

Marine Mammals Protection (Clifford and Cloudy Bay Sanctuary) Notice 2008

Pursuant to section 22 of the Marine Mammals Protection Act 1978, the Minister of Conservation gives the following notice, and the Minister of Energy, the Minister of Fisheries, and the Minister of Transport consent to the declaration in clause 4(2).

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Notice

- 1 Title
 - This notice is the Marine Mammals Protection (Clifford and Cloudy Bay Sanctuary) Notice 2008.
- 2 Commencement
 - This notice comes into force on the 28th day after the date of its notification in the *Gazette*.
- 3 Interpretation
 - (1) In this notice, unless the context otherwise requires,—
 - acoustic seismic survey** means a seismic survey carried out using acoustic pressure waves
 - acoustic source**—
 - (a) means a source of acoustic pressure waves used, or intended to be used, for the purpose of an acoustic seismic survey; and
 - (b) in relation to a source vessel, means an acoustic source on or controlled from the vessel
 - activate** includes reactivate
 - cetacean** means an animal that is a whale or dolphin within the meaning of the Marine Mammals Protection Regulations 1992
 - during poor visibility** means at night, during visibility of 2 km or less, or in wind of Beaufort 4 or stronger
 - explosion**—
 - (a) means a sudden release of energy (whether chemical or mechanical); but
 - (b) does not include the release of energy by an airgun or boomer
 - internal waters** has the meaning given by section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977
 - low-water line** has the meaning given by section 2(1) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977
 - mitigating acoustic device**, in relation to an acoustic source, means a low-power source of acoustic pressure waves, with a minimum source level of 160 dB re $\mu\text{Pa-m}$ (whether part of or attached to the source, separate from the source, or constituted by the source operating in another mode), intended to be used to deter cetaceans from approaching the source
 - passive acoustic monitoring** means the use of a towed hydrophone array with a minimum detection range of 1 000 m, coupled with appropriate software, to detect the vocalisations of cetaceans

qualified observer means an observer trained and experienced in whale and dolphin identification and behaviour, passive acoustic monitoring techniques, and distance estimation
seismic survey means a survey of the geology of the seabed, the structures beneath it, or both, carried out by projecting pressure waves into the layers beneath the seabed, and detecting and measuring the reflected signals

soft start, in relation to an acoustic source, means the gradual increase of the source's power over a period of at least 20 minutes and no more than 40 minutes

source of acoustic pressure waves includes an airgun or boomer

source vessel—

- (a) means a vessel on or from which an acoustic source that is being or is to be used to carry out an acoustic seismic survey is or is to be carried or controlled; and
- (b) in relation to an acoustic seismic survey, means every vessel on or from which an acoustic source that is being or is to be used for carrying out the survey is or is to be carried or controlled

source vessel observer, in relation to a source vessel, means a qualified observer on board the vessel

territorial sea has the meaning given by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

(2) All co-ordinates stated in this notice are expressed in accordance with the World Geodetic System (WGS 84).

4 Place defined and declared to be marine mammal sanctuary

- (1) All the place described in Schedule 1 is defined for the purposes of subclause (2).
(2) The place defined by subclause (1) is a marine mammal sanctuary, to be called the Clifford and Cloudy Bay Marine Mammal Sanctuary.
(3) A map of the sanctuary is set out in Schedule 2.
(4) The map set out in Schedule 2 is indicative only, and if there is a conflict between it (or the map of the sanctuary available for inspection on the Internet site of the Department of Conservation) and the verbal description in Schedule 1, the verbal description prevails.

5 Restrictions on seismic surveying

- (1) No person may carry out a seismic survey from a vessel in the sanctuary created by clause 4(1) unless he or she has, at least one month before doing so,—
 - (a) notified the Head Office of the Department of Conservation in Wellington in writing of his or her intention to carry it out; and
 - (b) given the Director-General a written undertaking, in a form satisfactory to the Director-General, to give the Director-General, within 2 months of the completion of the survey, a written report on all interactions between cetaceans and—
 - (i) the source vessel or vessels used; or
 - (ii) any equipment on or operated from the source vessel or vessels used; or
 - (iii) any person on the source vessel or vessels used.
- (2) No person may carry out on or from a source vessel in the sanctuary created by clause 4(1) a seismic survey using explosions as an acoustic source.
- (3) No person may cause an acoustic seismic survey to be carried out in the sanctuary created by clause 4(1) using an acoustic source that is on or controlled from a source vessel unless the person ensures that, while the vessel is in the sanctuary for the purpose of carrying out the survey, all the following requirements are complied with on (or, as the case may be, in relation to) the vessel:
 - *Qualified observers*
 - (a) at all times,—
 - (i) there must be one qualified observer on board the source vessel; and
 - (ii) there must be on board either the source vessel or a support or scouting vessel escorting it at least one further qualified observer in addition to the observer required by subparagraph (i):
 - (b) at all times while the acoustic source is operating otherwise than during poor visibility, a source vessel observer must maintain a watch for cetaceans:

- (c) at all times while the acoustic source is operating during poor visibility, a source vessel observer must conduct passive acoustic monitoring:
- *Possible sightings of cetaceans to be reported to qualified observer*
- (d) if a person on the source vessel or a support or scouting vessel escorting it who is not a qualified observer sees or detects within 1 000 m of the source vessel anything that in his or her opinion may be a cetacean (or 2 or more cetaceans), he or she must promptly report the sighting or detection to a qualified observer, and the observer must try to identify what was seen or detected:
- *Pre-start procedures*
- (e) an acoustic source must not be activated unless—
 - (i) a source vessel observer has continuously made visual observations all around the source vessel and source for the presence of cetaceans, from the bridge (or preferably an even higher vantage point) of the vessel, using both marine binoculars (for range estimation) and the naked eye,—
 - (A) if the water beneath the source when it is activated is less than 200 m deep, for at least the 30 minutes before the source is activated;
 - (B) if the water beneath the source when it is activated is 200 m deep or deeper, for at least the 60 minutes before the source is activated; or
 - (ii) the source is being reactivated, and a mitigating acoustic source has been running continuously (but for no more than 30 minutes) since the source was last shut down:
- (f) an acoustic source must not be activated during poor visibility unless—
 - (i) passive acoustic monitoring for the presence of cetaceans has been carried out by a source vessel observer for at least the 30 minutes before the source is activated; or
 - (ii) the source is being reactivated, and a mitigating acoustic source has been running continuously (but for no more than 30 minutes) since the source was last shut down:
- *General restrictions on activating acoustic source*
- (g) an acoustic source must not be activated at any time except by soft start, unless the source is being reactivated after being shut down less than 5 minutes before that time:
- (h) an acoustic source must not be activated at any time if, during the previous 30 minutes, a qualified observer has seen a cow-calf pair of cetaceans within 1 000 m of the vessel or source:
- (i) an acoustic source must not be activated at any time if, during the previous 30 minutes, a qualified observer—
 - (i) has seen a cetacean within 500 m of the vessel or source; or
 - (ii) has detected a cetacean (at any distance) by passive acoustic monitoring:
- (j) an acoustic source must not be activated (otherwise than during poor visibility) unless, while it is being activated, a source vessel observer continuously makes visual observations all around the source vessel and source for the presence of cetaceans—
 - (i) from the bridge, or preferably an even higher vantage point; and
 - (ii) using both marine binoculars (for range estimation) and the naked eye:
- *Restrictions on activating acoustic source during poor visibility*
- (k) an acoustic source must not be activated at any time during poor visibility if, during the previous 24 hours, 3 or more situations have arisen that—
 - (i) required the source to be shut down under any of paragraphs (n) to (p) or (r) to (t); or
 - (ii) but for the fact that it was not running, would have required the source to be shut down under any of those paragraphs:
- (l) an acoustic source must not be activated at any time during poor visibility if—
 - (i) no acoustic source on the source vessel has been active during the previous 24 hours; or

- (ii) during the previous 2 hours, a qualified observer has, from the source vessel or a support or scouting vessel escorting it, seen a cetacean within 1 000 m of the place where the source is; or
 - (iii) during the previous 2 hours, a qualified observer has, from the source vessel or a support or scouting vessel escorting it, detected a cetacean (at any distance) by passive acoustic monitoring:
- (m) an acoustic source must not be activated during poor visibility, unless passive acoustic monitoring is being continuously maintained on the source vessel:
- *Requirements to cease activation*
- (n) if, while an acoustic source is being activated, a qualified observer sees a cow-calf pair of cetaceans within 1 000 m of the source vessel or source, activation of the source must cease, and the source must be shut down and not reactivated unless—
 - (i) a qualified observer has seen the pair move to a point that is more than 1 000 m from both the vessel and the source, and no qualified observer has seen them within 1 000 m of the source vessel or source again during the 30 minutes after they were seen to move to that point; or
 - (ii) despite continuous observation, a source vessel observer has not seen them at all during the 30 minutes after they were last seen within 1 000 m of the source vessel or source by a qualified observer:
- (o) if, while an acoustic source is being activated, a qualified observer sees a cetacean within 500 m of the source vessel or source, activation of the source must cease, and the source must be shut down and not reactivated unless—
 - (i) a qualified observer has seen the cetacean move to a point that is more than 500 m from both the vessel and the source, and no qualified observer has seen it within 500 m of the source vessel or source again during the 30 minutes after it was seen to move to that point; or
 - (ii) despite continuous observation, a source vessel observer has not seen it at all during the 30 minutes after it was last seen within 500 m of the source vessel or source by a qualified observer:
- (p) if, while an acoustic source is being activated during poor visibility, a qualified observer detects a cetacean (at any distance) by passive acoustic monitoring,—
 - (i) activation of the source must cease, and the source must be shut down; and
 - (ii) activation must not recommence until at least 30 minutes after a qualified observer last detected a cetacean (at any distance) by passive acoustic monitoring:
- (q) an acoustic source shut down under any of paragraphs (n) to (p) or (r) to (t) must not be reactivated except by soft start, whether or not—
 - (i) a mitigating acoustic device has been running before activation begins; or
 - (ii) the source is being reactivated after being shut down for less than 5 minutes:
- *Requirements to shut down*
- (r) if, while an acoustic source is activated, a qualified observer sees a cow-calf pair of cetaceans within 1 000 m of the source vessel or source, the source must immediately be shut down, and must not be reactivated unless—
 - (i) a qualified observer has seen the pair move to a point that is more than 1 000 m from both the vessel and the source, and no qualified observer has seen them within 1 000 m of the source vessel or source again during the 30 minutes after they were seen to move to that point; or
 - (ii) despite continuous observation, a source vessel observer has not seen them at all during the 30 minutes after they were last seen within 1 000 m of the source vessel or source by a qualified observer:
- (s) if, while an acoustic source is activated, a qualified observer sees a cetacean within 500 m of the source vessel or source, the source must immediately be shut down, and must not be reactivated unless—

- (i) a qualified observer has seen the cetacean move to a point that is more than 500 m from both the vessel and the source, and no qualified observer has seen it within 500 m of the source vessel or source again during the 30 minutes after it was seen to move to that point; or
 - (ii) despite continuous observation, a source vessel observer has not seen it at all during the 30 minutes after it was last seen within 500 m of the source vessel or source by a qualified observer:
 - (t) if, while an acoustic source is activated during poor visibility, a qualified observer detects a cetacean (at any distance) by passive acoustic monitoring,—
 - (i) activation of the source must cease, and the source must be shut down; and
 - (ii) activation must not recommence until at least 30 minutes after a qualified observer last detected a cetacean (at any distance) by passive acoustic monitoring:
 - *Use of mitigating acoustic devices*
 - (u) a mitigating acoustic device must not be run except when no acoustic source is being used for data acquisition (for example, during manoeuvring of the source vessel concerned):
 - (v) a mitigating acoustic device—
 - (i) must not be run for a continuous period of more than 30 minutes; and
 - (ii) must not be activated until at least 30 minutes after it was last shut down:
 - (w) while a mitigating acoustic device is running, a source vessel observer must continuously make visual observations all around the source vessel and source for the presence of cetaceans.
- (4) Paragraphs (e) and (f) of subclause (3) are cumulative.
- (5) Paragraphs (n) to (t) of subclause (3) do not limit or affect paragraphs (g) to (m) of that subclause.
- (6) Paragraph (q) of subclause (3) overrides paragraph (g) of that subclause.

Schedule 1

cl 4(1)

Clifford and Cloudy Bay Marine Mammal Sanctuary

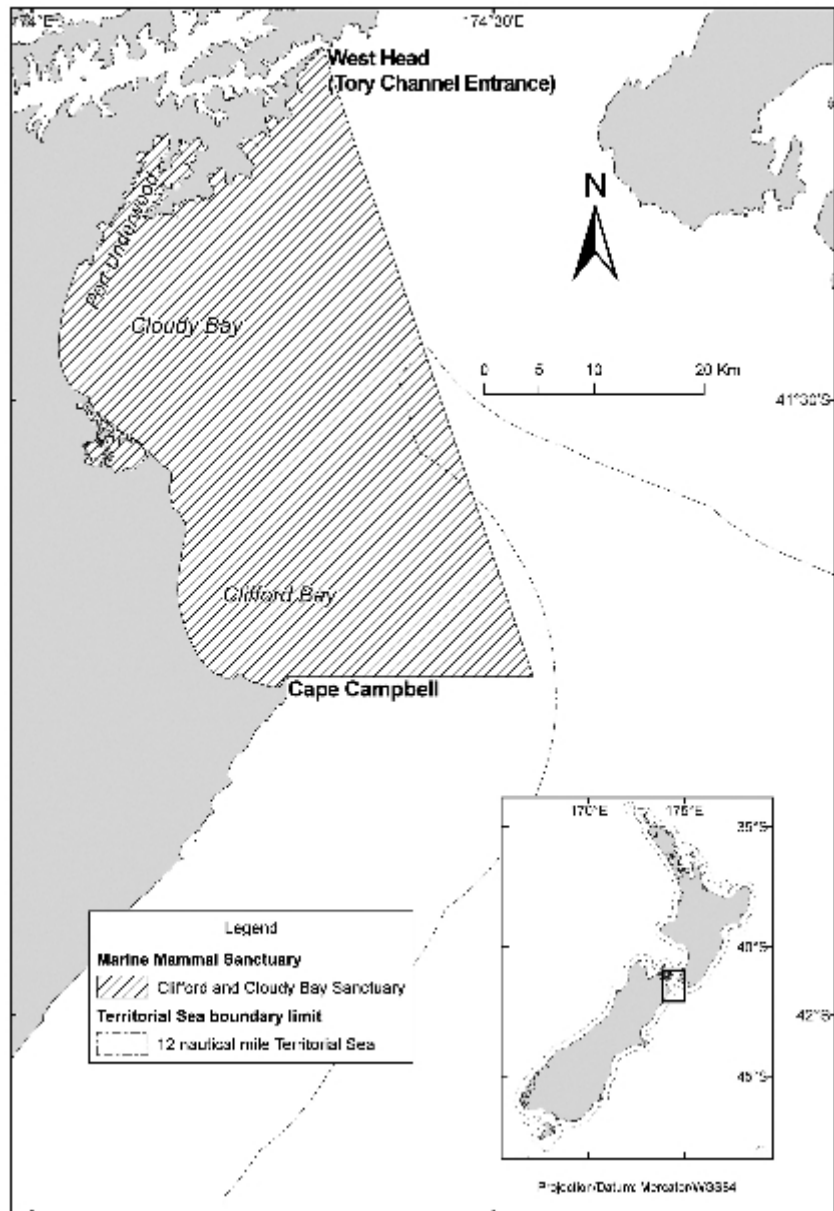
All the areas of the sea enclosed—

- (a) by the line of mean high-water springs from a point on Cape Campbell (at approximately 41°43.54'S and 174°16.57'E) thence by a line running in an easterly direction to a point at sea (at approximately 41°43.54'S and 174°32.59'E), thence by a line running in a north-westerly direction to a point on West Head on the Tory Channel (at approximately 41°12.79'S and 174°18.93'E); and
- (b) by the line of mean high-water springs alongshore in a north-south direction between the point on West Head on the Tory Channel (at approximately 41°12.79'S and 174°18.93"E) to the point on Cape Campbell (at approximately 41°43.54'S and 174°16.57'E).

Schedule 2

cl 4(3)

Map of sanctuary



Dated at Wellington this 23rd day of September 2008.

Steve Chadwick,
Minister of Conservation.

Harry Duynhoven,
for Minister of Energy.

Jim Anderton,
Minister of Fisheries.

Annette King,
Minister of Transport.

