FIVE STAR
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Sunday, October 11, 2009

To: Assistant Regional Administrator, Protected Resources Division, Northwest Regional Office, National Marine
Fisheries Service, 7600 Sand Point Way, NE., Seattle, WA 98115
From: James H. Dale, Five Star Whale Watching,
651 Humboldt Street, Victoria, B.C., Canada, V8W 1A6

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 070821475-81493-01]
RIN 0648-AV15

Protective Regulations for Killer Whales in the Northwest Region
Under the Endangered Species Act and Marine Mammal Protection Act

(1) Expand the regulation to include Oregon and California, as the Southern Resident Killer Whales expand their range far beyond Washington, especially in Winter.
In addition, as Research suggests that Chinook Salmon is their preferred prey and Chinook Salmon are much less prevalent in the inland
waters of Juan de Fuca Strait, Haro Strait and Puget Sound in the Winter, I hope that you will expand this Regulation to be year-round and
include Oregon and California.

(2) Reduce the 200 yards Viewing buffer to 100 yards. The Noren paper suggests that from 2005 to 2006 the median viewing distance increased dramatically from 25m to 85.5m as boaters became aware that vessel proximity, even if the vessel was not under power, was a potential interference with the Southern Resident Killer Whales as they searched for prey.

(3) Replacing the ½ mile no-go zone with a 7 knot go-slow zone. This still addresses the Acoustic Masking concern as the vast majority of vessels operating at 7 knots or less produce little sound of the amplitude or frequency that might mask Killer Whale Echolocation.

(4) Changing the "parking in the path" law to a guideline. I believe that this would be a regulation all but impossible to comply with as the "Path" of Killer Whales is not always discernible, even by very responsible vessel operators who are trying to maintain a 100m or 200m buffer zone. Making it a guideline would allow Enforcement Officers to use violations as evidence of irresponsible vessel operation, but to have it as a Strict Liability Offence is untenable.

(5) More Research Needed. There seems to be a lack of evidence from research to identify what is, in fact, causing the declines in L-pod's population. I support the "Precautionary Principle" and we must, therefore, take appropriate measures to minimize our impact as Humans: But we must start getting more precise evidence.

(6) Whales do not seem to take any action to avoid vessels: At best, it appears that Southern Resident Killer Whales are totally apathetic about the presence or lack of presence of boats. Their innate social ability may lead them to seek out boats for play or interaction, but the proposed 100m viewing zone seems to address this need for a buffer.

(7) Need for more Federal Enforcement dollars. I find it extremely frustrating to witness wanton violations of existing laws because of the limited number of NMFS Enforcement Officers on the water. This would achieve two very important goals: Protecting the Whales, and clearly identifying the nature of any vessel interference that is occurring. I believe that it is often a small percentage of the Recreational Boaters that exhibit bad behavior that then tarnishes all of us, even those who are operating responsibly.

(8) NOAA to fund more public education. Please use the resources of volunteer and funded organizations such as the Pacific Whale Watch Association, OrcaNetwork, The Whale Museum, The Whale Museum in Friday Harbor, Seattle Aquarium and others.

(9) Economic effects on company and community.

(10) Need for more salmon enhancement. I support your efforts towards recovery of the Chinook Salmon runs especially those that head to the Columbia Tiver Basin and Snake River.

Thank you for this opportunity to comment.

Thank you for this opportunity to comment,

Sincerely,

James H. "Jim" Dale
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15 December 2009

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
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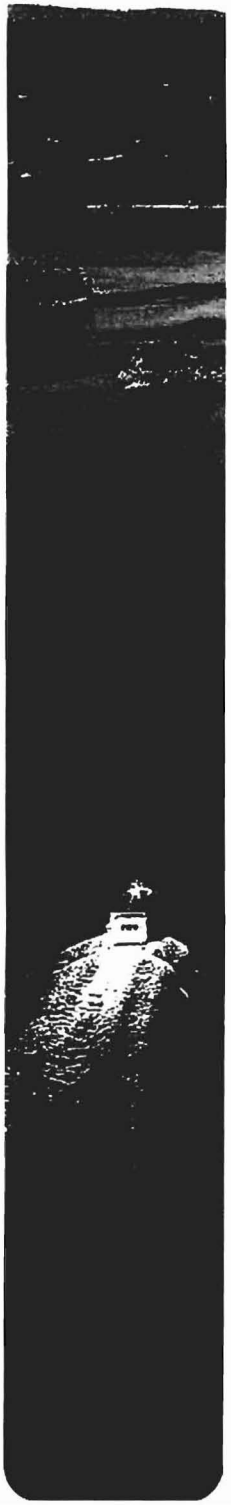

RE: Docket No. 070821475-81493-01, RIN 0648-AV15 – Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act.

To Whom It May Concern:

Thank you for the opportunity to offer comment on the above mentioned proposed rule. I believe the staff at the National Marine Fisheries Service (NMFS), members of the Whale Watching Industry, the Scientific Community and people that simply love these whales have all displayed their desire, albeit in different manners, to protect these creatures through the process allowed thus far. All should be commended.

Our company has been operating passenger ferries, sightseeing tours and whale watching/wildlife cruises from Bellingham and Friday Harbor since 1987. We employ approximately 30 people annually and consider ourselves an important piece of the economic development equation in our region. Tourism, one of the cleanest and greenest industries in this state, needs to be fostered and developed. This proposed rule will do the opposite.

I, personally, have been Captaining vessels in the San Juan Islands and interacting with our Southern Resident Killer Whales since 1979.

I would like to express my opposition to all three or the proposed restrictions; the 200 yard approach restriction, the ½ mile no-go zone, and the prohibition against parking in the whales' path.

I believe the basis for these proposed rules has not been supported by science and is simply a reactionary response to a perceived threat. I believe these

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proposed rules divert attention from the true issues facing Southern Resident Killer Whales (SRKW) by reacting to the optical threat of Whale Watching.

To truly assist the SRKW populations long term viability I feel the proposed rules should address the following:

1. **Expand the regulations to include Oregon and California with Washington.**
   As the feeding grounds of this population spans the waters of all three states the area of protection must do so as well.

2. **Reduce the 200 yards in the proposed rule to 100 yards.**
   There is no proof that vessel presence has any effect on the whales. The 100 yard proximity limit as named in the MMPA, Washington State law and the self-prescribed guidelines of the Pacific Whale Watching Association are ample. The additional 100 yards will reduce the educational value of the patrons aboard the whale watching vessels which could adversely impact the long term understanding and wellbeing of the whales.

3. **Replacing the ½ mile no-go zone with a go-slow zone.**
   The proposed "no-go" zone is unrealistic and would be difficult to enforce. By replacing this with a "7-knot speed limit" you would have an enforceable rule that would add to the protection of the whales while maintaining the rights of passage, shipping, fishing, kayaking and general recreation.

4. **Changing the "parking in the path" law to a guideline.**
   As a law this rule would be difficult to enforce and will only serve the financial coffers of the legal trade. It would be reasonable if the whales traveled on a directional highway, but they do not. As a guideline it is fair to expect a vessel operator not to park in the whales known path. It is not fair, however, to make a vessel operator legally responsible for an altered path chosen by the whale.

5. **Lack of evidence from research of starvation.**
   More scientific data must to collected to prove that vessel presence is causing starvation in the whales before such extreme measures are taken to eliminate this human / whales interaction.

6. **Avoidance. (whales don't avoid vessels)**
   Additional studies must be done to weigh both the potential negative and positive effects on the whales by vessel presence. As anyone who has spent much time with whales can attest, whales are social creatures that often make the effort to have a closer interaction with a vessel. It is entirely possible that attempting to preempt the whales' choice may have a detrimental effect on the whales' wellbeing.

7. **Need for more federal enforcement dollars.**
   Before or included in any proposed new laws the Federal Government must have a plan and funding in place for enforcement. The whales would be better served by funded enforcement of the laws currently in place the additional laws that continue to lack oversight.

8. **NOAA to fund more public education.**

Additional education for the public of threats and potential threats to these whales would do more for them then the addition of these proposed rules. Funding for education should be an essential part of this protection plan. There must be increased education of private boaters to mitigate their impacts but there also needs to be educational opportunities to all of the public to mitigate their effects.

9. **Economic effects on companies and communities.**
   This proposed rule does not realistically reflect the potentially adverse economic effect that these rule changes will have on this commercial industry. Just as economics are playing a role in the decisions on salmon enhancement and environmental contamination so should they on commercial whale watching.

10. **Need for more salmon enhancement.**
    Once again, I feel that these proposed rules aimed at the commercial whale watching industry are a diversion from the true issue facing the SRKW's, lack of prey. This time, effort and money should be being spent on salmon enhancement and food stock, not wasted on the politically and optically expedient whale watchers.

In addition to the items listed above I believe that the whales, boaters and whale watchers would be better served by replacing the three new proposed rules with the following:

- ***"Vessels may not negligently be within 100 meters of Southern Resident Killer Whales."***
- ***"Vessels must avoid the established path of Southern Resident Killer Whales."***
- ***"Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out 1/2 mile."***

Realizing that this is a politically charged issue I can only urge you to take a step back from this path and change the requirements in the proposed rule to these. This will give the opportunity to enhance the wellbeing and protection of the SRKW population while continuing to learn from and about these intelligent and incredible creatures.

Thank you again for the opportunity to participate in this process.

Sincerely,

Captain Drew M. Schmidt
President

January 13, 2010

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

To Whom It May Concern:

Re: Docket No. 070821475-81493-01, RIN 0648-AV15 – Protective Resolutions for Killer Whales in the Northwest Region Under the Endangered Species Act and the Marine Mammal Protection Act

Thank you for extending the comment period to January 15, 2010, for the proposed regulations for the protection of the Southern Resident Killer Whales in the waters around the San Juan Islands.

For the past 7 years I have helped manage a Canadian based whale watch company and I fully support any and all regulations that promise to protect these endangered animals and help lead to their recovery. I believe the NMFS has put in a tremendous amount of time and done a commendable job in preparing a Southern Resident Killer Whale Recovery Plan. However, I strongly believe that, as currently written, the proposed new regulations on vessel activity near the San Juan Islands and the 200 yard viewing distance regulation is unfounded and serious flawed.

From the information and reports that I have read, including NOAA's own science, there appears to be no concrete scientific evidence which states that reducing or restricting vessel traffic around the whales will be of any benefit to their recovery. So why is NOAA focusing on vessel traffic when there are other more obvious and dangerous threats to the whales such as poor salmon stocks, toxins and pollution in the Salish Sea, and all the while there is plenty of data that suggests that these new regulations will have a serious negative economic impact to tourism, and as a result the communities that rely on tourism dollars, on both sides of the border.

In the 2009 season our communities experienced a 10% to 20% reduction in the number of visitors with a similar reduction in the total per visitor spending; the related economic impacts were wide-spread. It is difficult to support measures that will lead to further reductions in economic activity unless they are the only way to achieve the desired result of protecting Southern Resident Killer Whales (SRKW). The way the proposed vessel regulations are written it is hard to imagine that they will do anything but seriously damage the viability of the whale watching industry and related tourism industry.

If these new regulations are considered 'for the greater good' then, in these tough economic times, it is irresponsible for NOAA to ignore the negative economic impact when 'the greater good' is an assumption and barely even suggested by science. Again, if the evidence was clear

and founded that a pull-back to these distances and a no-go zone would protect the SRKW, then the ensuing sever economic hardship may be justified. However, there are much stronger measures that NOAA itself has proposed that can provide to a large extent the same protection and recovery to the Southern Resident Killer Whales with little or no economic harm to my industry, such as salmon restoration, tighter restrictions on toxins, and more effective public education.

The Southern Resident Killer Whales have been in contact with vessels for hundreds of years. This is not new for them; it is a part of their natural environment. I would argue that there is a lower degree of direct vessel contact now than there was 40-50 years ago when there was several thousand commercial vessels on the water, five to six days per week. The amount of contact then is astounding compared to the number of whale watching vessels now operating and viewing the whales from a minimum of 100 yards. No one in the whale watching industry wants to see any harm come to these animals. On the contrary, the educational value that we are able to pass on to people from all over the world as to the challenges that these animals face, only strengthens public awareness to their plight and eventually to cleaning up our waters and their environment.

In best interest of the whales (which is why we are in this process) I strongly feel the following should be addressed in the proposed rules:

(1) **Expand the regulations to include Oregon and California with Washington.**

As the feeding grounds of this population spans the waters of all three states the area of protection must do so as well.

(2) **Reduce the 200 yards in the proposed rule to 100 yards.**

There is no proof that vessel presence has any effect on the whales. The 100 yard proximity limit as named in the MMPA, Washington State law and the self-prescribed guidelines of the Pacific Whale Watching Association are ample. The additional 100 yards will reduce the educational value of the patrons aboard the whale watching vessels which could adversely impact the long term understanding and wellbeing of the whales.

(3) **Replace the ½ mile no-go zone with a go-slow zone.**

The proposed "no-go" zone is unrealistic and would be difficult to enforce. By replacing this with a "7-knot speed limit" you would have an enforceable rule that would add to the protection of the whales and address the acoustic masking concern, while still maintaining the rights of passage, shipping, fishing, kayaking and general recreation.

(4) **Change the "parking in the path" law to a guideline.**

As a law this rule would be difficult to enforce and will only serve the financial coffers of the legal trade. It would be reasonable if the whales traveled on a directional highway,

but they do not. As a guideline it is fair to expect a vessel operator not to park in the whales known path. It is not fair, however, to make a vessel operator legally responsible for an altered path chosen by the whale.

(5) **Do more research to determine how best to increase killer whale foraging in this region.**

More scientific data must be collected to prove that vessel presence is causing starvation in the whales before such extreme measures are taken to eliminate this human / whales interaction. Some research even suggests that even in the presence of inappropriate vessel behavior, this is adding less than 2% for that brief time to the energy expenditure of killer whales. If killer whales experience that inappropriate behavior for even 10% of their day, then their additional energy expenditure is estimated at 0.2%. So let's eliminate the inappropriate vessel behavior and put NOAA's limited resources into parts of the Southern Resident Killer Whale Recovery Plan that are clearly having far more impact that 0.2% extra energy expenditure; namely, Salmon Stock Recovery and Pollution Clean-up.

NOAA and the States of Washington, Oregon and California have some fantastic plans for the recovery of the Columbia River Basin, Snake River, Elwha River, etc. and the Puget Sound Partnership for Pollution Clean-up. We at Great Pacific Adventures and within the Pacific Whale Watch Association (PWWA) have been supporting and promoting these efforts for years. Please allow us to continue our efforts in educating the public and generating support.

(6) **Move on from the issue of avoidance. (Whales don't appear to avoid vessels)**

If you must, carry out additional studies to weigh both the potential negative and positive effects on the whales by vessel presence. We have had 25 years of study, hundreds of thousands if not millions of dollars spent, and still NOAA concludes at page II-110 of National Marine Fisheries Service. 2008. **Recovery Plan for Southern Resident Killer Whales** (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington:

> "*The potential impacts of whale watching on killer whales remain controversial and inadequately understood. Although numerous short-term behavioral responses to whale watching vessels have been documented, no studies have yet demonstrated a long-term adverse effect from whale watching on the health of any killer whale population in the northeastern Pacific.*"

As anyone who has spent much time with whales can attest, whales are social creatures that often make the effort to have a closer interaction with a vessel. It is entirely possible that attempting to preempt the whales' choice may have a detrimental effect on the whales' wellbeing.

(7) **Provide NOAA with more federal enforcement dollars.**

Before, or included, in any proposed new laws the Federal Government must have a plan and funding in place for enforcement. The whales would be better served by

funded enforcement of the laws currently in place then additional laws that continue to lack oversight.

NOAA's own reports show that recreational boaters are far and away the biggest violators of Responsible Viewing Guidelines. But instead of enforcing the existing guidelines, NOAA seems to have chosen to ratchet up the restrictions on every vessel out there, including the PWWA vessels that have been complying with the existing guidelines.

(8) **Provide NOAA with more funds geared to more public education.**

Additional education for the public about how we can all reduce or eliminate threats and potential threats to these whales would do more for them than the addition of these proposed rules. Funding for education should be an essential part of this protection plan. There must be increased education of private boaters to mitigate their impacts but there also needs to be educational opportunities to all of the public to encourage consumers to make better choices. Reduce, Re-Use and Recycle.

(9) **Reconsider the Economic effects on companies and communities.**

This proposed rule does not realistically reflect the potentially adverse economic effect that these rule changes will have on this commercial industry and through the multiplier effect, drastic negative impact on the region. Just as economics are playing a role in the decisions on salmon enhancement and environmental contamination so should they on commercial whale watching.

(10) **Refocus on more salmon enhancement.**

I feel that these proposed rules are aimed at the commercial whale watching industry and are a diversion from the true issue facing the SRKW's, lack of prey. This time, effort and money should be being spent on salmon enhancement and food stock and not wasted on rhetoric and regulation changes, to the economic detriment of our communities

I'm not suggesting an outright rejection of the proposed new vessel restrictions but I support the following amendments to the proposed new regulations put forward by the Pacific Whale Watch Association (PWWA):

1. ***"Vessels may not negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon and California, except under special permit issued by NOAA."***

2. ***"Vessels must avoid the established path of Southern Resident Killer Whales."***

3. ***"Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out 1/2 mile."***

These are viable alternatives that may require increased enforcement but I believe the proposed amended regulations are fair and effective and will enhance the health and protection of the SRKW populations.

Thank you again for the opportunity to comment.

Sincerely,

Connie Olson
Manager

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