

Marine Life, March 2004

### Legal Note to Mariners: Beware the Whales

As predicted, DFO is ramping up their enforcement and fines for mariners alleged to be disturbing marine mammals, particularly those getting close to orca. On February 9<sup>th</sup>, 2004 the B.C. Provincial Court in Duncan handed down the largest fine ever, \$6,500. Fisheries alleged that the accused, an American operating near Active Pass, had been following (at 4 knots) behind orca at a distance of 30 metres for approximately 5 minutes. The accused plead guilty part way through trial.

Given the endangered status of the southern resident orca, it is expected DFO will be increasing their enforcement for all types of vessels around the orca. Vessels not engaged in commercial whale watching might expect fines in the range of \$1,000 to \$5,000 for this offence, while whale watch operators should expect higher fines. The maximum fine is \$100,000.

Although the law is currently unclear about what a mariner should do to avoid allegations of disturbing a marine mammal, it is clear that vessels should not *approach* a whale, particularly an orca, to within 100 metres. If a whale approaches a vessel, the vessel should be slowed gradually and stopped dead in the water until the whales leave. Obviously this poses problems for tugs under tow and vessels engaged in fishing, and the law must be fleshed out in this regard. If you unexpectedly find a whale in your wake and it is not possible to stop the vessel, do not make any sudden course or speed changes and wait for the whales to leave. If you are approached by DFO with the allegation that you were too close to a whale, document all eye-witness and navigational evidence as quickly and thoroughly as possible, as it may be 6 months before you know you are being charged.

Darren Williams, marine lawyer  
Questions may be put to [dw@MarineLaw.ca](mailto:dw@MarineLaw.ca)