

Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary

User Guidance



Department of Conservation
Te Papa Atawhai

Purpose of Guidance:

Te Pēwhairangi Marine Mammal Sanctuary User Guidance (**The Guidance**) is for the public and users of the Bay. It is intended to provide user guidance for how Te Pēwhairangi Marine Mammal Sanctuary (**the Sanctuary**) restrictions apply to users of the marine and coastal area.

It also addresses specific issues where people need an additional level of guidance for how the Sanctuary restrictions interact with their activities.

Audience:

All users of the marine and coastal area in Te Pēwhairangi / Bay of Islands.

Background:

The Department of Conservation (DOC) is legally responsible for the protection of marine mammals in Te Pēwhairangi / Bay of Islands, in accordance with the Marine Mammals Protection Act 1978 (MMPA).

A marine mammal sanctuary has been established under the MMPA to achieve this, with tailored provisions to address known issues affecting marine mammals in Te Pēwhairangi / Bay of Islands.

The aim is to ensure tamariki and future generations experience the diverse array of marine mammals that are experienced today.

Te Pēwhairangi / Bay of Islands is used by many people for many reasons and activities. The purpose of the Sanctuary is to reduce known pressure from vessel and human interactions on marine mammals in Te Pēwhairangi / Bay of Islands, and to give them the opportunity to visit these waters safely. The Sanctuary allows users to continue to use and enjoy the waters of Te Pēwhairangi / Bay of Islands, but in a way that is safe for marine mammals. Research shows behavioural changes and a dramatic drop in the number of bottlenose dolphins visiting the Bay – a taonga species for local kaitiaki, and an iconic species for the community. Bottlenose dolphins are an indicator species for other marine mammals. Effects from vessel and human interactions impact all marine mammals.

The Sanctuary is one piece of the puzzle, to contribute to a thriving eco-system for Te Pēwhairangi / Bay of Islands. The Department is working with Northland Regional Council, Fisheries New Zealand, and mana whenua for integrated management of the local marine and coastal area.

Declaring Te Pēwhairangi / Bay of Islands waters as a marine mammal sanctuary is about celebrating the marine mammals we have in the Bay, the diversity of the ecosystem, and how important this is for the people that live here and for those that visit.

How this Guidance works:

The Sanctuary includes three key restrictions for vessel users and people to understand and follow when using the waters of Te Pēwhairangi / Bay of Islands.

This Guidance is developed to explain each restriction, its reason, and how it applies – providing an extra level of guidance where required.

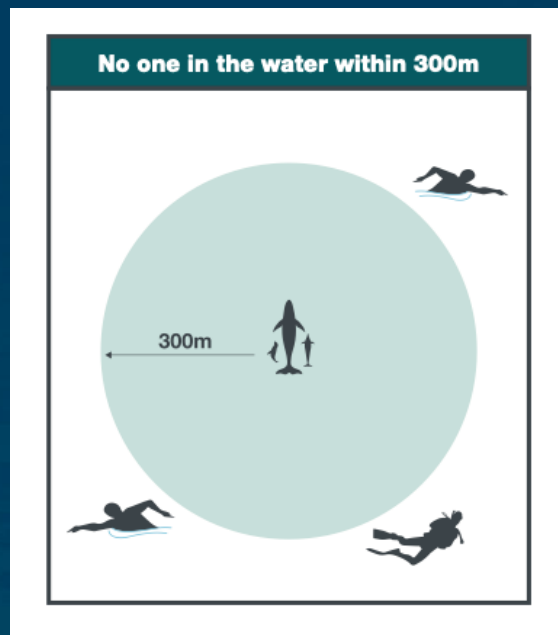


Additional general matters such as the interaction with customary rights and interests, exemptions to the Sanctuary regulations, how to report an issue, and penalties are explained below.

The Sanctuary Restrictions

Restriction 1¹

Every person commits an offence who, without lawful authority or reasonable excuse, remains in the water within 300m of any marine mammal in the marine mammal sanctuary.



Reason

The warm and sheltered waters of Te Pēwhairangi / Bay of Islands mean we have a high number of people in the water. This is a particularly important issue to address in Te Pēwhairangi / Bay of Islands.

When marine mammals come over to look at you or interact with you when you are swimming or doing another activity in the water, it might seem like they are enjoying the interaction. However, it is important to remember that when they do this, it is stopping their natural survival behaviours, such as resting and feeding. In Te Pēwhairangi / Bay of Islands this is particularly problematic because bottlenose dolphins spend 86% of daylight hours surrounded by vessels or humans.

Biologically, interacting with a marine mammal in their environment (by being in the water) causes one of the highest levels of disturbance, particularly for mothers and calves, who are especially vulnerable. Mothers stop feeding their babies and are distracted from their care when interacting with people in the water.

The Marine Mammals Protection Regulations 1992 (MMPR) contain existing regulations around being in the water with marine mammals. The MMPR include different regulations for different species of

¹ Clause 5(1) of Marine Mammals Protection (Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary) Notice 2021

dolphins and whales and vary depending on whether juveniles are present. It is often difficult for people to tell the age of the marine mammal, or the particular type. In Te Pēwhairangi / Bay of Islands, it is well documented that the requirement to identify species and age of marine mammals has resulted people jumping in when they shouldn't.

The Sanctuary restrictions remove the need to identify species or age, making it much easier to comply with.

What does “person in the water” mean?

It means any person, or part of a person, in the water within the boundaries of the Sanctuary, including but not limited to swimming, diving, wading, snorkelling, and surfing and stand-up paddle boarding (when not on your board).

When any part of a person is below the surface of the water in the boundaries of the Sanctuary, they are considered “in the water” for the purposes of this restriction. People should not be in the water within 300m of a marine mammal unless they have lawful authority or a reasonable excuse to do so.

Stand-up paddleboards, kayaks, donuts, jetskis, smaller craft and inflatables are designed to hold people above the water level. You are required to stay 300m from marine mammals. If the 300m distance from marine mammals is breached you are required to follow the same rules as larger craft, including stopping and not entering the water, our expectation is that you remain on these craft and do not jump off.

If your safety is at risk, or there are circumstances outside of your control, this may not be possible, and that is ok.

How do I comply with this restriction if I am diving?

Safety always comes first.

If you encounter a marine mammal once you have commenced your dive:

- Stay together as a group.
- Don't deviate from your dive plan.
- You don't need to exit the water (remember safety is first).
- Maintain your depth and enjoy watching the marine mammal respectfully.
- Don't pursue interactions with the marine mammal.
- When you surface from your safety stop, move swiftly to the vessel (or shore) and exit the water if it is safe to do so.
- Don't re-enter the water until the marine mammal is more than 300m away.

With diving preparation is key. Prior to entering the water for a dive plan for the above actions:

- include actions that will be taken if you encounter a marine mammal in your pre-dive safety briefing.
- ensure that these actions are captured in your dive plan.
- ensure that your surface safety person, and/or skipper, does a thorough scan for marine mammals before anybody enters the water (from either shore or a vessel). If there are marine



mammals present within 300m of your entry point, do not enter the water until they are more than 300m away.

How do I comply with this restriction if I am swimming or snorkelling?

Safety is also first while snorkelling or swimming, but unlike diving, it is generally safe to exit the water upon becoming aware of marine mammals.

Prior to entering the water for a swim or snorkel:

- Do a scan of the water.
- If you see any marine mammals, delay your swim or snorkel until they are 300m away.

If you encounter a marine mammal once you have commenced your swim or snorkel:

- Exit the water at your closest safe exit point and remain out of the water until the marine mammals are 300m away (and heading away from you).
- The closest exit point may not be the point you entered from.
- Once marine mammals are more than 300m away, you can continue your swim or snorkel.

What about activities on the shore edge (e.g. wading, walking in the intertidal zone)?

Activities on the shore edge includes things like gathering seafood whilst wading, cooling off in the shallows, surf cast fishing, getting on and off water toys (such as wake boarding, jet skis, kitesurfing, tubing from the shore), and getting in and out of watercraft (kayaks, paddleboards).

Safety comes first, however when doing activities on the shore edge, it is generally safe to exit the water upon becoming aware of marine mammals.

Prior to entering the water for activities:

- Do a scan of the water.
- If you see any marine mammals, delay entering the water until they are 300m away.

If you encounter a marine mammal once you have started your activity on the shore edge:

- Exit the water at your closest safe exit point and remain out of the water until the marine mammals are 300m away (and heading away from where you are).
- The closest exit point may not be the point you entered from.
- Once marine mammals are more than 300m away, you can continue your activity.

How does this restriction relate with the existing Marine Mammals Protection Act and Regulations?

The MMPA and MMPR regulate how vessels and people interact with marine mammals in New Zealand / Aotearoa.



The MMPA, MMPR and the Sanctuary restrictions all have legal effect. It is an offence to breach their requirements.

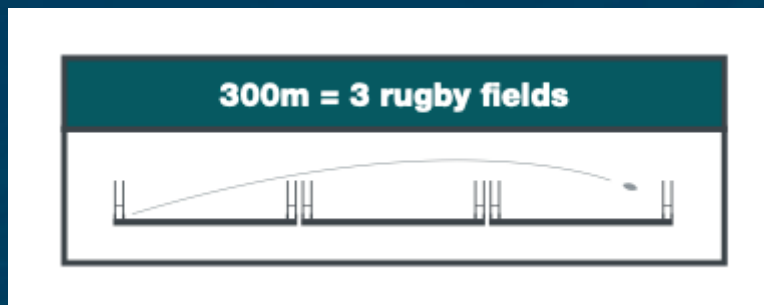
The MMPR provides existing regulations regarding being in the water with whales and dolphins (not seals) that are either less restrictive, or the same as the requirement to not be in the water within 300m of any marine mammal (i.e – no swimming within 300m with whales, no approach distance, no swimming with juvenile dolphins or pod that includes them).

The Sanctuary restriction to not be in the water with 300m of a marine mammal is specific to Te Pēwhairangi / Bay of Islands and takes priority.

The MMPR still apply.

How do I judge 300m?

-300m is the equivalent of the length of 3 rugby fields

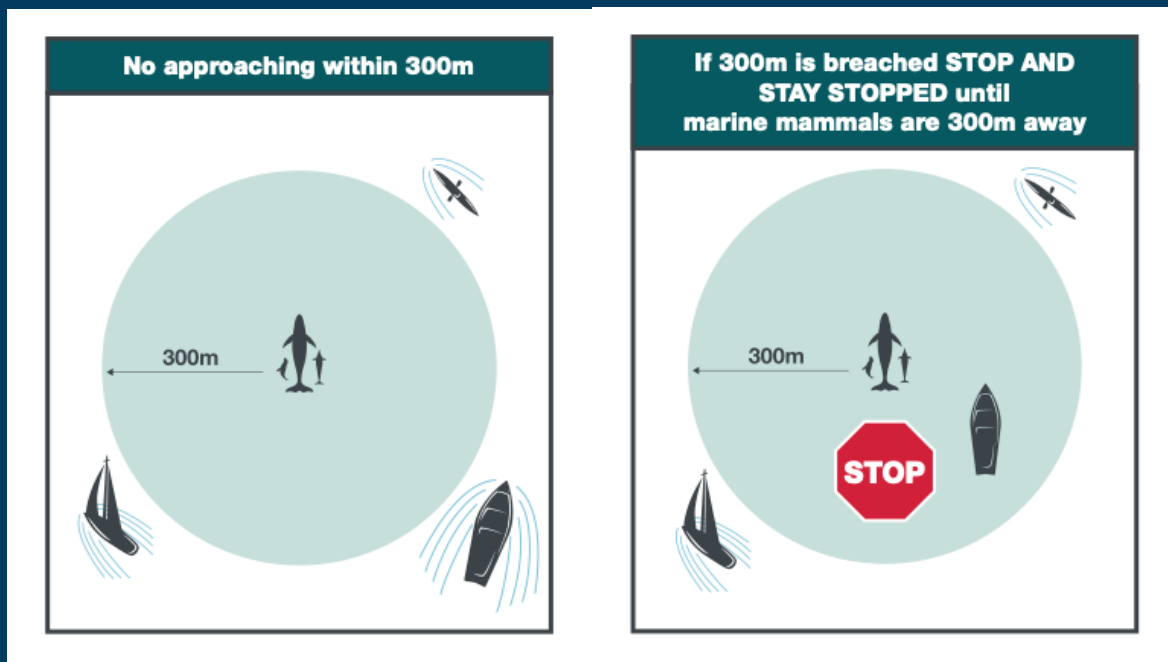


Restriction 2²

Every person in charge of a vessel commits an offence who, without lawful authority or reasonable excuse, fails to ensure their vessel:

- *stops if the person in charge becomes aware of any marine mammal less than 300m distance in the marine mammal sanctuary, or*
- *remains stopped until any marine mammal is more than 300m away in the marine mammal sanctuary.*





Reason

This restriction is to reduce marine mammal disturbance and ensure their safety and yours while enjoying the waters of Te Pēwhairangi / Bay of Islands.

Approaching marine mammals can disrupt core biological behaviours, such as feeding and resting, while also increasing the risk of collisions. Mothers and calves are most at risk, as calves spend more time at the surface, can be more inquisitive, rely on the whole group for help and need their mothers to focus on regular feeds without disturbance.

Dolphins are wild animals and we should give them the choice to interact with us on their terms.

This isn't a new issue. The MMPR already has minimum distances vessels are required to keep from marine mammals for these reasons.

However, in Te Pēwhairangi / Bay of Islands the level of interactions with marine mammals is high. Marine mammals have become habituated to interacting with boats and this is changing their behaviour for the worse.

We need to help them help themselves and reduce the temptation to interact with boats instead of them behaving naturally in their own environment.

How the Sanctuary restriction works:

This restriction has several components.

Everyone must do their best to stay 300m from marine mammals and experience them from this distance or more.



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Te Papa Atawhai

People on board vessels should be able to keep a good watch for marine mammals and keep a 300m distance in most conditions. Ideally, this means vessel operators simply adjust their course to keep at least a 300m distance from marine mammals, and continue doing what they need to do, and the marine mammals remain undisturbed.

We accept people want to be able to go about normal activities in Te Pēwhairangi / Bay of Islands. Marine mammals should be left free from disturbance as much as possible.

The requirement to stop and remain stopped is the last resort – and should only be needed if the requirement of staying 300m away from marine mammals hasn't worked.

The second part of the restriction gives you clear guidance to ensure you get back to 300m safely for you and the marine mammals.

Why 300m?

The current MMPR have existing regulations to keep 300m from dolphins so this is not a new concept. 300m is the same as 3 rugby fields. This regulation aligns with international standards as to a distance which you can spot a marine mammal.

What does “stopping” mean?

Stopping varies for every vessel, and skippers know how to achieve this safely. Safety always comes first.

As a broad definition this means the vessel ceasing forward thrust and no longer trying to make way. A vessel drifting is ok as long as it's safe.

If your vessel is stopped and you feel that you or others are at risk of injury, or your property is at risk of damage, safety should prevail.

When considering infringements, a warranted officer will consider a skipper's actions to preserve safety and/or property, as appropriate.

Stopping vessels around marine mammals is known to reduce negative impacts on their behaviour from vessel interaction.

If you find yourself within the 300m and have to stop, be aware that other vessels within the 300m of the marine mammal will also need to stop. This awareness will be vital for everyone's safety.

The requirement to stop rather than move away slowly means the marine mammals are not tempted to keep interacting.

This restriction allows marine mammals to continue with natural behaviours.

What if the marine mammals hang around for hours and I need to be somewhere? Do I just need to stay there?

Research suggests that it tends to be a maximum of 6 minutes before most marine mammals have moved 300m away.



While waiting for marine mammals to move away, enjoy observing their natural behaviours such as nursing calves, throwing fish, or playing with seaweed.

The sooner you stop and stay stopped, the less likely they are to follow you.

If, in the rare occasion marine mammals do stay for extended periods while vessels are fully stopped, you may be able to leave after waiting a reasonable time. Whether it is reasonable for you to leave will depend on the circumstances.

What if I have gear in the water and / or am towing something and end up within 300m of marine mammals?

There is no requirements for any gear in the water, or items being towed (eg: AC biscuit, wakeboards, fishing gear) to be removed when you spot marine mammals.

However, the skipper must take all actions to stop the vessel safely. If this means removing the gear to stop safely, the skipper can make this decision and take this action and stop the boat in a manner that is safe to do so.

How does this restriction relate with the existing Marine Mammal Protection Regulations?

The current MMPR also regulates vessels within 300m of marine mammals, with additional regulations for commercial operators.

The current MMPR has different regulations for different species (i.e.: 300m for dolphins, 100m for baleen whales with calf, 50m for whales without a calf).

The Sanctuary has consistent restrictions regardless of species – which makes it easier to follow. You don't have to identify species.

This protects all marine mammals from the known issue of vessel interactions impacting their behaviour.

Both the Sanctuary and MMPR have legal effect. The Sanctuary restriction is specific to Te Pēwhairangi / Bay of Islands and takes priority.

What about stopping vs leaving at a safe speed?

Leaving at a 'safe speed' changes marine mammal behaviour in Te Pēwhairangi / Bay of Islands.

Stop until the marine mammals are further than 300m away. This will help prevent the behaviour change in Te Pēwhairangi / Bay of Islands.



Event Planning and Exemptions

Te Pēwhairangi / Bay of Islands is a playground with a long history of on water events.

This Sanctuary is not intended to prevent these events from occurring.

Events can still occur, if impacts on marine mammals are mitigated.

If you are organising an on-water event, that may need to be exempt from the sanctuary regulations involve DOC early to ensure you meet all of the requirements to hold your event within the boundaries of the Sanctuary.

Depending on the size, scope and potential impact of the event, a mitigation plan might be required.

Mitigation plans may need to include:

- Detailed race plans, event scale and participant numbers.
- Establishment of 600m “safety zone” for the duration of the event that must be maintained around the sound source (e.g course or area being used for the event. All vessels, except those actively racing/competing, shall be halted when a marine mammal enters the 600m safety zone and resume only after the animal has been gone from the safety zone for a minimum of 15 minutes. The safety zone must be in effect 30 minutes prior to event start and 30 minutes after the event ends.
- DOC-approved biological monitor to conduct surveys before and during race events. Events only commence (delay start protocols) if no marine mammals have entered the 600m safety zone for a minimum of 30 minutes prior to race start time.
- Competency requirement for all skippers and crew who are appointed in any role pertaining to the event.

Your local Te Pēwhairangi / Bay of Islands DOC office will be able to provide more detail on what you need to do when organising an event.

Giving effect to the principles of the Treaty of Waitangi and the Sanctuary

DOC has obligations under section 4 of the *Conservation Act 1987* to give effect to the principles of the Treaty of Waitangi in statutory instruments such as the marine mammal sanctuary.

A partnership rōpū has been established between the Department of Conservation and Ngā Hapū o te Pēwhairangi (coastal hapū in the Bay of Islands), to advise on management of the marine mammal sanctuary, in a manner consistent with the MMPA. The Sanctuary will be managed in manner that gives effect to the principles of the Treaty of Waitangi, and in ongoing recognition of mana tuku iho, as defined in the Marine and Coastal Area (Takutai Moana) Act 2011.

Customary rights and interests in the marine and coastal area and the Sanctuary

Māori have specific rights and interests stemming from the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and under the Te Takutai Act 2011. The Sanctuary interrelates with these rights in the following way:



- the marine mammal sanctuary area remains part of the common marine and coastal area and, any applications for recognition of customary marine title and/or protected customary rights under the Takutai Moana Act 2011 are still able to proceed; and
- the marine mammal sanctuary does not prevent the operation of existing or proposed rohe moana, mātaítai, rāhui and taiāpure under the Fisheries Act 1996 and arising out of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The exercise of customary fishing rights in the Sanctuary area is discussed below.

How do I exercise my customary fishing rights in the Sanctuary?

As there are no restrictions that directly impact fishing activity, the measures are likely to have little impact on existing customary fishing.

Exercising customary fishing rights will still be required to comply with the Sanctuary restrictions, as discussed in this guidance, similarly to how they are already required to do so under the Marine Mammal Protection Regulations.

What to do if you see someone committing an offence?

If you see someone breaking the restrictions of the Sanctuary, the MMPR or the MMPA you can report it using DOC's hotline – 0800DOCHOT.

It is always helpful for us if you can take photos or video so we can follow up.

What happens to you if you break the restrictions? (ie: what are the penalties?)

It is a punishable offence to break the restrictions of the Sanctuary, the MMPR or the MMPA.

Penalties are dependent upon the alleged breach of the Sanctuary restrictions, with options to pay the infringement or make an appeal. They can include a \$400, \$600 or \$800 infringement fee and maximum fine of \$800 or \$1,600 if an infringement notice is issued.

Prosecutions may be pursued that could lead to an imprisonment term not exceeding 2 years or a fine not exceeding \$100,000.

