



NOAA FISHERIES SERVICE



The Protected Species Division provides stewardship of living marine resources through science-based conservation and management and the promotion of healthy marine ecosystems.

Marine Mammal Interactions (A regulatory perspective)

The definitions, prohibitions and penalties cited herein are selective. They are relevant to watching large whales. All marine mammals, including large whales, are protected under the Marine Mammal Protection Act (MMPA). Most large whales are further protected by the Endangered Species Act (ESA) as well. For a complete set of regulatory provisions, please access the following web sites:

- www.nmfs.noaa.gov/pr/laws/mmpa/
- www.nmfs.noaa.gov/pr/laws/esa/
- www.gpoaccess.gov/ecfr/- this site will access the electronic Code of Regulations pertaining to marine mammals. Click on Code of Federal Regulations- click on e-CFR. Go to Title 50 on the drop down menu. MMPA regulations can be found by clicking on Section 216.

DEFINITIONS

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions). 50 CFR 213

Endangered species means any species which is in danger of extinction throughout all or a significant portion of its range. 50 CFR 424.02

Threatened species means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. 50 CFR 424.02

The term *Take* is defined under the under the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” and under the MMPA as “harass, hunt, capture, kill or collect, or attempt to harass, hunt, capture, kill or collect.” This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation



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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. 50 CFR 216.3

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild. 50 CFR 216.3 *Level B Harassment* means any act of pursuit, torment, or annoyance which 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 but which does not have the potential to injure a marine mammal or marine mammal stock in the wild. 50 CFR 216.3

PROHIBITIONS

It is unlawful for any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States. 50 CFR 216.11 (b)

Approaching right whale (Under 50 CFR 224.103 (c))

(1) Prohibitions. It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

- (i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;
- (ii) Fail to undertake required right whale avoidance measures specified under paragraph (c)(2) of this section.

(2) Right whale avoidance measures. Except as provided under paragraph (c)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

- (i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.
- (ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

Right whales are also protected under the Code of Massachusetts regulations which also prohibit the approach of right whales within 500 yards (322 CMR 12:00).



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FEDERAL PENALTIES

See attached penalty schedules for specific violation penalties.

Any person who knowingly violates any provision of the MMPA or of any permit issued thereunder, shall, upon conviction be fined not more than \$20,000 for each such violation, or imprisoned for not more than one year, or both. 16 USC 1375 § 105 (b).

Any person who knowingly violates any provision of the ESA or of any permit issued thereunder be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six months, or both. 16 USC 1540 § 11(a-b).

RECOMMENDATIONS

Please treat marine mammals with caution and respect. For your safety, and the safety of your passengers, please do not feed, swim with, or harass marine mammals. Whales are wild animals and therefore their behavior may be unpredictable at times, especially if they are angry, frustrated, or afraid. Look and admire them from a distance, but please do not get too close. Please follow the speed-distance recommendations and never approach a whale within 100 feet.

ENFORCEMENT HOTLINE

To report a potential violation, please call the NOAA Fisheries Enforcement Hotline at 1-800-853-1964. Operators are available to take your call 24 hours a day, 7 days a week, 365 days a year.