



**THE MARINE MAMMALS PROTECTION REGULATIONS 1990**

PAUL REEVES, Governor-General

**ORDER IN COUNCIL**

At Wellington this 8th day of October 1990

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

**ANALYSIS**

- |  |  |   |
|--|--|---|
| <ul style="list-style-type: none"> <li>1. Title and commencement</li> <li>2. Interpretation</li> <li>3. Application</li> <li>4. Commercial operations carried out without permit prohibited</li> <li>5. Permits</li> <li>6. Requirements to be satisfied before permit issued</li> </ul> |  | <ul style="list-style-type: none"> <li>7. Conditions governing commercial operations</li> <li>8. Permits to be displayed</li> <li>9. Suspension or revocation of permits</li> <li>10. Conditions governing persons other than commercial operators</li> </ul> |
|--|--|---|

**REGULATIONS**

**1. Title and commencement**—(1) These regulations may be cited as the Marine Mammals Protection Regulations 1990.

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“Commercial operator” means a person who carries on a commercial operation:

“Commercial operation” means an operation carried on for any form of hire or reward in which persons are transported, conveyed, conducted, or guided to view or come into contact with any marine mammal in New Zealand or in New Zealand fisheries waters:

“Director-General” means the Director-General of Conservation:

“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 5 of these regulations.

**3. Application**—These regulations shall apply throughout New Zealand and New Zealand fisheries waters.

**4. 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 5 of these regulations.

**5. Permits**—(1) Subject to these regulations, the Director-General, on 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 also specify—

(a) The vessels or aircraft to be used by the operator; and

(b) The name of the master of the vessel or the pilot of the aircraft.

(3) Subject to regulation 9 of these regulations, every permit shall be in force for such period not exceeding 5 years as the Director-General may approve, and may be renewed from time to time.

(4) No permit shall be transferable or be deemed to allow any person other than the operator specified therein to carry on the commercial operation authorised by the permit.

(5) Where the holder of a permit is a body corporate and the control of the management of the holder is transferred to another person, the permit shall be deemed to have been transferred and shall cease to have effect.

**6. Requirements to be satisfied before permit issued**—(1) Every applicant for a permit shall submit for the Director-General’s approval a plan of the proposed operation for which the permit is being sought.

(2) Before approving a proposed plan, the Director-General may require that the plan be amended by the applicant to incorporate such matters as the Director-General may specify in writing.

(3) Once a plan is approved it shall be deemed to form part of the permit issued in respect of the plan, and shall be complied with accordingly.

(4) The Director-General shall satisfy himself or herself that—

(a) Any relevant statutory requirements relating to the operation and safety of the vessel or aircraft to be used by the applicant have been complied with; and

(b) The master of the vessel or pilot of the aircraft holds an appropriate valid certificate of competency or licence, as the case may require.

(5) An applicant shall furnish to the Director-General such information as the Director-General may reasonably require, by notice in writing, for the purposes of this regulation.

(6) The Director-General shall not issue a permit unless he or she—

(a) Has approved the proposed plan; and

(b) Is satisfied as to the matters specified in subclause (4) of this regulation.

**7. Conditions governing commercial operations—**(1) Every commercial operation shall be subject to the following conditions:

(a) No vessel or aircraft shall be operated so as to disrupt the normal movement or behaviour of any marine mammal:

(b) Contact with any marine mammal shall be abandoned at any sign of its becoming disturbed or alarmed:

(c) The operator shall not cause any marine mammal to be separated from a group of marine mammals, or cause the members of any such group to be scattered:

(d) No rubbish or food shall be thrown near or around any marine mammal:

(e) No person shall make any loud or disturbing noise near any marine mammal:

(f) No aircraft or helicopter shall operate at a distance less than 300 metres from any marine mammal:

(g) No person in the water shall be less than 50 metres from any marine mammal other than a dolphin or seal:

(h) No person shall be less than 50 metres from any whale other than a stranded whale:

(i) A vessel shall approach a marine mammal from a direction that is parallel to the mammal and is slightly to the rear of the mammal:

(j) Marine mammals shall be allowed to approach vessels:

(k) Any vessel less than 300 metres from any marine mammal shall move at a constant slow speed no faster than the slowest marine mammal in the vicinity, or at idle or “no wake” speed:

(l) No sudden or repeated change in the speed or direction of any vessel shall be made, except in the case of an emergency:

(m) Where a vessel stops to enable the passengers to watch any marine mammal, the engine shall either be placed in neutral or be switched off within a minute of the vessel stopping:

(n) A vessel shall not approach within 500 metres of any marine mammal for the purpose of enabling the passengers to watch it if there are 3 vessels already positioned to enable their passengers to watch the same mammal:

(o) Where 2 or more vessels or aircraft approach an unaccompanied marine mammal, the masters or pilots concerned shall co-ordinate their approaches:

(p) No person or vessel shall cut off the path of a marine mammal or prevent a marine mammal from leaving the vicinity of any vessels:

- (q) No vessel shall proceed through a group of marine mammals:
- (r) No person shall be less than 200 metres from any female whale that is accompanied by a calf or calves:
- (s) 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:
- (t) No person on the shore shall disturb any marine mammal:
- (u) No person shall harass any marine mammal.

(2) Where the Director-General considers it necessary for the protection, conservation, or management of any marine mammal or marine mammals of any class, he or she may, by notice in writing to the holder, make any permit subject to such requirements, being not inconsistent with subclause (1) of this regulation, as he or she may specify in the notice.

(3) Every commercial operator shall ensure that the conditions set out in subclause (1) of this regulation and any requirements notified to the operator under subclause (2) of this regulation are complied with.

**8. Permits to be displayed**—Every commercial operator shall display the permit issued to the operator by attaching it to the vessel or aircraft specified in the permit.

**9. Suspension or revocation 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 Marine Mammals Protection Act 1978:
- (b) Contravenes or fails to comply with any statutory requirement relating to the operation and safety of any vessel or aircraft used by the holder in carrying on a commercial operation:
- (c) Carries on a commercial operation without an appropriately certificated master or licensed pilot:
- (d) Contravenes or fails to comply with any condition or requirement specified in or notified under regulation 7 of these regulations:
- (e) Contravenes or fails to comply with any provision in the plan approved for the holder under regulation 6 of these regulations.

(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 or revoke any permit or permits of any class:
- (b) Restrict the operation authorised by any permit or permits of any class.

(3) Where any person ceases to be a commercial operator, the Director-General may suspend or revoke that person'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) Any person may appeal to the Minister of Conservation against a decision to suspend or revoke that person's permit; and the Minister may confirm, reverse, or modify the decision appealed against.

**10. Conditions governing persons other than commercial operators**—(1) The conditions specified in regulation 7 (1) of these regulations shall apply to every person other than a commercial operator, subject to the following modifications:

- (a) Paragraph (h) of that regulation shall be read as if for the expression "50 metres" there were substituted the expression "100 metres":
- (b) The Director-General may, subject to such requirements as he or she considers necessary for the protection, conservation, or management of whales in the area, authorise any person to swim or dive within 100 metres of any whale.
- (2) Every such person shall comply with regulation 7 (1) of these regulations accordingly.

C. J. HILL,  
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 28 days after the date of their notification in the *Gazette*, require commercial marine mammal watching ventures to be authorised by a permit issued by the Director-General of Conservation.

*Regulation 2* defines certain terms used in the regulations. The terms most widely used are "commercial operation" and "commercial operator". A commercial operation is one that is carried out for hire or reward and in which persons are transported, conveyed, conducted, or guided to view or come into contact with any marine mammal in New Zealand or New Zealand fisheries waters. The term "commercial operator" has a corresponding meaning.

*Regulation 3* provides that the regulations apply throughout New Zealand and New Zealand fisheries waters.

*Regulation 4* prohibits the carrying on of commercial operations without a permit issued under *regulation 5*.

*Regulation 5* provides for the issue of permits by the Director-General. A permit will authorise a named operator to carry on a specified commercial operation.

*Regulation 6* sets out matters that must be satisfied by applicants for permits.

*Regulation 7* sets out conditions that apply to all commercial operations.

*Regulation 8* requires permits to be displayed on vessels and aircraft used in commercial operations.

*Regulation 9* provides for the suspension or revocation of permits, and the imposition of restrictions.

*Regulation 10* applies the conditions set out in *regulation 7 (1)* to persons who are not commercial operators, with minor modifications.

There are no prescribed fees in respect of permits issued under these regulations, however costs incurred in processing applications are recoverable by the Director-General of Conservation under section 60B of the Conservation Act 1987.

Offences in relation to requirements and conditions imposed by these regulations are prescribed by section 23 of the Marine Mammals Protection Act 1978.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 11 October 1990.

These regulations are administered in the Department of Conservation.