TOURISM INDUSTRY ASSOCIATION OF BC

National Programs, Fisheries Resource Management
Fisheries and Oceans Canada
200 Kent Street
Ottawa, ON K1A 0E6

August 13, 2024

Submitted electronically to DFO.NCRFMMMRconsultation-consultationRMMGPRCN.MPO@dfo-mpo.gc.ca

Re: Proposed Amendments to Marine Mammal Regulations

To Whom it May Concern:

On behalf of the Tourism Industry Association of British Columbia (TIABC) whose members include several whale watching companies and the Pacific Whale Watch Association, thank you for the opportunity to submit responses to the questions posed by Fisheries & Oceans Canada (DFO) as part of the public consultation process on the proposed Marine Mammal Regulation amendments for Pacific killer whales in BC waters. The following are TIABC's recommendations for consideration.

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

TIABC believes any amendments to the current approach distance of 200 metres should apply only to endangered Southern Resident killer whales, whose behaviour and look sets them apart from Bigg's killer whales which are thriving and do not need the same level of protection.

It is important to note that in neighbouring Washington State, where Southern Resident killer whales also reside, a viewing distance of 1,000 yards will be applied as of January 1st, 2025, while a distance of 200 yards will be permitted for all other non-endangered species. Similar measures (e.g. 1,000 metres for Southern Residents; 200 metres for all other killer whales) should be implemented in BC to be consistent, especially considering that whale watching companies in either jurisdiction often cross borders as part of their work.

Whale watching is a vital part of BC's visitor economy and an iconic experience that well over 200,000 domestic and international tourists enjoy annually through the 14 BC-based Pacific Whale Watch Association members, as well as other operators. The sector supports over 1,000 jobs and generates some $132 million in annual economic activity.

Importantly, whale watching operators care deeply for the environment and many contribute a portion of their revenues and resources into education and sustainability initiatives to protect the marine environment. They also play a critical role in informing recreational boaters, fishers and others on rules and regulations to help protect whales, especially the endangered Southern Residents.

Applying an approach distance of greater than 200 metres for non-endangered Pacific killer whales is both unnecessary and punitive and runs the risk of shutting down operators due to a competitive disadvantage against their Washington State counterparts, and/or a completely unsatisfactory guest

experience. Consequently, visitors will choose other destinations beyond BC where they can view whales at a much closer distance.

It should be noted that outside of British Columbia and Washington State, there are very few regulations for viewing killer whales, and where they do exist, the approach distance is typically 100 metres.

- **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?**

Within the whale watching sector, '*approach distance'* is clearly understood and suggests conscious and positive actions on behalf of professional whale watchers to protect species such as Southern Residents. In other words, whale watch vessels can control the distance at which they knowingly approach whales.

On the other hand, the term '*avoidance distance'* has a different connotation and implies that all vessels should avoid whales. While this might be true for commercial shipping operators, recreational boaters and others who are unfamiliar with various species or the details of regulations, it does not make sense to whale watch companies who ultimately model appropriate viewing speeds and distances through radar or range finders, and as mentioned earlier, alert others when whales are near.

Clearly, the actions of whales cannot be controlled or in some cases anticipated so expecting vessels to adhere to an '*avoidance distance*' will be difficult not to mention dangerous if they are required to maneuver their boats suddenly, potentially causing physical or acoustic harm to whales.

- **Question 3: Through the current interim order, Transport Canada prohibits vessels from positioning themselves in the path of a killer whale in southern BC coastal waters. Do you have comments or considerations regarding this prohibition?**

TIABC supports regulations that prohibit vessels from obstructing the path of any killer whale. However, vessel operators cannot control the behaviour of the whales and any actions could be misinterpreted by law enforcement officers…which seems unfair. Therefore stronger language within the order that speaks to vessels ***intentionally*** impeding the path of killer whales is required. An intentional move can be more easily identified by officers in such circumstances.

- **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 200m and 400m. 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?

Because of the expertise of professional whale watching operators, TIABC recommends that the existing distance of 200 metres for all killer whales except Southern Residents be maintained, and an approach distance of 1,000 metres for Southern Resident killer whales be implemented. If such regulations are implemented by DFO, no other exemptions (e.g. professional) would be required as all vessels would need to abide by the same rules.

Conversely, if the viewing distance for non-Southern Residents was expanded beyond 200 metres, a professional exemption would be necessary.

- **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?**

Although similar in nature, drones are decidedly different than aircraft given they do not carry passengers or pilots onboard, and are regulated separately depending on jurisdiction. Specific rules and language must be included within the regulations that both identify and apply to drones to avoid any confusion or to fill in the gaps where air regulations are lacking.

- **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?**

As a tourism advocacy organization that looks out for the interests of our members, including professional whale watchers, TIABC is keen to see a healthy balance between protecting the interests of professional whale watch operators and the overall sector, as well as ensuring the health and protection of the marine environment which includes Southern Resident and other killer whales within BC waters.

A science-based, data-driven and common-sense approach is paramount to achieving palatable solutions for all stakeholders. Moreover, any future regulations should be consistent throughout British Columbia and congruent with those in Washington State to ensure consistency, compliance, protection and desired outcomes for both killer whales and the whale watching sector for the foreseeable future.

Best Regards,



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