” speed in order to outdistance the dolphins but must increase speed gradually, and shall not exceed 10 knots within 300 metres of any dolphin:
- (n) Pilots of aircraft engaged in a commercial aircraft operation shall use their best endeavours to operate the aircraft in such a manner that, without compromising safety, the aircraft’s shadow is not imposed directly on any marine mammal.

19 Special conditions applying to whales

In addition to complying with the provisions set out in regulation 18 of these regulations, every commercial operation and every person coming into contact with whales shall also comply with the following conditions:

- (a) No person in the water shall be less than 100 metres from a whale, unless authorised by the Director-General:
- (b) No vessel shall approach within 50 metres of a whale, unless authorised by the Director-General:
- (c) If a whale approaches a vessel, the master of the vessel shall, wherever practicable,—
 - (i) Manoeuvre the vessel so as to keep out of the path of the whale; and
 - (ii) Maintain a minimum distance of 50 metres from the whale:

- (d) No vessel or aircraft shall approach within 300 metres (1000 feet) of any whale for the purpose of enabling passengers to watch the whale, if the number of vessels or aircraft, or both, already positioned to enable passengers to watch that whale is 3 or more:
- (e) Where 2 or more vessels or aircraft approach an unaccompanied whale, the masters concerned shall co-ordinate their approach and manoeuvres, and the pilots concerned shall co-ordinate their approach and manoeuvres:
- (f) No person or vessel shall approach within 200 metres of any female baleen or sperm whale that is accompanied by a calf or calves:
- (g) A vessel shall approach a whale from a direction that is parallel to the whale and slightly to the rear of the whale:
- (h) No person shall make any loud or disturbing noise near whales:
- (i) Where a sperm whale abruptly changes its orientation or starts to make short dives of between 1 and 5 minutes duration without showing its tail flukes, all persons, vessels, and aircraft shall forthwith abandon contact with the whale.

20 Special conditions applying to dolphins or seals

In addition to complying with the conditions set out in regulation 18 of these regulations, any commercial operation and any person coming into contact with dolphins or seals shall also comply with the following conditions:

- (a) No vessel shall proceed through a pod of dolphins:
- (b) Persons may swim with dolphins and seals but not with juvenile dolphins or a pod of dolphins that includes juvenile dolphins:
- (c) Commercial operators may use an airhorn to call swimmers back to the boat or to the shore:
- (d) Except as provided in paragraph (c) of this regulation, no person shall make any loud or disturbing noise near dolphins or seals:

- (e) No vessel or aircraft shall approach within 300 metres (1000 feet) of any pod of dolphins or herd of seals for the purpose of enabling passengers to watch the dolphins or seals, if the number of vessels or aircraft, or both, already positioned to enable passengers to watch that pod or herd is 3 or more:
- (f) Where 2 or more vessels or aircraft approach an unaccompanied dolphin or seal, the masters concerned shall co-ordinate their approach and manoeuvres, and the pilots concerned shall co-ordinate their approach and manoeuvres:
- (g) A vessel shall approach a dolphin from a direction that is parallel to the dolphin and slightly to the rear of the dolphin.

Part 4 Miscellaneous provisions

21 Transitional provisions

- (1) Applications (including amended applications) for permits received before the commencement of these regulations shall be dealt with as if the Marine Mammals Protection Regulations 1990 were still in force.
- (2) Applications for permits that are received after the commencement of these regulations shall be dealt with under these regulations.
- (3) Permits issued under the Marine Mammals Protection Regulations 1990 shall be subject to regulations 13, 14, 16, 17, 18, 19, and 20 of these regulations. The Marine Mammals Protection Regulations 1990 (except regulations 5(4), 5(5), 6(3), 7, 8, and 9) shall continue to apply to such permits as if not revoked, unless inconsistent with these regulations.

22 Regulations revoked

The Marine Mammals Protection Regulations 1990 (SR 1990/287) are hereby revoked.

BOB MACFARLANE,
Acting for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 January 1993, revoke and replace the Marine Mammals Protection Regulations 1990.

The principal changes effected by these regulations are as follows:

- (a) Regulation 3 provides that the regulations do not apply in respect of a fishing vessel engaged in commercial fishing, unless the vessel is also engaged in a commercial operation as defined in regulation 2 of these regulations or deviates off course to engage in recreational viewing of marine mammals:
- (b) Regulation 4 sets out the purposes of the regulations. The principal purpose is the protection, conservation, and management of marine mammals:
- (c) Regulations 6 to 9 specify the matters the Director-General of Conservation must have regard to when deciding whether or not to grant a permit:
- (d) Regulation 11 requires each applicant for a permit to publicly notify the applicant's application:
- (e) Regulation 16 confers a right of appeal to the Minister of Conservation against the Director-General's refusal to renew an existing permit for an existing permit holder.

ISSUED

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 November 1992.
