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

Comment On: NOAA-NMFS-2008-0327-0001

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

Document: NOAA-NMFS-2008-0327-DRAFT-0036

Comment from Trev Neufeld

Submitter Information

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General Comment

DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration 50 CFR Part 224 [Docket No. 070821475-81493-01] RIN 0648-AV15

Re: Protective Regulations for Killer Whales in the NW Region Under the ESA and MMPA

(1) Expand any regulation to include Oregon and California.

The SRKW's expand their range beyond Washington, especially in winter. Research suggests that Chinook Salmon is the preferred prey for the SRKW's and Chinook Salmon are much less prevalent in the inland waters of Juan de Fuca Strait, Haro Strait and Puget Sound in the winter.

(2) Create a 7 knot go-slow zone instead of the proposed ½ mile no-go zone.

This addresses the acoustic masking concern as vessels operating at 7 knots or less produce little sound of the amplitude or frequency that might mask Killer Whale echolocation.

(3) Maintain and Enforce the 100 yard viewing buffer.

The Noren paper suggests that from 2005 to 2006 the median viewing distance increased dramatically, from 25m to 85.5m. As boaters learned to comply with viewing buffers the actual distance from whales increased. This is a learning process. Give the boaters time to learn and enforce the existing, relatively new, law!

(4) Fund more Federal Enforcement.

It is extremely frustrating to continually witness wanton violations because few NMFS Enforcement Officers on the water. Two goals would be achieved: 1) Enhanced protection of the Whales, and 2) Clear identification of the vessel and nature of infraction. A small percentage of the recreational boaters act bad, but it tarnishes all of us, especially those who are operating responsibly.

(5) Fund more Public Education.

Please use the available resources better ie. support conservation organizations such as the Pacific Whale Watch Association, OrcaNetwork, The Whale Museum, The Whale Museum in Friday Harbor, Seattle Aquarium and others.

(6) Increase Conservation, Decrease economic downturn on communities.

Extending the viewing buffer from 100-200yds certainly may decrease the number of people choosing to experience the connection between Orca and Man. The net result could be less, not more, support for the necessary Conservation and Stewardship actions under NOAA's Recovery Plan for the Southern Resident Killer Whale population.

(7) Promote Salmon enhancement.

Salmon is the basis of the higher level food chain. All the large mammals near land and sea need this resource. Continue to support efforts towards recovery of the Chinook Salmon runs especially those of the Elwah River, Columbia River and Snake River.

Thank you for this opportunity to comment.

Sincerely

Trev Neufeld BSc., MSc. Marine Biology

Ms Donna Darm
Assistant Regional Administrator
Protected Resources Division
NW Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, Washington, 98115

Dear Donna,

I am probably one of the oldest and long term spokesmen for the protection of Puget Sound orca whales. In 1976, after witnessing a terrible capture attempt in Budd Inlet, I took part in a lawsuit against NOAA, the Department of Commerce, Sea World, etc to demand protection of these whales. At that time we had very FEW people on our side. Hardly anyone spoke up for the whales because they knew little about them. The general theory was that orcas ate all the salmon, so they should be shot.

Secondly the research being done at that time was mostly paid for by the Marine Park and aquarium industry. It always highlighted the theory that whales do much better in captivity.

We knew that we had to do two things.....

1. develop more ways that whales could be watched in the wild

and

2. develop research about whales in the wild.

Since that time the whale watch industry has developed. For the most part, I believe that they have done a pretty good job of self restraint and respect of the species. The most incredible thing is that they have accomplished is providing us with tens of thousands of advocates for whale protection because of what the general public has learned from their kayaks, shore programs and whale watch boats.

I understand that the number of kayak and power boat whale watchers has grown. Perhaps a better way to regulate would be to limit the number of licenses provided for this activity. That seems to make some sense to me.

It is my belief that trying to close the West Side of San Juan Island would be damn near impossible to carry out.

But putting all this aside, I sure wish your agency would refocus its efforts on the real problem. That is the terrible condition of Puget Sound salmon runs and the amounts of pollution. in the waters of our area. This is a concern that must be met, if we are going to save this species.

Many thanks for taking public input.

A handwritten signature in black ink, appearing to read 'R. Munro', written over the text 'Many thanks for taking public input.'

Ralph Munro
Secretary of State [retired]
5041 Houston Road
Olympia, Washington
98502-1723

3030 109th Ave. SE
Bellevue, WA 98004
October 24, 2009

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

Subject: Protective Regulations for Killer Whales in the Northwest Region

Dear Sir or Madam:

I am writing to comment on your proposed regulations under the Endangered Species and Marine Mammal Protection Acts, prohibiting vessels from approaching within 200 yards and/or parking in the path of killer whales, and from entering a conservation area along the west side of San Juan Island. While I definitely support the overall purpose and provisions of the recovery plan for Southern Resident killer whales, I believe it goes too far in excluding kayaks and similar non-motorized watercraft from the proposed no-go zone.

First, let me say that I have not yet had the good fortune to see Orcas from a kayak near San Juan Island. I've attempted to be there at the right time, launching my kayak several times from the San Juan County Park/Smallpox Bay site and once from Snug Harbor. Each time I was a few hours too early or too late, according to others who saw them on those days. So if I am at all typical, kayak encounters with Orcas in that area are rare as well as low-impact.

My personal observations of kayak and other boat interactions with whales are based most vividly on the unusual appearance of a resident pod in Dye's Inlet, between Silverdale and Bremerton, for a two-week period approximately 19 years ago. The whales were presumably feeding and socially interacting as they would elsewhere in Puget Sound. I was there on 3 different days. The kayaks and other non-motorized boats were much less intrusive than the power boats. Whales occasionally did come in our direction, dove under our stationary kayaks, and came up on the other side swimming on the same paths. They did not seem to avoid us, and the kayakers' actions typically were above the water line, trying frantically to deploy cameras at the right moments. Most of the power boats were recreational rather than commercial whale-watching boats, but from other observers I understand that many of today's commercial boats tend to be even more extreme in high-speed chasing and sometimes attempting to intercept the Orcas.

Based on my understanding of the recovery plan, and the vessel threats to whales, allow me to make the following five comments about the proposed regulations.

Kayaks differ significantly from other vessels of concern.

Several participants at your September 30 hearing spoke eloquently about this, and some of the written comments I've seen did also. Suffice it to say that acoustic masking and vessel strikes are virtually impossible with kayaks. Because of their quiet, low speed and fairly large turning radius, behavioral disturbance is also unlikely or very minor. (see comment on scientific studies below) In fact, in my experience over some 60 years of sea kayaking, I find that most people get into it precisely because their boats minimize disturbance of the environment.

SHARON GRACE
175 Gretchen Way
Friday Harbor, WA 98250
360-378-3377 Phone

January 12, 2010

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

Re: Proposed Protective Regulations for Killer Whales in the Northwest
Region under the ESA and MMPA

Dear Administrator:

I submitted comments by email on January 12, 2010 in which I referenced a disk containing some of the photographs of whale/boat interactions I took during 2009. I have enclosed that photo disk in this letter. The date and time on each photo were printed from the photo record itself. The shooting information for each photo should be able to be accessed by right clicking on the photo. The photos show vessels in violation of current laws enacted to protect the orcas. Most of the photos on the disk were taken after NOAA published its proposed regulations to protect the orcas. I observed more bad behavior from the commercial vessels after the regulations were published, than before. The recreational boat behavior seemed unchanged.

I took each photo on the disk from land on the west side of San Juan Island. Most photos show some portion of the Haro Strait in the proposed "No Go" zone. The photos substantiate the need for increased enforcement and increased vessel regulation to protect the orcas.

Thank you.

Sincerely,



Sharon Grace

Enc.

cc: Maria Cantwell, w/disk and original comments
Patty Murray, w/disk and original comments
Rick Larsen, w/disk and original comments

“Given the small population size, the endangered status of the population, and the suggestion that boat traffic can disrupt feeding activities of resident killer whales (Williams et al. 2006, Lusseau et al. 2009), it seems reasonable to us to err on the side of caution when managing boat traffic around southern resident killer whales. Given suggestions that this population may be food-limited (Fisheries and Oceans Canada 2008), minimizing boat traffic around whales may also improve foraging efficiency by reducing masking effects of boat noise on echolocation (Bain & Dahlheim 1994).”

***From “Effects of vessels on behaviour patterns of individual southern resident killer whales *Orcinus orca*”
Rob Williams^{1, 5, *, **}, David E. Bain^{2, **}, Jodi C. Smith³, David Lusseau⁴***

RE: RIN 0648–AV15

Protective Regulations for Killer Whales in the Northwest Region Under the ESA Species Act and the MMPA

To whom it may concern,

From 2000-2004, I materially participated in many of the orca studies conducted in the San Juan Islands, helping to collect and secure data for several of the research projects that took place during those years. Since 2005 I have been a member of The Soundwatch Boater Education Program, as a driver, educator, and co-principal investigator. For the last decade, when not actively participating in the above endeavors, I have been a shore based observer and professional photographer, throughout the Salish Sea, spending countless hours observing both the whales and the people watching these magnificent animals. In 2000 I founded an environmental education program, *Killer Whale Tales*. This program has worked in partnership with most of the leading scientists and orca educational outreach organizations, and has reached over 30,000 students throughout Washington State to date with our unique brand of science based activities and storytelling.

I am writing today as a private citizen.

I want to thank NOAA for their aggressive stance, on this first wave of rule making, attempting to mitigate one of the three identified factors currently threatening the Southern Resident Killer Whales. While there may be debate about which order the problems of lack of prey, toxins and vessel/noise effects should be addressed, I would like to clearly state that I support the proposed regulations.

I could cite the various studies that clearly support the reasoning behind these proposed regulations, but I feel they are so clearly and succinctly stated in the proposal and the recovery plan, that I don't feel it is necessary repeat those citations here. Instead, I would rather like to rebut many of the assertions put forth at the public meetings. These comments were meant to discourage NOAA from moving forward with these wholly prudent and necessary rules, designed to ease the impact of vessel effects on the endangered Southern Resident Killer Whale population.

Having attended all of the public meetings regarding this issue, I do want to join the chorus of voices that has asked that only peer reviewed and published data be used when judging whether or not these rules need to be implemented as written or augmented. The issue must be decided on the facts as we currently understand them.

To that end, I ask that NOAA remain steadfast in their work regarding the proposed rule making, as no anecdotally based argument proposed at any of these meetings, which have called for the dismissal or severe weakening of these proposed rules, can meet the peer reviewed/journal published threshold that everyone so stridently desires. Anecdotal stories and observations of whales 'befriending' boats should not be seriously considered as a reason to weaken or dismiss these proposed rules. If serious objections to these rules exist, those objections need to have the weight of years of study and data analysis behind them to back those assertions.

As an educator/teacher for the last 20 years I ask that NOAA thoughtfully assess any comments regarding the efficacy of the whale watching boat as an educational platform, before agreeing to reduce the proposed 200 yard buffer zone. While I do believe that boat based education may be possible, as this time, there is no standardized curriculum, no peer reviewed lesson plan, nor any pre/post testing to determine the overall effectiveness of such environmental education. Indeed, all comments stressing the efficacy, validity or necessity of boat based education are strictly anecdotal and do not meet the threshold for valid scientific conclusions.

The commercial whale watching fleet has nearly unanimously objected to the proposed buffer as onerous, stating that there is no way to effectively educate and inspire people from that distance, that no one could ever care about the whales or be moved to help with conservation issues if kept that far away. As someone who has spent the last 10 years working with the regions school children, inspiring them not only to "care" but to take effective and measurable action* in regards to their family's real-world impact on the whales, I find it absolutely absurd that anyone feels that asking boats to stay at least 200 yards will in some way adversely affect the educational value or connection that these whales engender in people. If one cannot adequately educate folks from 200 yards then it is more a reflection of those teaching, than the proximity to the subject. Effective and peer reviewed conservation education is happening amongst people who have never seen a whale and in some cases have never been to the beach. It can be done. Further, it is not a reason to remove or lessen the proposed increased in the viewing distance or the half mile no-go zone.**

Sports fisherman and charter fishing owners, as well as recreational boaters, were also indignant at the public meetings about being asked to move out of the path of whales in their hallowed fishing grounds and vacation areas. They continually stated that there was no possible way that their trolling for fish or the impact caused by recreational whale

watching, could in any way adversely affect these whales. In fact, many expressed how much whales loved their vessels and were curious or in most cases uninterested in their vessels' presence. Again these statements are completely anecdotal and have no scientific veracity to support them.

However, what they fail to mention and what is clearly demonstrated in the Soundwatch data, and in the attached photographs*** taken from the shore on the Westside of San Juan Island, is that these boats and their operators can be, and are, completely negligent when it comes to getting to and departing their favorite fishing destinations. Private vessels make up the number one class of "incidents" each and every Soundwatch shift. These vessels are documented making high speed transits up and down the Westside of San Juan Island, frequently crossing over the whales in the area, with little regard to either the whales well being or the current state law. This behavior undoubtedly creates many of the reported *Be Whale Wise* hotline violation calls and results in those watching from the shore to shake their heads and wonder aloud how this is even allowed to continue day after day after day. A half mile "no-go zone" and a requirement to clear the path of oncoming whales, are prudent responses to reduce these sorts of activities and their documented effects on the whales.

In general, the proposed rules address these thoroughly documented and analyzed issues and offer a way to mitigate them without severely, or in most cases even moderately, affecting some of the stake holders who object so strongly to their implementation.

I would offer that if any reductive changes to these rules need occur, then NOAA ought to measure those requests for change with extreme caution and only if the science supporting those reductions is clear and irrefutable.

Conversely, I would strongly suggest, that if any changes be made, it would be to adopt these current proposed rules without change, and to augment them with the following:

1. It is absolutely imperative that a speed limit be enacted, not only when the whales are on the Westside, as sensibly proposed by the whale watching industry, but throughout the entire critical habitat area. A safe boating speed of 4-7 knots when within a half mile of the animals would go a long way to reducing not only the documented problem with engine noise, but would also considerably reduce the impact of the vessel presence as well. Lower speeds would also provide enforcement with an easily assessable and therefore enforceable tool, to stop the truly reckless and careless boating often seen in the presence of these animals.
2. While I have read and understand the reason for not pursuing a permitting system of commercial whale watching, I strongly ask that this idea be seriously reconsidered. As it stands right now, there is nothing in place to severely deter

the documented repeat commercial offenders from pushing the limits of safe and responsible boating in the presence of these animals. A one-thousand dollar fine, while high to some of the smaller companies, is the monetary equivalent of roughly 15 passengers on a daily trip. It is not a deterrent. Only a systematic "three strikes and you are out" policy or something to that effect, would be useful in ensuring that the current laws are followed.

3. While I have worked daily with and appreciate the service of the uniformed enforcement agents on the water, it is my experience, that they are completely overwhelmed and often ineffective when it comes to being agents of change. These officers lack issue specific training regarding the nuances of the problem, as well as the hardware necessary to adequately do their jobs and are not on scene nearly enough throughout the summer. Serious consideration needs to be given to not only how these new rules are going to be enforced, but also who is going to be enforcing them. Without an annual funding source and without knowledgeable, trained officers on the job, any proposed new rules will prove just as ineffective as the current state law.

In conclusion, I once again strongly support the proposed rules. Having been party to this issue for nearly ten years now, I want to see a strong and steady hand brought to this problem, and to see real and significant assistance come to these endangered animals.

As an educator and an advocate for the future generation of whale enthusiasts, I ask that significant consideration be given to the hundreds of thousands of children, who are for the purposes of this rule making a silent majority. They will ultimately inherit whatever decision is made regarding this issue. Please come to a conclusion that will allow them to see what true, thoughtful and intelligent adults can do when given the facts of a situation. For in their eyes, this is a pretty easy problem to solve.

I look forward to NOAA's continued work on salmon restoration and most importantly I look forward to the proposed rule-making regarding toxins...an issue that is truly affecting us all, people and whales alike.

Thank you for your work,



Jeff Hogan

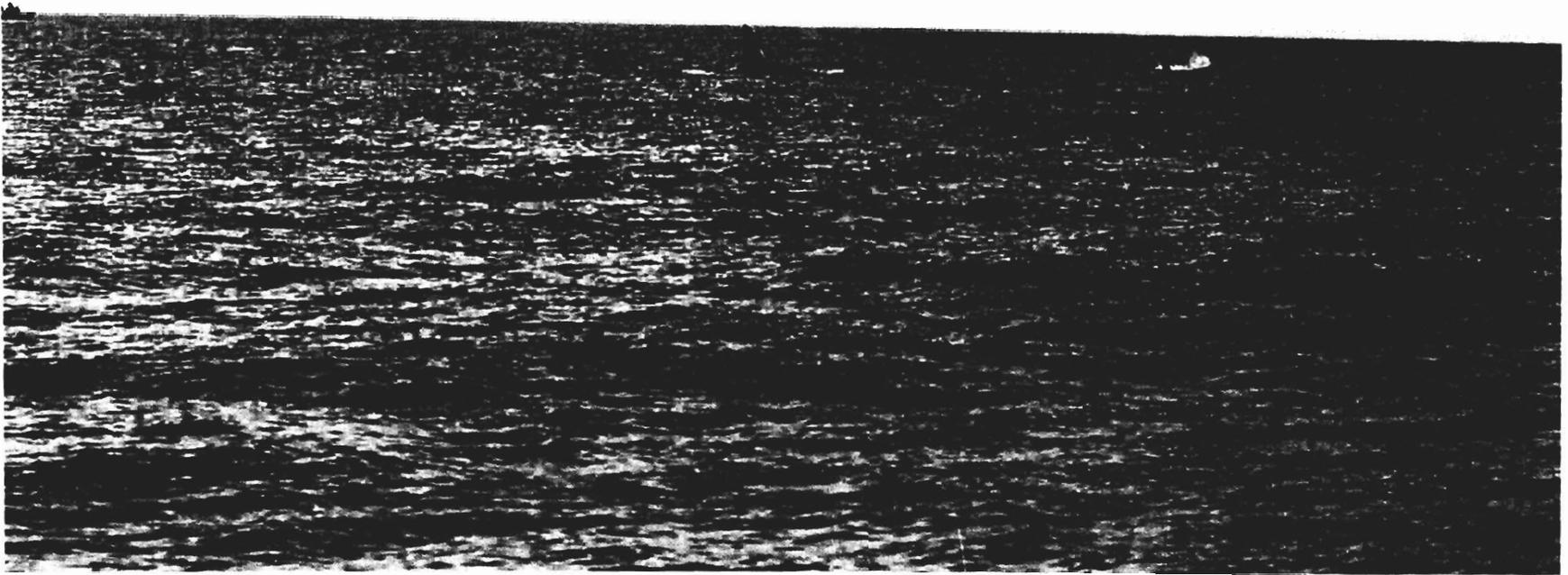
Attached Items:

***Results of the annual "Kids Making a Difference Now" conservation activity, as well as other curriculum materials are available at www.killerwhaletales.org**

****Please reference the attached photographs that clearly demonstrate, in a measured way, what a killer whale looks like from 200 yards.**

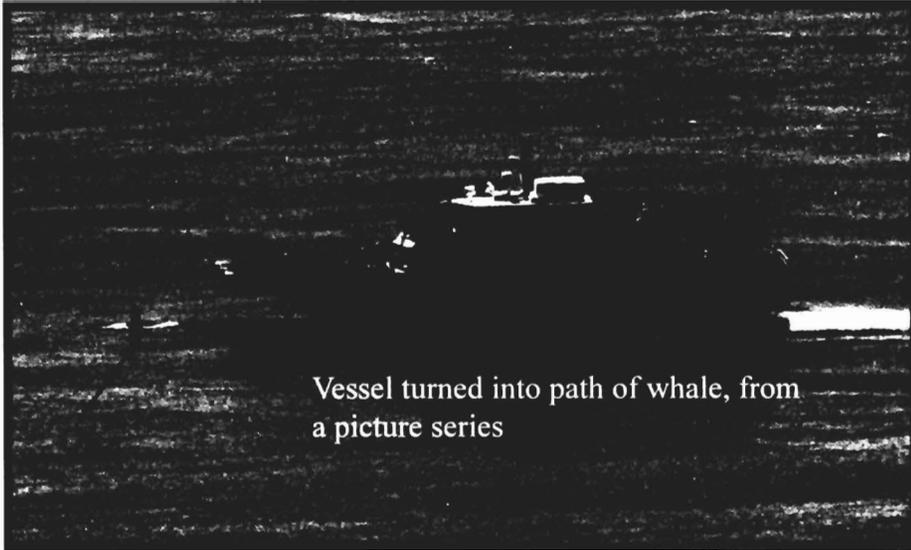
*****Please make note of the vessel interaction photographs attached to this document. The bound packet is a random assortment of images taken since the WA State law became enacted in 2008, and clearly demonstrates the need for the proposed rules regarding whales and vessel interactions.**

The male killer whale is 196 yards from the Soundwatch Vessel as measured by laser range finder.
Photographed with a Nikon D200, 80-200mm AFS, 2.8 Lense, set at 80mm, roughly naked eye equivalent
Image taken on 8/14/2009 at 2:56:10pm, in the False Bay area on the Westside of San Juan Island
Photo is uncropped



The male killer whale is 204 yards from the Soundwatch Vessel as measured by laser range finder.
Photographed with a Nikon D200, 80-200mm AFS, 2.8 Lense, set at 200mm
Image taken on 8/14/2009 at 2:55:34pm, in the False Bay area on the Westside of San Juan Island
Photo is uncropped





Vessel turned into path of whale, from
a picture series

7-21-2008 12:38pm Commercial



8-12-2008 5:32 pm Private



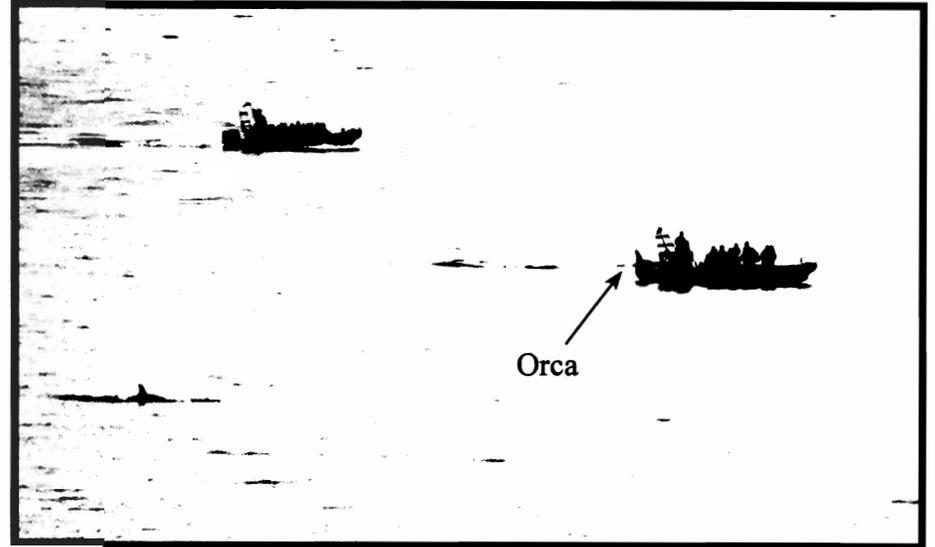
8-23-2008 7:15pm Private Kayak



8-28-2009 8:47am Private



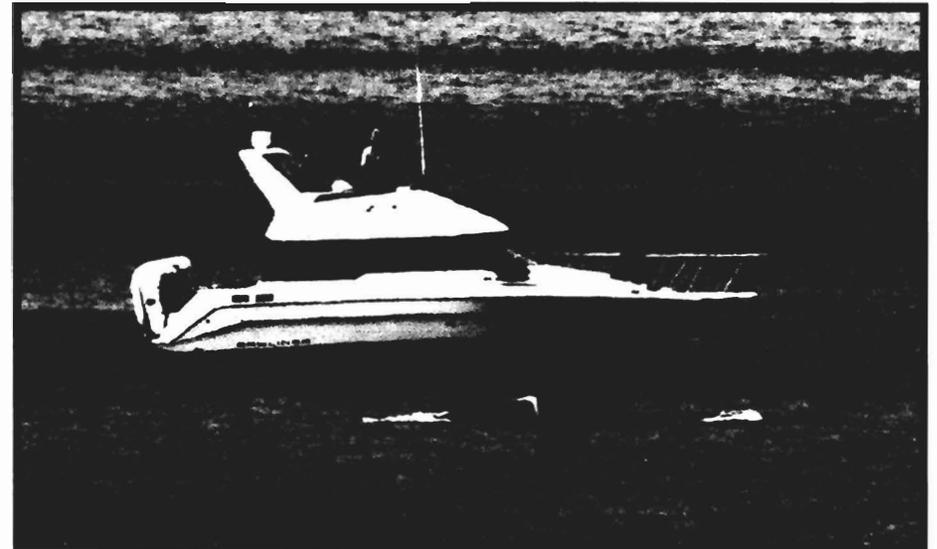
8-11-2009 4:15pm Commercial



8-11-2009 4:43pm Commercial



8-18-2009 11:47am Private



8-19-2009 12:26pm Private



6-30-2009a 10:18am Private



6-30-2009b 10:18am



Vessel motoring within 100 yards and inshore

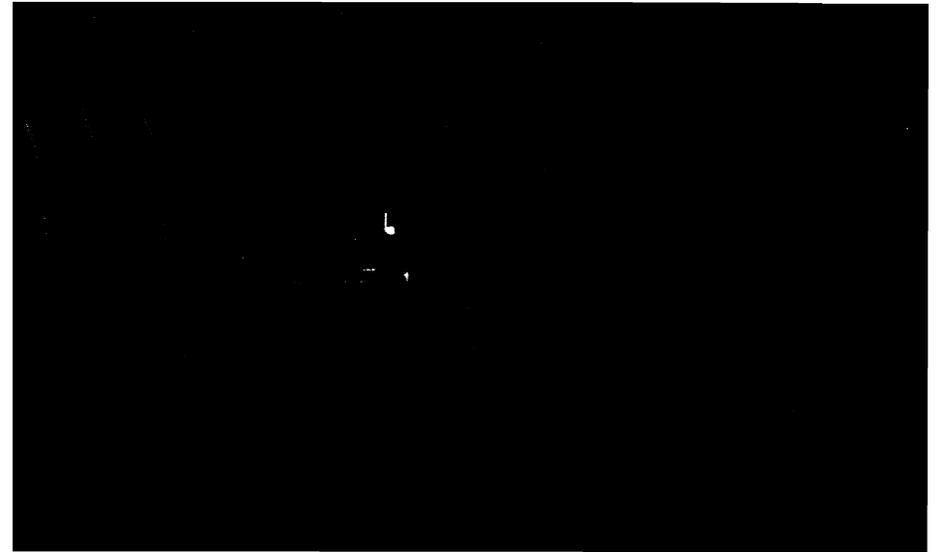
7-4-2009 6:41pm Commercial



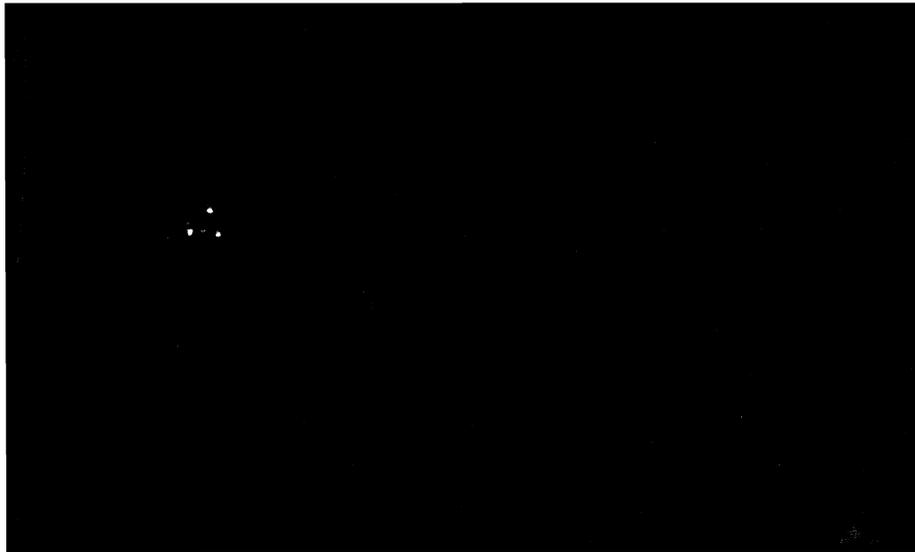
7-25-2009 6:39am Private



7-29-2009a 6:13pm Commercial



7-29-2009b 6:14pm Commercial



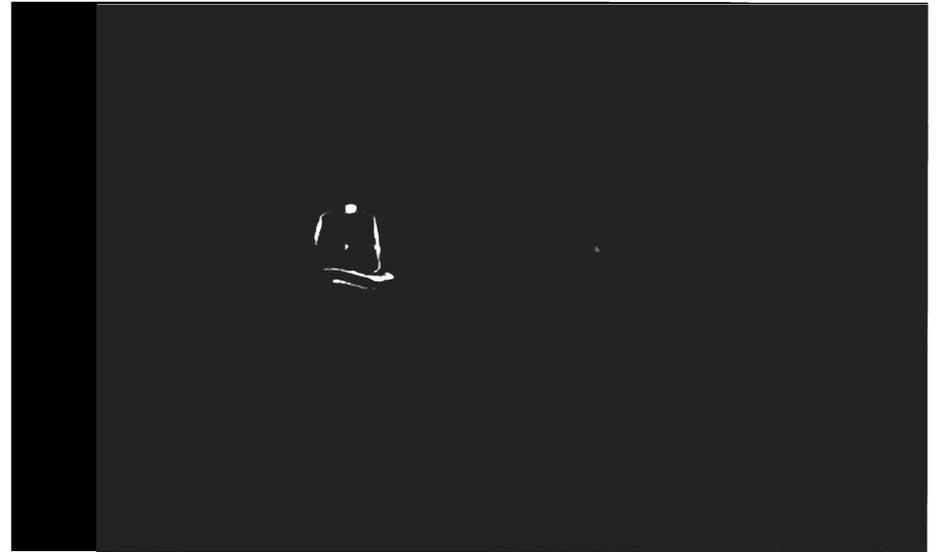
7-29-2009c 6:15pm Commercial



7-29-2009d 6:16pm Commercial



8-6-2009 12:18pm Private



7-28-2009 6:24pm Commercial



8-09-2009 7:04pm Private

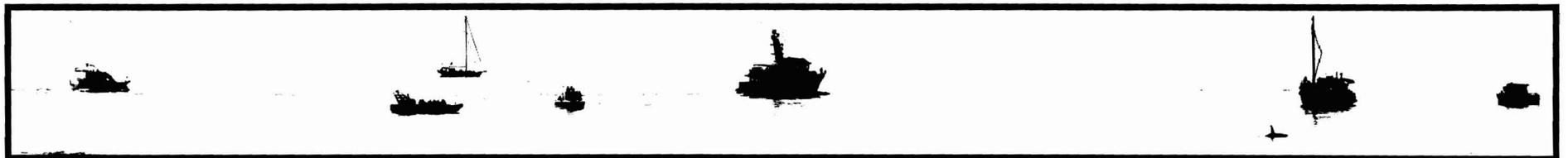
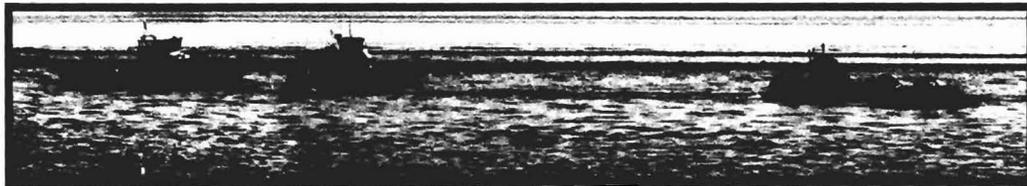


8-11-2009 8:14am Private



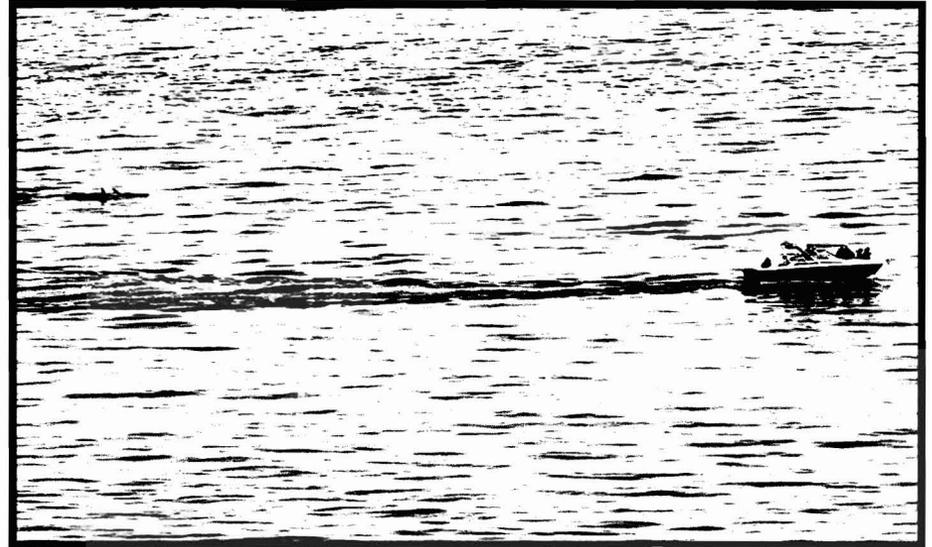
8-2-2008 2:48pm

**ALL PHOTOS WERE TAKEN FROM SHORE ON THE WESTSIDE OF SAN JUAN ISLAND.
ALL PHOTOS WERE TAKEN AFTER THE WA STATE LAW WENT INTO EFFECT.**

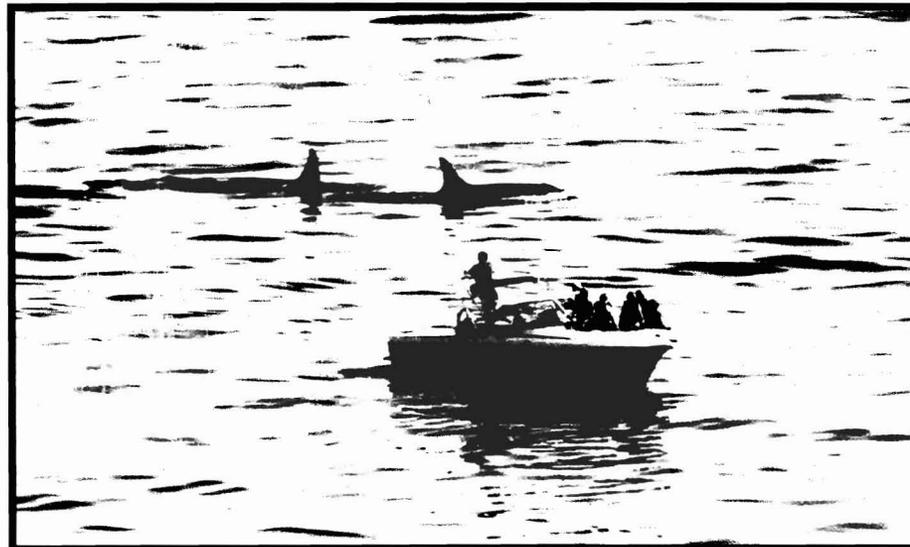




8-11-2009a 4:08pm Private



8-11-2009b 4:08pm



8-11-2009f 4:09pm

Vessel also performing an old school “leap frog”, overtaking whale, turning into path and shutting down in predicted travel lane

Subject: Access to whale watching
From: dbechtold@ttsd.k12.or.us
Date: Wed, 19 Aug 2009 21:19:56 -0700 (PDT)
To: Orca.Plan@noaa.gov

I had heard that the National Marine Fisheries service is considering a 200 yard buffer zone on the San Juan Island's Southern Resident orcas, a half mile "No Go Zone", and a ban on ALL boating from May to September on the western side of San Juan Island.

Please hear my request when I ask that these restrictions not be imposed. I believe a better proposal would include the following:

- * A 100 yard buffer
- * A quarter mile No Go Zone that will only be in effect WHEN WHALES ARE PRESENT. This should exclude non-motorized craft such as sea kayaks.

I have been an elementary school teacher for the last 15 years, but prior to that I worked in very responsibly run Eco-tourism business's in Alaska. Whale watching was part of our activities and we were able to educate a fair number of people to the beauty of the marine environment. It's one thing to watch the Discovery Channel, but it's a whole different experience when a pod of Orcas pass by you, or a humpback blows a bubble net near your small craft. The experiences can have a lasting effect on those who witness nature in this way. It was a main reason I became a teacher. To help children grow up with a sense of responsibility for the planet.

It is very good to have RESPONSIBLE commercial whale watching tours. They not only educate the public, but they can very clearly inspire them as well. We should encourage those companies that operate responsibly.

It appears to me though that their should be an increase in funding to enforce the laws already imposed and decrease irresponsible activities.

A serious, committed effort should be made to restore salmon runs and habitat, and protect to water quality of the San Juan Islands.

Thank You,

Dan Bechtold
17720 NE Fairview Dr
Dundee, Oregon 97115

Subject: Whale watch boats need a heavy hand
From: MaryBobnLola <marvista@rockisland.com>
Date: Thu, 20 Aug 2009 07:28:23 -0700
To: Orca.Plan@noaa.gov

NOAA
orca.plan@noaa.gov

I believe that:

-we should maintain a 150 yard buffer zone from the Southern Resident Killer Whales (orcas).

-there should be a ¼ mile "No Go Zone" on the west side of San Juan Island for motorized craft only when whales are present.

-I LIVE ON THE SOUTHWEST SIDE OF SAN JUAN ISLAND AND VERY VERY FEW COMMERCIAL WHALE WATCHING TOUR BOAT OPERATORS GO BY THE RULES! THEY CONSTANTLY HARRASS THE WHALES BY SETTING THEMSELVES UP WHERE THEY KNOW THE WHALES WILL BE GOING BY AND WAIT FOR THEM. THEY CONTINUE TO HOP SCOTCH AND FOLLOW THE WHALES. THEY SET THEMSELVES UP OVER AND OVER AGAIN. THEY DO NOT KEEP A PROPER DISTANCE AND MANY TIMES EVEN GET BETWEEN THE LAND AND THE ORCAS.

- funding for enforcement should be increased to ensure laws are obeyed. Make the fines large enough that it will help pay for the enforcement. I believe that if you give out a few tickets then maybe the tour boats will begin to "play by the rules." As it stands now, they know that there is no enforcement so they blatantly ignore all the rules. They know where Sound watch is and they behave accordingly. **Enforcement is the key; hit them where it hurts (the pocketbook).**

- An all-out effort should be made to restore salmon runs and habitat

-an all-out effort should be made to reduce toxins and improve water quality of the Salish Sea

please feel free to email or write if you have any questions.
Thank You

Signed,
Mary Elford
1601A False Bay Dr.
Friday Harbor, WA 98250

August 20, 2009

Subject: Comments to the proposed regulations to protect killer whales in Washington State from the effects of various vessel activities

From: jay bennett <jayjulie@bendbroadband.com>

Date: Sat, 22 Aug 2009 11:42:51 -0700

To: Orca.Plan@noaa.gov

I am a regular visitor and recreational fisherman to the No-Go Zone in the proposed regulation. I have no issue with protecting the orca's but I do believe existing regulations by federal and Washington state are adequate regarding harassment and proximity to these mammals. I, however, have very strong objections to the rule prohibiting recreational boaters and fishermen from the No-Go Zone, yet permitting tribal and commercial fishermen to use the area. The purpose of the rule, as I understand it, is to protect killer whales from interference and noise associated with vessels. Am I to understand that commercial and tribal fishing vessels do not interfere and make noise? In my view, if you want to meet the purpose in the No-Go Zone then restrict ALL vessels. This will serve the mammals well, it will make enforcement far easier, and it will avoid the potential conflict where definition of "commercial fishing" can be avoided. Moreover, I believe it is long overdue for the NW Indian Fisheries Commission and their tribal members to come on board with community credibility by complying with science by honoring the need to avoid these mammals and back away from the argument so widely used on the basis of the Boldt decisions (usual and accustomed grounds and stations). Surely, the tribes can honor that small coastline stretch to protect these whales.

Jay Bennett
Bend, OR

Subject: Comments on "no-go" zone off of San Juan Island
From: Bill Weissinger <bill@sanjuanlaw.com>
Date: Mon, 24 Aug 2009 17:53:27 -0700
To: Lynne.Barre@noaa.gov

Dear Ms. Barre:

I own waterfront property along the proposed "no-go" zone off of San Juan Island. I see first hand the source of the problem.

1. Whale watching boats from Canada are the biggest problem. To look for whales, I look for whale watching boats, and the Canadian boats predominate.
2. Next are other whale-watching boats.
3. Next are general marine power boats.
4. Next are sail boats.

Some boats are basically never problems:

1. kayaks
2. boats that are fishing.
3. small boats (think here open boats of 18' and under)
4. I have a 12' aluminum boat: such boats are never problems.

These boats should be exempted by the regulations.

In addition, property owners should be allowed general marine use of their property. I should be able to launch a kayak or my aluminum skiff from my property, and use it to fish or sight-see within the ½ mile limit, without violating the rule.

In summary, please revise the rule to (1) allow property owners within the zone in question to use the waters within the ½ mile zone, so long as not for commercial purposes; and (2) exempt kayaks and other boat traffic that doesn't have a material adverse impact on whales.

If I can't use the waterfront in front of my own house, my property values will decline substantially. They've already declined enough! Please revise the rule.

Sincerely,

Bill Weissinger

Sent by:
William J. Weissinger
bill@sanjuanlaw.com
telephone: 360-378-6234
fax: 360-378-6244
www.sanjuanlaw.com

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Subject: Comments on proposed orca avoidance regulations
From: Andrew Palmer <apalmer@olympus.net>
Date: Wed, 02 Sep 2009 06:58:01 -0700
To: Orca.Plan@noaa.gov

I fully support the "no go zone" proposal for the west side of San Juan Island for all vessels. With regard to the 200 yard limit when in the vicinity of orcas elsewhere, I would urge the following modification. For vessels under way with sail power only, I suggest the language be modified to state that "vessels under sail power only will make reasonable effort to avoid close approach (within 200 yards)".

This is consistent with accepted rules of the road that recognize that sail powered vessels have certain restrictions (wind speed, wind direction, and boat speed) that prevent them from having the maneuverability to always avoid a close encounter. I personally have experienced this problem when sailing my boat in Admiralty Inlet when a pod of orcas was present. I did try to maintain a good buffer between my boat and the orcas, which were very active, but I could not outrun them or change direction enough to avoid them coming closer to the boat than 200 yards.

Thank you for the opportunity to comment.

Andrew Palmer
121 Raven Road
Port Townsend, WA 98368

Subject: Re: Proposed Killer Whale Vessel Regulations

From: Janet Sears <Janet.Sears@noaa.gov>

Date: Tue, 28 Jul 2009 10:57:08 -0700

To: Terry Gowler <terry.gowler@teamcorporation.com>

CC: Orca.Plan@noaa.gov

Terry - Thank you for your input. I'm copying the comment e-mail on this reply so your comments will be included. ~ Janet

Terry Gowler wrote:

Janet,

I appreciate the update. I think there is one element missing in this that is just as important as distance, that of noise. I have seen tour boats with 3 large outboard motors gunning their engines to move or leap frog to the next location to view the whales. Sound travels better in water than air and if I can hear this engine noise from the beach the whales can hear it even louder. The sound of these revving props in the water and the boats pounding in the waves can create loud underwater noise. If you have ever been swimming in a lake or sound where there are power boats you can hear this. This effects their hunting and eating habits as well their prey. I've seen this done with big diesel tour boats and small runabouts. Its full throttle after the whales pass to beat them to the next legal vantage point ahead of their path. Speed limits within a quarter mile distance from the whales to limit the noise should be implemented as a safeguard as well as distance. Both are important. What that speed limit should be I do not know, that's for the experts but the situation does exist. Please feel free to forward this to any interested policy makers.

Thank you for your time with this observation.

Terry Gowler.

-----Original Message-----

From: Janet Sears [<mailto:Janet.Sears@noaa.gov>] Sent: Tuesday, July 28, 2009 9:51 AM

Subject: Proposed Killer Whale Vessel Regulations

Apologies for any duplicate notices. You commented on our advance notice

of proposed rulemaking for potential vessel regulations. We've just released the proposed regulations and wanted to ensure that you're aware

of them.

Fisheries Service Proposes New Rules to Safeguard Puget Sound's Killer Whales
Endangered Whales Could Be Given Wider Berth, Safety Zone

NOAA's Fisheries Service is proposing new rules on vessel traffic aimed at further protecting Southern Resident killer whales in Washington's Puget Sound. These large marine mammals, the subject of intense curiosity from kayakers to tourists crowding the decks of commercial whale-watching vessels, were added to the Endangered Species list in late 2005.

The proposed rules would prohibit vessels from approaching any killer whale closer than 200 yards and forbid vessels from intercepting or parking in the path of a whale. In addition, the proposed regulations would set up a half-mile-wide no-go zone along the west side of San Juan

Island from May 1 through the end of September where generally no vessels would be allowed.

"The idea here is to give these remarkable animals even more real, meaningful

protection," said Barry Thom, acting head of the agency's Northwest regional office. "Without it, we would undercut the hard work we are all doing to recover the species by improving the sound's water quality and recovering salmon, the killer whale's primary food."

The fisheries agency said there would be exemptions to the rules for some vessels, including those actively fishing commercially, cargo vessels travelling in established shipping lanes, and government and research vessels. The no-go zone would also have limited exceptions for land owners accessing private property adjacent to it.

While Southern Resident whales are also threatened by degraded water quality in the sound and lack of prey, primarily salmon, biologists have

known for years that vessel traffic may be tied to their low numbers.

The whales, which depend on their highly sophisticated sonar to navigate

and find food, can be affected by underwater noise from boats and disturbed by vessels that approach too close or block their paths. The population peaked at 97 animals in the 1990s and then declined to 79 in 2001. It currently stands at 85 whales. The agency's recovery plan, released in early 2008, calls for actions to reduce disturbance from vessels.

If adopted, the earliest the rule would take effect would be May 2010. The agency said it will hold public meetings Sept. 30 in Seattle and Oct. 5 in Friday Harbor for people to learn more about the proposed rules. The public comment period on them closes Oct. 27, 2009.

See the Web at

<http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Killer-Whales/ESA-Status/Orca-Vessel-Regs.cfm> for more information.

Subject: San Juan "No Go" Zone
From: Brian Leonard <brianl@dillonworks.com>
Date: Fri, 31 Jul 2009 12:56:37 -0700
To: Orca.Plan@noaa.gov
CC: brian_leonard@comcast.net

To Whom It May Concern:

I am an active sports fisherman, member of PSA, and soon-to-be member of CCA. I am also a property owner on, ironically enough, Orcas Island, and respectfully submit my comments on this issue for your consideration:

I am vehemently opposed to this, if ANY boat traffic is allowed. PERIOD. If part of the issue is the noise generated by boats, then no boats, including tribal and commercial vessels, should be allowed in the area. Commercial boats are typically louder than most recreational vessels – why would ANY be exempt?

If you make this area inaccessible to ALL boat traffic-you will have my full support. If you are selective, and prejudicial about boat traffic in this area, I will be adamantly opposed to this idea.

Please don't hesitate to contact me if you have any questions, or would like to discuss this further.

Brian Leonard **Director of Sales & Marketing**

brianl@dillonworks.com

Dillon Works! Inc.
11775 Harbour Reach Drive
Mukilteo, WA 98275

Phone: 425.493.8309

Fax: 425.493.8310

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Subject: Orca Plan comments

From: Ryan Hunter <rhunter@montanasky.net>

Date: Mon, 03 Aug 2009 17:44:42 -0600

To: Orca.Plan@noaa.gov

NOAA,

As a former kayak guide on the west side of San Juan Island and a dedicated environmentalist I agree with the bulk of NOAA's proposed regulations for the recovery of Orcas in Puget Sound. I have to admit, however, that the application of the no-go-zone regulations to all kayakers seems excessive and misplaced.

As a guide, I always stopped paddling when Orcas were in the vicinity (several hundred yards at least) and observed non-harassment guidelines in place at the time. The Orcas did not seem to mind us at all and even appeared to enjoy interaction with humans.

It is apparent that motorized vessels impact echolocation, that the chasing and harassing the Orcas - even in kayaks - can impact their behavior, and that large numbers of vessels (motorized or not) in the vicinity of Orcas could affect their behavior, but in my experience a small number of stationary, non-motorized vessels (observing non-harassment guidelines) have no significant impact on the Orcas.

That said, I believe there is a more careful way to craft these regulations. A permitting system should be established to allow only a certain number of non-motorized vessels in the proposed no-go-zone at a certain time. Further, federal authority and funding should be provided to Soundwatch to enforce non-harassment regulations with steep fines. Third, more focus should be given to cleaning up pollution in Puget Sound and recovering salmon runs, the likely two most significant factors contributing to the decline of Orcas.

One last point is worth making. Applying the no-go-zone to all kayakers would put the local kayak tour groups out of business. It is not only unsafe, but also not any fun to be kayaking more than a half mile beyond the shoreline. One of the benefits and real joys of kayaking is the ability to paddle into small coves, between rocks, and close along the shoreline to see starfish and other small shoreline details. Moreover, the kayak companies educate tourists from across country about the beauty of the Orcas, the threats they face, and the need to save them. As NOAA is well aware, any recovery effort is doomed to fail without public support, and kayak tours on the west side of San Juan Island are an important part of building public support, so their commercial demise will jeopardize recovery efforts.

Ryan Hunter
311 8th St. W.
Whitefish, MT 59937

Subject: Revised NOAA regulations

From: Kerwin Johnson <kerwin@islandersinsurance.com>

Date: Tue, 11 Aug 2009 11:54:36 -0700

To: Orca.Plan@noaa.gov, Lynne.Barre@noaa.gov

CC: angie@crystalseas.com

To Whom It May Concern,

As a long time island resident, a past Whale Museum Board Member, and a local business person I am curious as to the degrees of regulations being discussed. Yes, our whales are endangered, no doubt, but I am not certain that the kayaking industry should be shouldering the brunt of these proposed new regulations.

I have always been concerned about the fact that the whales seem to get no rest. I have been a financial supporter of the Soundwatch program for years. I would like to see that rather than you destroy an industry that you take a look at how we can provide more quiet time for the whales.

I would like first and foremost, to see that Sound Watch have more teeth in its education process. They are a model that has been used over and over regarding educating the boating public about the proper ways to co-habitate with whales. If they had the teeth to impose fines for those who do not follow the "whale wise" rules - I think many of the problems would go away. Additionally, repeat offenders (I witnessed Canadian whale watch boats hopscotching a couple of weeks ago while I was out in my private kayak) would be fined heavier and heavier and ultimately lose their licenses. Yes, I believe all operators should be licensed as well as the number of licenses should be limited. Again, another enforcement issue but it has worked elsewhere.

What I mean by giving the whales some rest would be to make it illegal to get within 1/2 mile of any whales prior to noon each day. It would give the whales each morning off. After noon, the 1/2 mile limitation for power boats to be off shore is a great idea. Regarding kayaks, this is an unreasonable distance to be away from shore. I would suggest that kayaks would need to be within 100 - 200 yards of the shore (this would allow the whales to pass by without interruption as most often they are further off shore) or they would have to be outside the 1/2 distance as the other boats. It would give a safe option for kayaker's - both private and commercial.

I do believe that whatever plan is chosen, if there is not enforcement - and dollars available for that enforcement - there is not need to institute these rules.

thank you for listening and lets all be "whale wise" - better yet - environmentally wise.

Kerwin Johnson

Agent

Phone: 360-378-2195

Fax: 360-378-5948

Subject: Re: Fw: Proposed US Rules for Whale Watching
From: George Mercer <jgmercer@shaw.ca>
Date: Fri, 14 Aug 2009 17:59:05 -0700
To: Orca.Plan@noaa.gov, Orca.Plan@noaa.gov

Alternative suggestions on regulations: limit the time and/or days tour boats can operate; limit the number of tour boats licensed, restrict the number of boats on the water, push changes to be international and apply in Canadian waters.

This summer I have observed on 2 different occasions tour and private boats in the Active Pass /Mayne Island area watching whales and while the rules may have been followed the poor animals seemed totally harassed. Active Pass is tight and I know the ferries don't have a lot of room to manoeuvre, but there were boats lined up on either side of the Pass and at the opening, a ferry coming down the centre and private boats moving through the pod. When you see things like that happen on regular bases - what chance do they have. The tour boats are essentially herding them by being on three sides - I don't know how they can feed or communicate with noise and distraction. With all of the challenges the Orca's face, human harassment should not be one of them - they need down time, which is why I have suggested alternate limitations.

Good luck with your initiative, please push the Canadian government to follow suit.

Janet Mercer

>

The National Oceanic and Atmospheric Administration is proposing
> tougher new rules for Southern Resident Killer Whale whale
> watching. They are
> seeking public comment at the following site:
>
> [http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-
> Porpoise/Killer-Whales/ESA-Status/Orca-Vessel-Regs.cfm](http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Killer-Whales/ESA-Status/Orca-Vessel-Regs.cfm)
>
>
> Here is a fact sheet on the proposed changes:
> (See attached file: 07-28-2009.pdf)
>

Subject: Protection for Orcas

From: uschie15@aol.com

Date: Fri, 13 Nov 2009 20:37:42 -0500

To: Orca.Plan@noaa.gov

I am writing to respectfully urge NOAA to implement new laws to restrict boat traffic around orcas during whale watching:

1. The 200 meters should be 400 meters as recommended when companies are watching nursing orcas.
2. "No Whale Watch Zones" should be established.
3. Time limits of maximum 30 minutes should be put into operation.
4. Whale watching should be halted when the weather is bad (during fog and stormy conditions), so that orcas do not get hit by boats.
5. Government licensing of whale watch companies, as well as training of whale watch operators.
6. Governments should promote land-based whale watching, which is popular in other parts of the world.

These magnificent animals deserve to live peacefully and we should respect their environment. Stricter measures to keep them safe should be put into action now.

Thank you for your time.

Ursula Pelka
6205 Idylwood Lane
Edina, MN 55436

PUBLIC SUBMISSION

As of: February 01, 2010
Received: October 27, 2009
Status: Pending_Post
Tracking No. 80a4c947
Comments Due: January 15, 2010
Submission Type: Web

Docket: NOAA-NMFS-2008-0327
Protective Regulations for Killer Whales in the Northwest Region under the Endangered Species Act and Marine Mammal Protection Act

Comment On: NOAA-NMFS-2008-0327-0001
Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act

Document: NOAA-NMFS-2008-0327-DRAFT-0027
Comment from Holly Brauchli

Submitter Information

Name: Holly Brauchli
Address:
Seattle, WA,

General Comment

Please see attachment.

Attachments

NOAA-NMFS-2008-0327-DRAFT-0027.1: Comment from Holly Brauchli

NMFS, responding to cries of the public, appropriately listed the Southern Resident orcas as an endangered species in 2005. Having listed them, NFMS now is duty-born to enforce regulations which prevent the further endangerment of the species. The proposed regulations to protect the orcas, however, do not fulfill the goals of the ESA; indeed they do not even solve the problems enumerated in the proposal itself. Specifically, the proposed regulation which limits the distance allowable between a vessel and an orca does not address the issues which need to be resolved as required by law. Therefore, I object to this proposal and request that an alternative be adopted.

The proposal begins with a clear illustration of NMFS's duties at law.¹ As listed a species, the orcas are protected by the Endangered Species Act. Among other actions, the ESA prohibits agency action which would result in the "take" of an endangered animal.² The Act defines take as to "harass, harm, pursue, hunt, shoot, wound, kill, [or] trap."³ The whales are also protected by the Marine Mammal Protection Act,⁴ which orders NOAA and its subsidiaries not to commit a take against marine mammals.⁵ That Act defines "take" to include any pursuit, torture, or annoyance which either has potential to injure or kill marine mammal, or causes disruption of behavioral patterns such as migration, breeding, feeding, breathing, nursing, or sheltering.⁶ Last but not least, NOAA has expanded regulations beyond the MMPA definition of take to "negligent or intentional operation of an aircraft or vessel...which results in disturbing or molesting a marine mammal."⁷ The result of all these regulations is a clear positive duty to actively promote the safety of the orcas in a way which will provide as much protection to their physical and behavioral well-being as possible.

The problems which fall under the jurisdiction of the laws above can be divided into two groups. The first group contains issues relating to actual physical harm, maiming, or death of the orcas. Incidents which fall into this category include a 2005 collision with a whale which caused injury which subsequently healed, reports of a female whale with a series of deep gashes along her backbone, and the tragic death of the very social orca L98 from a collision with a tugboat.⁸ The second category of issues involves the behavioral disruption of animals. Most of these behavioral alterations relate to the sounds of the vessels interfering with echolocation⁹, used for communication as well as orientation.¹⁰ The distress caused by the sound itself also has a clear effect on the whales, as noted by their sudden behavioral changes when ships come nearby.¹¹

Having done an excellent job of laying out its legal duties and the problems which could be remedied by regulation of vessels, NMFS fails at the implementation of rules which would

¹ 74 FR 37674, 37676-7 (July 29, 2009).

² 16 U.S.C. § 1538.

³ 16 U.S.C. § 1538(a)(1).

⁴ 16 U.S.C. § 1361 et. seq.

⁵ 16 U.S.C. § 1362.

⁶ 16 U.S.C. § 1362(3)(13).

⁷ 50 CFR § 216.3 (2009).

⁸ 74 FR 37675

⁹ *Id.*

¹⁰ http://en.wikipedia.org/wiki/Animal_echolocation

¹¹ 74 FR 37675

actually resolve the problems. First, the 200 yard regulation fails to prevent the actual physical harm or death of the animals. Noting that collisions have occurred in the past, the agency then creates a regulation which would only affect a portion of the vessels which the orcas could collide with. The scope of the rules would apply to all vessels, motorized or un-motorized – so long as they are not government vessels, cargo vessels in the shipping yards, research vessels, fishing vessels actively engaged in fishing, or vessels “limited in their ability to maneuver safely.”¹² How such wide exceptions would reduce collisions to the point of preventing takes is beyond me. It seems that the regulation only extends to whale watching vessels, which would have an inherent self-interest in not maiming the whales which are their source of income. Meanwhile, all other boats – notably the ones known to cause injury by collisions – may continue with no changes in their behavior. It is rather ironic that the death of L98, the orca referred to in the proposal itself as a justification for the rule, was caused by a tugboat which as a government vessel, would not be affected by the regulation. There is little need to mention the damage capable of being caused by vessels “limited in their ability to maneuver safely.” One questions why those ships are even water-bound in the first place. There is no evidence that this regulation would be constructive in any way towards elimination or even considerable reduction of collisions with orcas.

Second, the 200 yard regulation fails to remedy the affects which vessels have on orca behavior. This is first seen in the agency's discussion of the decision to choose a 200 yard distance for its rule: noting that studies show that extreme distress exists from ship sounds within 100 yards, while little to no stress from sound exists at a 400 yard distance, the agency apparently compromises near the center of the two, claiming that the value of whale-watching would be ruined were people forced to look at the beasts from a 400 yard distance.¹³ This is ridiculous on several levels, the first being the complete failure to list evidence that there is any significant reduction of distress at a distance of 200 yards. To assume that the curve of reduction of stress to reduction of sound is a linear one is naïve. If the animals are unable to echolocate from a distance of 100 yards, it is difficult to imagine that they will have sudden clarity with the addition of another 100 yards.

In addition, a repetition of the ludicrous outcome due to vessel exceptions arises. If all vessels fell under this regulation (the agency even claims that kayaks should be regulated because of their ability to “startle” whales),¹⁴ it might be a good thing. Yet it is difficult to imagine what good halting ferries and kayaks will be when giant Hanjin ships may blast through at full speed and interfere with the orcas' orientation anyway.

The agency attempts to make a point regarding vessel safety. Government boats clearly are tasked with important jobs, and requiring them to make sudden and unpredictable movements would increase the chance of collisions as well as pose safety hazards. What I fail to see is the connection between the government's missions and any negative affect imposed by the rule. The agency speaks of increased hazards and risks for the vessels and the orcas when creating these exceptions; not of the impairment of government activities. The argument reads as:

¹² 74 FR 37679

¹³ 74 FR 37678

¹⁴ 74 FR 37679

because these regulations could increase hazards to government vessels and to the whales themselves, government vessels should be excluded from these regulations. Clearly, if such hazards were created, the agency shouldn't be promulgating them in the first place as they would clearly go against the duties which it holds under the MMPA or ESA.

As well as detectable behavioral agitation, studies have shown that not only do whales have more difficulty finding each other, obstacles, and food in the wake of vessel sounds, but their dietary needs increase by 20% because of the added exertion from these difficulties. As stated in the proposal itself, another pressing danger on the orcas is the decreased availability for food – a problem which will apparently take many years to resolve.¹⁵ This regulation does very little to address this problem, especially considering the impressive number of ships exempted from it.

My criticism of these rules would be less poignant were there no other possible alternatives. However, it seems that they are available within the four corners of the proposal itself. A possible regulation which I noted was the option of mandating a seven knot-per-hour limit when within 400 yards of the whales.¹⁶ Despite the fact that this was not considered as an alternative in the proposal, it was evaluated in a draft environmental assessment.¹⁷ The only negative thing which the agency felt to mention about this regulation was that it would be difficult to implement without vessel tracking technology.¹⁸ I wonder why this is a problem: first, in this day and age it seems that vessel tracking technology would be a common thing, especially considering heightened security after the 9-11 attacks would indicate a more careful eye on all vessels within our jurisdiction. Second, I am unsure of how a 200 yard limit would be effectively regulated without similar technology. Surely, NMFS does not expect regulation to be that, once a boat veers close to a whale, an enforcing vehicle would then chase that vessel down.

Meanwhile, a regulation such as this might have some strengths. The slow movement of the ship would give the whales plenty of time to steer themselves clear of any dangerous propellers. I also understand that slower speed lowers the sound wave frequencies emitted by the vessel to a level which does not interfere with echolocation or orca behavior. I am sure the owners of vessels may also appreciate not having to come to complete stops. In addition, the fact that these regulations would not be quite as annoying would indicate that fewer exceptions would be needed, therefore making the regulation more realistically universal.

I am sure there are other similarly viable options of enforcement which are more practicable, and also are less awkward in execution so that one could rationally expect all ships to comply with the standards set. The purpose of this comment is to respectfully indicate that the proposal here does not accomplish what it sets out to do, and therefore does not fulfill the obligations which NMFS holds under law.

Sincerely, Holly Brauchli

¹⁵ 74 FR 37680

¹⁶ 74 FR 37678

¹⁷ *Id.*

¹⁸ 74 FR 37682

PUBLIC SUBMISSION

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

Comment On: NOAA-NMFS-2008-0327-0001

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

Document: NOAA-NMFS-2008-0327-DRAFT-0019

Comment from Bob Clemence

Submitter Information

Name: Bob Clemence

Address:

14223 236th PL SE

Snohomish, WA, 98296

Email: bob.clemence@philips.com

General Comment

See attached.

Attachments

NOAA-NMFS-2008-0327-DRAFT-0019.1: Comment from Bob Clemence

I've looked at your proposed rules to restore the southern resident pods of Orcas and I'm very disappointed. I've been to the San Juans for several years watching the Orcas and I've talked to several Orca experts. They and I agree with your assessment of the main factors in the decline of Orca populations.

1. Lack of food
2. Pollution, specifically high levels of PCBs.
3. Vessel traffic

What I'm very disappointed in is that your proposed rules focus on the third item. The experts I have talked to agree that #1 (lack of Salmon) is by far the most critical, followed by #2 (pollution) and that #3 (vessel traffic) is a distant third.

Of course #1 and #2 are politically very difficult to tackle so you've taken the easy way out and focused on the item easiest to address with the lowest benefit, especially your ban of kayaking on the west side of San Juan Island. And I'm not sure it will be beneficial at all.

Under vessel traffic you list three issues that potentially harm orcas:

1) Noise pollution – Your restrictions will do little to nothing regarding this because sound travels extremely well under water. Moving vessel traffic to a ½ mile off-shore won't do much. To really make an impact you should ban all motorized boats in all of Haro Strait. When freighters go through you can clearly hear them no matter where they are in the Strait. I can only imagine how loud they are to the orcas underwater.

Banning kayaks makes no sense for this because they don't make noise. In fact some potential kayakers will end up in motorized whale watching boats increasing the overall noise level.

2) Possible collisions – For motorized boats, this is a possible risk but mostly for those which are traveling at a high rate of speed. Whale watching boats are pretty good at going slow around the whales. And most of the whales travel more than a ½ mile offshore anyway where the non-whale watching boats will travel at high rates of speed.

Again banning kayaks makes no sense since the chance of a kayak injuring a whale is non-existent.

3) Creating obstacles – You cite quite a few studies documenting the change of behavior when boats in general are around the orcas ((Kruse 1991; Kriete 2002; Williams *et al.* 2002a, 2002b, 2006, In Cress; Foote *et al.* 2004; Bain *et al.* 2006, Lusseau *et al.* In Press) but you only refer to one study documenting change of behavior of orcas when kayakers are around so I'm hardly convinced of the kayak's harm to the orcas. Without looking at the one study in detail it's impossible to comment specifically on it. But in my observations, kayakers tend to give the

orcas plenty of room and are quite respectful of their space. Now I admit this wasn't always the case. 15 years ago kayakers, and boaters in general, were quite aggressive in approaching the orcas. But by better education, this is no longer the case.

Again, many if not most orcas travel more than ½ mile off shore so these changes would have little impact except for kayakers who present the least possible harm to the orcas.

I've also heard it said that kayaks scare the salmon down deeper. I would like to see the scientific evidence to show that actually occurs significantly enough to affect the orcas feeding patterns.

Actually the boats I've observed harassing the whales the most were so called research vessels. I've observed these boats seemingly traveling right on top of the orcas. These will conveniently be exempt from your new rules.

In summary, you proposed rules will do little to actually benefit the orcas, but will benefit your careers because now you can say you did something. And by banning kayaks, you've forced kayakers who want to observe the whales to now go on motorized whale watching boats, increasing their traffic. And you've also done one other harmful thing by banning kayaks – you've eliminated many possible orca advocates by removing their access to see these wonders of the ocean.

Respectfully, Bob Clemence

Subject: Public Input

From: Mike Sear <sunspot@rockisland.com>

Date: Sat, 02 Jan 2010 13:23:45 -0800

To: Orca.Plan@noaa.gov

My name is Michael F. Sear, I have been a resident of Washington State for 42 years and my current address is on San Juan Island, Friday Harbor. I spend between 400 and 500 hours on the water in vicinity of the San Juan Islands throughout the year. I have reviewed the Federal Register Vol. 74, No. 144/ Wednesday, July 29, 2009/ Proposed Rules and offer the following comments / input.

1. In principle I support item (8) Proposed Action for the incorporation of Alternatives 3, 5 and 7, page 37683 and the need for protection the Southern Resident Killer/Orca whales. I offer the follow comments for NOAA's review and consideration before approval of the Order.

2. Based on the primary purpose of the proposed regulation an exception for commercial fishing (treaty and non-treaty) within the 1/2 protective zone or approaching within 200'and/or parking in the path of whales is in direct conflict with the defined purpose. Having witnessed commercial fishing off the Westside of San Juan Island it is not Incidental Take but a planned event within the Critical Habitat. More rationale and or science needs to be stated in the proposed rules on the impact of treaty and non-treaty commercial fishing.

3. Under Scope and Applicability section, page 37679, paragraph titled Exceptions: "(4) fishing vessels actively engaged in fishing" could be interrupted to include legally licensed Sport Fishing Vessel actively engaged in fishing. Reference to vessels lawfully engaged in Sport Fishing and the impact if any to incidental take has not been addressed by the proposed rules.

4. Under Rationale for Regulations section, page 37681, the 4th complete paragraph states in part "The current infrastructure , however, includes enforcement,. monitoring, and stewardship". I take exception to the statement "includes enforcement"without facts and data to back-up the statement. Dedicated, ongoing enforcement based on real-time observations by enforcement officers at the County, State or Federal level appears to be minimal or non-existent. Although isolated enforcement has taken place it seems for the most part ineffective and inconsistent. I believe it is imperative that the current enforcement or lack there of including funding should be reviewed and address in detail before the Proposed Rules are approved.

5. In ref. to Alternative 5, page 37683, the perpendicular boundary lines of the Protected Area, No-go zone at Mitchell Point and Eagle Point are positioned in an area of strong tidal movement. As a result the significant number of Sport Fishing vessels that frequent these two points, especially Eagle Point, will find it very difficult to avoid encroachment into the no-go zone when turning out or in. Consideration of a 200 meter or greater turning zone at these two boundaries could and/or would reduce unintentional encroachment into the proposed No-go zone.

NOAA's review and consideration of my comments to the proposed rule making is appreciated,

Michael F. Sear
216 Marina Lane
Friday Harbor, WA 98250

(360) 378 9742

Subject: SRKW rules

From: Erick Peirson <erick.peirson@gmail.com>

Date: Thu, 14 Jan 2010 10:17:12 -0800

To: Lynne.Barre@noaa.gov

Hi Lynne;

Well, I had really hoped to make this pitch in person, but as I've been reminded the comment deadline is closing I'd best write instead. This will be a bit brief, as I'm in Ireland at the moment and have little connectivity. but you'll get the idea.

To introduce myself: I drive for a commercial tour-boat operator, and have been in the industry for about 5 seasons. I have a B.S. in biology, and have conducted bioacoustic research on killer whales. When it comes to the proposed rules now on the table, I frankly don't have a dog in the fight. I'm far more interested in the "how" than the "what" when it comes to policy of any kind. Also: I'm not asking for money.

I had a great chat with Dawn Noren in December about the present state of affairs regarding the new proposed rules. We talked a bit about her research, and the "way forward" for SRKW conservation. In that conversation I pitched an idea that I believe has the potential to fill a critical gap in this circumstance.

You are the one sifting through all of the feedback from the last round of comments, so I won't belabor the details of those reactions, except to observe that very few objections addressed the content of biological research applied in the rule-making process. It seems to me that there is now a huge sociopolitical barrier sitting between the most recent biological results (e.g. Dawn's behavioural work) and their application to a successful conservation strategy for the SRKW population.

I do not believe that simply increasing "public education" is going to unseat this barrier. There are two reasons for this. First, the majority of objections to the rules are not really about the content of the science. Second, the technocratic approach insults the deep-seated American cultural tradition of adversarial jurisprudence. Trying to educate your public does not buy trust, and does not satiate the need for public adversarial vetting of the complex economic and biological factors at play in this situation.

Solution? Citizen panel. Governments around the world, from municipalities to nations, have used citizen panels to successfully produce policy-oriented recommendations. These panels are composed of lay persons, usually with little background in the topic at hand, that act as a kind of jury. An advisory panel, composed of policy-makers & stakeholders (whale watch operators, sport fishers, biologists, OrcaRelief activists, whomever), act under the coordination of a professional mediator to provide this panel with a balanced and robust selection of evidence (presentations by biologists, testimony from SoundWatch, etc). The panel meets over a series of weekends, perhaps, to hear evidence and to deliberate. These deliberations lead to the production of a series of recommendations concerning the issue at hand. Note that these recommendations are non-binding!

Prima facie, the value of this exercise is to tap the reasoning power of relatively unbiased people to produce workable solutions. But the REAL value to us in this situation is to bring the public -- both stakeholders and spectators -- into direct contact with the biological and economic factors that underlie the proposed rules. If your rules are sound, then this entire proceeding will likely result in no change

to them. Or maybe the panel will come up with some good ideas that are incorporated into the rules. Or maybe the panel issues a recommendation that you don't agree with, in which case you proceed as you'd like given the explicitly non-binding nature of the recommendations.

But what ever the case may be, you will have given the best scientific evidence an audience, and you will have sated the craving for a public and balanced vetting of the facts that a simple comment-session cannot provide.

Logistics include finding a mediator who is experienced in these proceedings, which will not be difficult, and securing grant money to pay for it. There are a number of organizations in the United States that fund these kind of proceedings. If I had prepared this e-mail properly I would have some links for you, but alas I'm on the road and don't have my bookmarks handy. If I have successfully piqued your interest we can delve into this further. This proceeding could be prepared in spring, and take place throughout the summer, hopefully keeping you on schedule.

If this is something you're interested in, perhaps we could schedule a phone conversation and I'll try to find a place from which to call you on Skype.

Happy new year!

Erick

--

erick.peirson@gmail.com

<http://epeirson.blogspot.com/>

Subject: Comment on Proposal Rule for Orca
From: Gary Luhm <gluhm@comcast.net>
Date: Fri, 16 Oct 2009 14:23:50 -0700
To: Orca.Plan@noaa.gov

Dear Sirs

My name is Gary Luhm. I'm a Kirkland, WA resident, sea kayaker and photographer, and also the Conservation Chair of the Washington Kayak Club. I've been to San Juan Island on shore, on a commercial whale-watch vessel and by kayak to see the Orca in past years. All are excellent ways to experience the Whales, and I would not want the public to lose that opportunity unless the reason was truly justified.

I just read through the proposed regulations, and I have a few objections, specifically regarding kayakers. The proposed rule text indicates the biggest concerns are noise that masks echolocation and communication, and, to a lesser degree, collision by boats. Documentation to support this is provided or cited. The proposal goes on to restrict kayaks as well as power boats, however, reasoning that kayakers may "startle whales", "be less likely to follow rules", "may over-estimate distance because of their low profile", "may assume that they're less likely to disturb wildlife", and based on a dolphin study, cause a "response . . . greater for kayaks than for motorized vessels", and concluding that "it is appropriate to protect killer whales from different types of vessels."

I am all for protecting the Orca, but I find the arguments listed here for restricting kayakers specious. It's a leap to go from emphasizing noise and collision interference from motorized vessels, and then lumping non-motorized kayakers in with such vessels. The science doesn't support it. Too, it seems kayakers—less of a problem—are being more severely restricted. The "no-go" zone effectively means kayakers would be banned from the area, as few kayakers will venture out beyond the ½ mile zone in boat-traffic-thick Haro Strait. It also mean the San Juan County Park at Smallpox Bay, a popular launch and destination, would be off limits to kayakers.

I don't have a problem so much with a 200 yard rule. However, the 200 yard rule, when coupled with a curtailment of "park and wait", is a diminished whale-watch experience, and over time that may reduce the number of whale advocates because no one will get a "close encounter" except by luck or by disobeying the rule. I therefore support allowing the "park and wait", but urge a requirement that motorized craft, especially commercial whale-watch vessels, shut off the engine for a minimum 10 minutes following a maneuver, with no restart until the whales have again cleared 200 yds. I've had that experience whale-watching in Alaska, and shutting down the noisy engine so you can hear the whales breathe and vocalize was, as one person on board put it, "life changing". It could be a win-win for all.

I'm also opposed to the "no-go" zone, but if implemented I suggest kayakers be exempt in an area inside the kelp line along the shore of San Juan Island. This is similar to kayaker restrictions (which I believe are voluntary) in the Orca habitat zone along Johnstone Strait in BC (not to be confused with Robson Bight, where all vessels are banned). Failing in that, I would suggest allowing non-motorized craft access from the north to the San Juan County Park, again requiring boaters to stay inside the kelp line. In addition, since most boaters will respond favorably if educated, absolutely more should be done with that, including education for kayakers, recreational fishers and commercial fishers.

Subject: SRKW Protective Regulation Comments

From: Monika Wieland <monika.wieland@gmail.com>

Date: Wed, 16 Dec 2009 14:05:05 -0800

To: Orca.Plan@noaa.gov

My name is Monika Wieland, and I have spent summers with the Southern Resident orcas for the last nine years. I have worked as a research intern for The Whale Museum as well as a volunteer on Soundwatch, spent countless hours watching the whales from shore at Lime Kiln State Park, and worked for five seasons as a naturalist for a commercial whale-watching company out of Friday Harbor. I have a BA in Biology from Reed College where my undergraduate thesis, Repertoire Usage of the Southern Resident Community of Killer Whales, focused on orca acoustic communication. I currently have a paper in press with Marine Mammal Science focusing on the increased duration of Southern Resident calls in a period spanning 28 years, and you can find a proof of that paper here: <http://tinyurl.com/ya86quy>. Below you will find my comments in regard to the proposed vessel regulations put forth by NOAA.

- It is clear that the three identified threats to Southern Residents can be prioritized by importance in this order: 1) not enough salmon, 2) toxins in the environment, 3) vessel effects. I understand NOAA is focusing on vessel effects first because it is the easiest issue to tackle in the short term, but it still seems backwards to me, and I wish half as much energy was being focused on talking about salmon issues as is being expended talking about boats. I know this is a discussion about the boat topic only, but as of yet I don't see another forum to encourage immediate action for salmon issues so it seems worth stating here: the boats may be an added stressor to the whales, but until we address the salmon issues we have done nothing to ensure their long-term survival.
- The whole reason we are even talking about the endangered listing of the Southern Residents is because they were designated a distinct population segment, different not only from other types of marine mammals but actually culturally unique from all other groups of killer whales. If the Southern Residents are endangered because of their uniqueness then any decisions regarding their management should be based whenever possible on studies focused specifically on them. I understand that we have to make decisions based on the best available science, but it also important to be transparent about the focal animals in the cited studies and where it makes sense to draw reasonable comparisons to orcas and, just as importantly, where it does not. Most of the peer-reviewed studies cited in NOAA's proposal report the impact of vessels not on killer whales, but on other species such as humpback whales, bottlenose dolphins, right whales, etc. and in some cases the conclusions drawn by NOAA are not the same as the statements made in the journal articles. When using information garnered from studies about other species, the rationale for NOAA's conclusions about Southern Residents from the cited studies should be clearly justified. One particular example is the statement in the proposal about kayakers affecting the whales, which is backed by a citation of a study on the impact of kayaks on terrestrial Steller sea lion haul outs in Glacier Bay, Alaska. In this case, I don't think drawing a conclusion about orcas from this study is appropriate, but I have no idea why NOAA thought their conclusion was valid. I think it is crucial to spell out to the general public how and why scientific conclusions supporting the proposed regulations were drawn.
- There is no strong science supporting the statement that boats are in any way directly contributing to the decline of the Southern Resident population. Research on the local whales has shown some impact of boats influencing surface behaviors and vocalizations, and I understand that NOAA's viewpoint is that any disturbance of an endangered species is a negative one. But we really have to consider not only observed vessel impacts, but the biological significance of any recorded impacts. If whales occasionally tailslap more often when a boat is in close proximity or increase the amplitude of their calls when vessel noise is high, is that really affecting the fitness of these animals? Does it translate, for instance, into them needing more salmon, or being less effective at hunting? Of course we may not have answers to these questions, but they're important to consider. If what is really being advocated here is taking the precautionary approach, that certainly has its

merits, but the proposal comes across as being definitive on these issues rather than explaining the importance of a precautionary approach.

- Kayakers should not be lumped in with other, motorized vessels when making regulations. There have been no studies looking specifically at the impact of kayaking on local orcas, and in reality they are the quietest and slowest-moving of the crafts that are routinely out there with the whales. Closing the westside of San Juan Island to kayaking in the summer months would have huge local economic impacts - not only to kayak companies, but to other local venues such as hotels and restaurants, as well as to the San Juan County Park system which gets a significant amount of money from both commercial and private kayakers that launch from the park on the westside. I believe the economic impact of the proposed regulations was insufficiently considered.

- The most convincing studies of vessel effects on Southern Residents have been acoustic, describing changes in the vocalizations the whales make when boat engine noise is high. These proposed regulations do little to address that issue specifically, especially since the most significant contributors of noise - shipping traffic, which is louder than the noise from whale-watch boats even if the boats themselves are further away from the whales - are completely ignored. In the interest of acknowledging the demonstrated acoustic impact of boats on whales, I think there should be a slow-go zone instead of a no-go zone, which would reduce engine noise but still make this area accessible to whale watchers, recreational boaters, and kayakers.

- One of the biggest issues to consider when implementing new regulations is enforcement. The enforcement for the 100-yard law that was put into place in 2008 has been virtually non-existent. There are often no enforcement boats on the water, and when there are they often end up being part of the problem rather than the solution. Additionally, very few tickets have been handed out, in part because there has been insufficient education so boaters continue to unknowingly commit violations. Before putting new laws in place I think it is essential to develop a plan for an achievable program to ensure trained, competent enforcement that will have a regular presence as well as making sure educating the public is a top priority. Any laws regarding behavior around the Southern Residents should be part of all mandatory boater education programs. Perhaps efforts should be focused towards enforcing the laws we already have in place before we add new laws. Without enforcement, we will only have the negative effects of the regulations on the community, such as the economic impacts, without the benefits of increased protection for the whales.

- Obviously, funding for enforcement is a major issue. The establishment of a permit-based system for commercial whale watchers seems like a logical way both to regulate the industry and raise funds for enforcement. I know this idea has been dismissed due to the infrastructure that would be required to implement it, but it seems we should take the best solution rather than the easiest one.

- In addition to a clear enforcement plan, there should also be a built-in program for monitoring, re-evaluating, and modifying the regulations over time. These regulations should not be the be-all, end-all on this topic but should be a malleable entity open to alteration as more information becomes available.

- On many of the whale-watching trips I work we don't necessarily get closer than 200 yards to the whales, and passengers are still thrilled with these views. While I don't have a problem with the idea of a 200 yard distance regulation, there are two issues I have with this proposal. First of all, it does nothing to address the acoustic impact on the whales, which is the most serious impact demonstrated by the peer-reviewed science. The difference of 100 yards doesn't change much acoustically unless speed is also regulated. Additionally, many of the whale watch boats already operate at 150-200 yards in order to have time to avoid ending up within 100 yards of the whales if they change direction. A 200 yard buffer would require boats to operate at 250-300 yards, and at some point you have to consider the trade-off of a decreased viewing experience with the unspecified benefits of staying a little further away from the whales.

- I think it is important to realize is that no matter how many regulations we put in place, there will continue to be boats near whales. You can regulate people all

you want, but until you can regulate the whales (read: never), they are going to continue doing what they please whether boats are there or not, which means being unpredictable in their traveling and surfacing patterns. They will chase salmon under boats if that's where they want to feed, they will change direction and pass near a boat if that's where they want to travel, and they will even seek out boats like freighters (the largest, loudest, fastest-moving boats the whales' routinely encounter) just to surf their wake as I saw them do last summer. I have the honor of working with several whale watch captains who do all they can to comply with the whale watch guidelines, but even they sometimes "get caught" with whales too close to the boat, and when this happens, we just cut our engines and enjoy the moment for what it is - a nice view of the whales doing whatever they want.

- I don't have a problem with the concept of a marine protected area or "no-go zone" for the Southern Residents, but the issue I take with this particular proposal is that there doesn't seem to be any particular reason for putting the no-go zone on the westside of San Juan Island other than the fact that the whales spend a lot of time there. This area is not of any particular importance to the Southern Residents culturally, as the Robson Bight Ecological Preserve is for the Northern Residents, nor does it include their most significant feeding grounds (arguably the part of their habitat most critical to their survival), which are more off the southwest side of San Juan Island and off the Fraser River. We shouldn't establish a no-go zone just to have one - we should only consider establishing one if science shows that the proposed area is a habitat especially critical to their culture or survival.

- It's unrealistic to say that increased whale-watch regulations would have no impact on the whale-watch experience, especially if a no-go zone is established where whales may spend an entire day resulting in passengers not getting to view the whales at all, or only from ½ mile away. These issues should be thoroughly considered. I think it is important to remember the role that whale-watching places in the preservation of the Southern Residents. On a daily basis we, as a commercial whale watch company, establish lifelong connections between people and the whales. Whale-watch boats play an invaluable role in the education of the public on the real issues threatening the orcas - declining salmon stocks and toxins in the water. I have seen countless people transformed after they see a wild orca, touched for life by spending an hour observing killer whales in their natural habitat. I often spend the whole trip back to port talking to people about the threats the whales face and what they can do to help. Yes, we need to monitor the impact of vessels around the whales, and continue to discuss and develop guidelines and ways to educate all boaters about safe practices around the whales. But rather than target whale watching as a front-and-center reason for the decline of local whales, a statement that has no basis in the scientific literature, I think we need to recognize whale-watching for what it is: a platform to foster a sense of stewardship about not only our local endangered whales, but the entire ecosystem that they, and all of us really, depend on.

In conclusion, I support the development of a slow-go zone on the westside of San Juan Island where the whales spend a great deal of time, rather than a no-go zone. This addresses the main issue of the acoustic impact of vessels on the whales while still allowing viewing of the whales in this area where they spend a lot of time as well as recreational access to the other activities that occur on the westside such as kayaking, fishing, and pleasure boating. I don't support the development of a 200 yard buffer around the whales; instead, I encourage enforcement of our 100 yard law that is only minimally observed by the non-commercial whale watch traffic. Regardless of what is decided, I sincerely hope we enforce the rules that are established, and then quickly move on to address the very major issues of prey availability and toxins in the water.

PUBLIC SUBMISSION

As of: February 01, 2010
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Comments Due: January 15, 2010
Submission Type: Web

Docket: NOAA-NMFS-2008-0327

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

Comment On: NOAA-NMFS-2008-0327-0001

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

Document: NOAA-NMFS-2008-0327-DRAFT-0035

Comment from Trev Neufeld

Submitter Information

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General Comment

Lately, in the news, I understand some marine biologists would like to make an MPA extending for large areas out from San Juan Island. Haro Strait is not a simple backwater like Robson Bight. The political, sociological, and economic implications are rather staggering!

My understanding is that NMFS would like to return the population of the SRKW's to pre-capture numbers. Is somebody looking for a political appointment?

Lets get real! When we extracted large portions of the breeding age females out of the water between 1968 and 1978 we condemned these animals to lower populations. Only God made the population what it was and we cooked the goose that laid the golden egg.

Might I suggest a practical solution that can actually be implemented, enforced and will most likely do a decent job of protecting the SRKW's! Put a 7 knot go-slow zone, 1/2 mile out from the west side of San Juan Island.

Simple! Can we make it simple?

PUBLIC SUBMISSION

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Docket: NOAA-NMFS-2008-0327

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

Comment On: NOAA-NMFS-2008-0327-0001

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

Document: NOAA-NMFS-2008-0327-DRAFT-0037

Comment from Maria Tucker

Submitter Information

Name: Maria Chantelle Tucker

Address:

Victoria, British Columbia, Canada,

Organization: Orcagirl Digital Services

General Comment

I have attached my comments inside of a word document. Thank you for reading this.

Attachments

NOAA-NMFS-2008-0327-DRAFT-0037.1: Comment from Maria Tucker

My comments on the new proposed Orca Guidelines
January 04, 2010

Taken from my original online post at; <http://www.orcanation.com/2009/08/new-orca-guidelines-comment/>

An amazing and informative encounter with endangered killer whales like the one above, unexpected and unavoidable at times (notice our captain following the guidelines, makes the attempt to move the vessel to avoid a close encounter within 100 yards but didn't realize an animal was right there), changes peoples lives, giving them motivation and passion to make changes in their lives in hopes of creating a better world for sensitive species like these. This is a perfect illustration of how things can happen even when the current guidelines are followed, and this will be no different with the proposed new guidelines. I don't believe in censoring whale photos and video because I do not feel I am guilty of doing something wrong. What age have we entered where we're considering doing so?, such a paranoid time isn't going to solve the issues this planet faces. Honesty, reality, and truth. Common people let's get it together!

Disclaimer: The following is my personal opinion. I am no expert, I am no scientist, but I am 1 person with a perspective (and there are many perspectives), so here it goes.

NOAA has proposed new guidelines for the southern resident killer whales. You can read about those here. This is based off of a couple of studies, highlighting one in particular that suggests that boats initiate orca behavior up to 200 yards away.

I feel concern for the new proposed guidelines for a variety of reasons and I am all about protecting the orcas. I also watch orcas from land and from boats, the boat I am on uses a whale friendly drive for noise reduction underwater. To me the new guidelines also create new problems... and, will this change actually make a difference in saving these whales? I think it's time to start enforcing boater education (about behaving around marine life) upon obtaining a license, install enforcement (materials in addition to "be whale wise" guidelines) in marinas, enforcing greener boating technology and viewing platforms, enforcing a reformed 100 yard guideline (with having engines cut within a 200 yard radius as our current guidelines "flaw" could be actually more disturbing to the orcas), and most importantly, address their fish (food) crisis (fish farms, over fishing) and start resolving pollution issues. And should commercial fishing vessels be allowed to fish in the orcas proposed "no go zone"? as it is suggested in the new guideline proposal? As for pollution, run off, sewage? I really don't know where to begin except that we change our behaviors when it comes to consuming products of a greener nature. Unless all of these areas are reviewed, I doubt very much that we will have much success. I also hate to see groups demonized in the process, this involves all of us to cooperate together. Whale watching is an important platform for the public and I would hate to see it stripped away.

I feel sympathetic for those people who don't understand this situation and are either too afraid to comment or then feel the need to side with this new guideline "just in

case” because yes it does sound like a good idea. However I feel that once you have really looked at this yourself (on scene experience is helpful) you will see what reality we are facing. Having covered some education in hazards, it has helped me to look at a task at hand realistically and approach it in an unbiased nature. I have stated a summary comment above which is based off long winded conversations and rants of my own in a private realm. All we can do is to help the public understand this issue better, so that they can contribute a useful voice when it comes to protecting endangered wildlife such as the southern resident killer whales. Please read the link above, and contribute your comment to the links provided at the bottom of that post.

We the people need to be careful when emotionally responding so that we may choose wisely the best approach for these orcas. We must demonstrate a collective knowledge that says “we understand these animals are contaminated and their food stalks an issue”. By voicing our concerns about the proposed guidelines, we are actually and rightfully enforcing government to take the appropriate action where it is urgently required, which unless we push hard, this will continue to go unaddressed and then these animals really are doomed for extinction as the science suggests. Our own fate follows theirs. This entire website was inspired by our bound fates... We’re all connected.

A quick recap in point form of what I think would be helpful;

1. Refined guidelines & slow go zone for the San Juan Island shoreline (no start up within 200 yards, 100 yard from animal)
2. Enforcement strengthened (within ww fleet, stronger on the water presence, more financial support to monitors)
3. Green boating technology and systems
4. Mandatory marine mammal education upon obtaining a personal boating license
5. Pro active published materials handed out on whale watching boats and marinas about pollution impacts
6. Fish management / fish farms strongly addressed
7. Limited number of boats present with wildlife (I have seen various written approaches on this; licenses etc)
8. Communication and cooperation between industry groups, ending of demonizing and finger pointing

Over the past months I have conducted a survey of the publics perception on this and have included the survey results below. I feel as a member of the public who has been heavily involved with killer whale documentation that I was responsible to gather that perspective on behalf of the public point of view. In addition, there are a variety of additional comments that have been made in the chat box that you can access and read any time. Feel free to visit <http://orcinus.blogspot.com> for more information. I have left an additional post on that blog here; <http://orcinus.blogspot.com/2009/10/power-to-people.html>

Thank you for accepting and reading my comments.

Sincerely,
Maria Chantelle Tucker
Orcagirl.com

**DO YOU THINK THE
PROPOSED 200 YARD
GUIDELINE WILL HELP TO
SAVE ENDANGERED
SOUTHERN RESIDENT
KILLER WHALES?**



Votes so far: 179
Poll closed

Subject: Comment Letter to NMFS re Regulations for Killer Whales in Northwest Region
From: rich and diane <puffin33@earthlink.net>
Date: Tue, 27 Oct 2009 09:11:59 -0700 (GMT-07:00)
To: Orca.Plan@noaa.gov

Dear Assistant Regional Administrator, Protected Resources Division:

Please find attached my comment letter on the proposed regulations to establish a half-mile exclusion (no go) zone off the west coast of San Juan Island. Thank you for the opportunity to comment on this proposed regulation. Please acknowledge receipt.

Richard W. Elliott
12448 Holmes Pt. Dr. NE
Kirkland, WA 98034

(425) 823-0704
puffin33@earthlink.net

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Richard W. Elliott
12448 Holmes Pt. Dr. NE
Kirkland WA 98034
(425) 823-0704
puffin33@earthlink.net

October 26, 2009

Via Electronic Mail: orca.plan@noaa.gov

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98111

Re: Comment re Protective Regulations for Killer Whales in the Northwest Region

Dear Assistant Regional Administrator:

Thank you for the opportunity to comment on NOAA's proposed protective regulations for Killer Whales in the Northwest Region. I attended the Sept. 30, 2009 public hearing in Seattle and, along with many other concerned citizens, provided testimony on the proposed half-mile exclusion (no-go) zone on the west coast of San Juan Island. As you know, the public comments were overwhelmingly negative.

By way of brief background, my wife Diane and I have a long-standing and deep relationship with the San Juan Islands and their marine wildlife. We own two small boats and are avid recreational boaters and fishers. We have cruised the San Juan Islands since the early 1970s and were married in Friday Harbor. During the late summer and early fall of each year, we take our 19-ft. Boston Whaler to the west coast of San Juan Island to take advantage of the excellent fishing and to observe wildlife. My wife is a fishery biologist, so our every trip on the water turns into a nature tour. We support conservation organizations such as the Nature Conservancy and Cascade Land Conservancy. I am a member of Puget Sound Anglers of Lake Washington, a non-profit that operates and maintains coho incubators sites in the tributaries of Lake Washington.

My concern over the proposed no-go zone is that it is inconsistent with reality and discriminates, without a rational basis, against recreational boaters and fishers. Our perception of reality is based on 37 years of direct experience. We occasionally encounter Orcas during our visits to the

Assistant Regional Administrator

October 26, 2009

Page 2

west coast of San Juan Island. We stay close to shore, so the whales are usually well seaward of our boat. Our "closest encounter" was during September of this year while we were cruising the west coast with a visiting scientist from Iceland. Off Mitchell Bay, we encountered whale watching boats that were observing members of L-Pod frolicking and feeding inshore. The boats were well outside one-half mile of shore. As sometimes happens, several whales swam out among the boats. Our practice when this happens is to shut down our outboard motor. The other recreational boats on either side of us followed suit. The whale-watching boats were also dead in the water. Several female Orcas swam past our boat, within about 20 feet, and peacefully went about their business. This is consistent with our prior Orca encounters, although the whales were closer during this experience. After the whales left, we were approached by Puget Soundkeepers in a Zodiac-type boat. They told us we had done exactly the right thing and gave us a brochure.

My point in telling this little story is that, in our 37 years of cruising and fishing the San Juans, we have never observed conflicts between Orcas and recreational boaters or sport fishers. The whales and the fishers come to the west coast of San Juan for the same reasons – salmon. Some of the premier fishing grounds for Chinook salmon are off the west coast. The best fishing for Chinook is within one-half mile of shore. The safest area for recreational boaters is within one-half mile of shore in adverse weather. Orcas, fishers and boaters have peacefully shared this area for decades, treating each other with mutual respect. Interestingly, my wife and I have never observed any conflict between the Orcas and the commercial purse seiners who also ply the waters during the limited late-summer season. The Orcas are intelligent and apparently know how to avoid the boats and nets.

The no-go zone is an overreaction to perceived conflicts between whalers and the targeted groups: recreational boaters, sport fishers, charter fishers, commercial fishermen, whale-watching companies and, of all things, kayakers. The overarching problem for the whales is not these uses – it is dwindling Chinook salmon runs due to the habitat destruction, pollution, fisheries mismanagement, and the historic damming of our rivers. Blanket exclusion of these user groups from the half-mile no-go zone will do nothing to alleviate these fundamental problems. Quite simply, the whales do not have enough to eat. That is why I said earlier in this letter that the proposed regulation lacks a rational basis.

Moreover, there is insufficient evidence, if any evidence at all, of recreational boaters and fishers causing harm to or harassing Orcas off the west coast of San Juan. "Take," as defined by the Endangered Species Act ("ESA"), includes such activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. ESA § 3(19). "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering; "harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering. 50 C.F.R. § 17.3. Recreational boaters

and fishers are not hunting down, killing, wounding, capturing or disrupting the normal behavior patterns of Orcas off the west coast of San Juan. To the contrary, the two species (whales and humans) exist in harmony. The whales are jeopardized by the other factors described above. Again, the regulation lacks a rational basis in fact. NOAA should focus its efforts where it really counts and not against groups that are causing little or no harm off the west coast of San Juan Island.

NMFS's *2008 Recovery Plan for Southern Resident Killer Whales* identifies increasing numbers of vessels around Southern Resident Orcas as a potential risk factor to the population, but states that little information is available on how and whether non-whale-watching vessels affect behavior of killer whales. The plan further states that additional acoustic monitoring and research on the effects of noise exposure are needed to determine the potential effect from acoustic sources. According to a 2008 Wash. Dept. of Transportation Study, the currently recognized underwater noise disturbance threshold for cetaceans is 160 dB(rms) and the in-water injury threshold is 180 dB(rms). WSDOT, *Marine Mammal, Fish, and Marbled Murrelet Injury and Disturbance Thresholds for Marine Construction Activity*. Where is the evidence that recreational boats and fishers are making underwater noise of this magnitude on the west coast of San Juan? We are not driving pilings or dropping depth charges.

In summary, I support the regulation's objective, protection of Orcas, but disagree with the regulation's discriminatory means. Orcas are beautiful, intelligent animals, and we are absolutely blessed to have them present in our marine environment. However, an exclusionary zone is not the answer, because: (1) it will be ineffective in furthering the objective; and (2) it hands out disparate treatment to user groups, without justification or a rational basis.

What I propose as an alternative is the following set of simple rules that could be enforced regardless of distance from shore and would avoid conflicts with whales:

- Enforce a 200-yd. no-approach rule.
- If an Orca approaches within 200 yds, a boat must shut down all engines. (An emergency exemption would apply if necessary to avoid collision with another boat or a whale.) Also, a recreational fishing boat must pull its gear (e.g., downriggers and other fishing gear).
- Impose a reasonable speed limit, say seven knots, on all vessels when Orcas are within sight distance.

I realize that one of the "reasons" for a no-go zone is the perception that it is easier to enforce than the more reasonable rules stated above. That is insufficient justification to discriminate against user groups who make a substantial economic contribution to our State. One of the

Assistant Regional Administrator
October 26, 2009
Page 4

duties of your agency is to enforce reasonable regulations. Moreover, I question whether the no-go zone is enforceable.

Again, thank you for the opportunity to comment. Your agency has a congressional mandate to protect Orcas which I fully support. For the reasons stated in this letter, however, a no-go zone is not part of the answer.

Very truly yours,

A handwritten signature in cursive script that reads "Richard W. Elliott".

Richard W. Elliott

cc: Sen. Patty Murray
Sen. Maria Cantwell

Subject: Thoughts after Friday Harbor Meeting
From: Kerwin Johnson <kerwin@islandersinsurance.com>
Date: Wed, 07 Oct 2009 13:43:42 -0700
To: Orca.Plan@noaa.gov

To Whom it May Concern,

I am writing at this time after attending the meeting of this past Monday evening in Friday Harbor. The meeting was well attended with many good thoughts presented for "open mike night". I would just like to have my thoughts go into the public record as well.

First of all I am a prior board member of the Whale Museum, a supporter of the Whale Museum, as well as a supporter of the Soundwatch Educational Program. I also am a business owner in Friday Harbor and have been for 26 years.

There were two statements that caught my attention during the meeting - #1. We need to use common sense through this process & #2. Check out the websites of the various whale watching operations to see what they are advertising doing - almost to the point of touching the whales.

Currently in place are some loose laws as well as the Be Whale Wise Guidelines. I feel, rather than going to the "NO GO Zone" immediately that we should do an interim step. The guidelines that are in place could be made into law - and then those laws MUST be enforced. Over and over again at the meeting the idea of lack of enforcement of these guidelines was brought up. I think that if laws were enacted, and enforced with fines or loss of licenses, etc. that we would find a lot less pressure on the whales. I have seen on numerous occasions hop scotching to get in front of whales, intentionally positioning oneself in the path of whales, as well as riding on the whales. This must stop and with sufficient penalties it most likely would stop. If not, then the next step - a no go zone.

To go along with the above idea, a "go slow zone" should be implemented - whereas 7 knots would be the maximum speed in the area from Cattle Point to Mitchell Bay if a boat were within the 1/2 mile zone or if the whales were within 1/2.

Another idea would be to not allow kayaks to go beyond 200 yards of the shoreline along this same section of the coastal waters. It would allow viewing the whales but would not allow them to be "caught" in their paths.

Finally, educational efforts need to be stepped up whereas NOAA would need to support the work of Soundwatch to a greater degree.

So, with increased enforcement, a go slow zone, an increased educational component, keeping kayaks out of the whales paths, as well as a component to keep boats a specified distance from the whales (150 - 200 yards) it seems this could be a common sense approach.

One other idea is to give the whales a day of rest. God recommended a day of rest for man - so perhaps man could recommend a day of rest for the whales - perhaps tuesdays.

Finally, I do not feel that a no go zone is warranted at this time - but could be implemented if need be. I am a sports fisherman and to exclude that area of the island for recreational fishing seems a bit over the top. We need to live in harmony with our environment, that includes our Orcas Whales.

Thanks for coming out and putting on the meeting this past Monday.

Regards

Kerwin Johnson

Agent

Phone: 360-378-2195

Fax: 360-378-5948

Subject: ORCA SMART
From: Carole May <carole@carolemay.com>
Date: Fri, 09 Oct 2009 16:00:37 -0700
To: Orca.Plan@noaa.gov

Florida has a Dolphin Smart program - the Pacific Northwest could easily adapt that program as Orca Smart. Read this article:

<http://www.examiner.com/examiner/x-15967-Puget-Sound-Marine-Life-Examiner-y2009m10d9-Dolphin-Smart-Why-not-Orca-Smart>

Have a good day,
Carole May

Subject: Half Mile No-Go Zone May Kill Paddlers or Rowers
From: MATT MARINER BROZE <marinerkayaks@msn.com>
Date: Sun, 04 Oct 2009 23:08:02 -0700
To: Orca.Plan@noaa.gov

I'm the lead author of the kayaking safety book, "Sea Kayaker's Deep Trouble". "Sea Kayaker's Deep Trouble" is mostly a collection of accident reports involving sea kayaks (along with an analysis of their causes) written for Sea Kayaker magazine.

My understanding, from listening to a presentation by and talking to an Orca researcher at a recent kayak club meeting, is that the resident Orcas are under stress from the shortage of their only food, Chinook salmon. Not only are the Chinook salmon numbers greatly reduced, but the average size of those Chinook remaining is about 1/2 of what they used to be. That means that an Orca must now catch at least twice as many salmon as before to get the same amount of food. It appears that the main stress that boaters may be adding to this grave situation is that the noise from their fast running engines and propellers may be interfering with the Orca's ability to echo-locate their prey. The smaller private boats with high speed engines are considered by the researchers to be the biggest additional stress. Also, I understand that while the proposed new regulations double the stand aside distance to only 200 yards, keeping powerboats at least 400 yards away would have been a much more preferable regulation to the researchers. It appears to me that some compromise between the whale's needs and the wants of those exploiting the Orcas' presence for commercial gain is being attempted with the new proposals.

Under the proposed rules, it appears power boaters and whale watching commercial interests are being catered to while those boaters under human power will have their very lives threatened by trying to comply with the new rules even though they are unlikely to be causing any problem at all for the Orcas. I doubt that anyone involved with the proposed no go zone has considered the effect it will have on the operators of human powered craft. I predict that, if adopted, the proposed no go zone may result in the deaths of some paddlers or rowers. Under the present proposal this is likely to happen precisely because the paddlers or rowers attempted to comply with the no go zone rules you are proposing and stayed 1/2 mile or more from shore. The distance they would have to go to reach the next possible landing site and stay within the rules is also further than many under human power may be able to safely travel, even under ideal conditions. If the wind or wave conditions deteriorate they will have to make the choice of violating the no go zone rule or struggling on in dangerous conditions. Even if they sensibly choose to violate the no go zone, they will still be starting from 1/2 mile away from the safety of shore in bad conditions. A strong offshore wind in this situation could easily doom them.

If the engine and propeller noise seems to be interfering with Orca feeding success (as the researchers believe) the answer seems quite simple to me. As soon as Orcas are spotted all engine powered craft within a 1/2 mile radius need to stop or at least drop their engine speed to an idle (unless the boater will somehow be in physical danger from doing so). A major problem seems to be high speed powered craft "descending" on the Orcas whenever they are spotted by anyone who transmits the sighting to others. So another possible solution might be to make it illegal to use a radio, phone, or any other communication device to contact others about the presence and location of Orcas. Given the choice, I suspect that whale watchers in power boats would prefer knowing about the presence of whales in the area and would more likely accept a restriction of something like a 5 knot speed limit if heading in the direction of Orcas from less than a mile away and an idle only requirement when within 1/2 (or at least 1/4) mile from Orcas.

One problem is that many private boaters and some whale watching groups already regularly violate the much less restrictive rules, as they stand today, and are likely to continue to do so with whatever new rules are established. So from an enforcement perspective I can see the value of a distinct 1/2 mile wide no go zone. The no go zone should be adequately marked to provide a clear line that must not be crossed. Because human powered craft are easily distinguished from engine powered craft, making a small near shore exception to the no go rules for the safety of

those operating human powered craft shouldn't add to the stress on the whales or create any enforcement problems for authorities.

Since from a safety and aesthetic standpoint most human powered boaters prefer to stay near shore anyway, a no go zone in the area of highest Orca concentration should be fine with us as long as the near shore area was left open to human powered craft. As a kayaker, I think limiting us to staying within 100 yards of shore in the no go zone would be acceptable. Maybe that distance could be flexible if the paddlers or rowers are attempting to avoid being too near other marine mammals, such as when nearing a seal or sea lion haul out. That way the safety of paddlers and rowers would be enhanced by the new rules rather than the no-go zone being life threatening. I say enhanced because paddlers and rowers would have to stay near shore in that area and they would no longer be at risk of being run down by power boaters not looking where they are going when distracted by the presence of Orcas.

If later, human powered boaters, or groups of them, seem to be causing a problem the rules could be amended to address the problems that they might be causing. The present no go zone proposal essentially amounts to a ban on the one group of boaters least likely to be causing the Orcas any problem at all. I doubt that either Orca researchers or power boaters would see much problem with allowing the near shore zone exception for human powered watercraft. I suspect that the power boaters would be glad to get them out of their way. If some researchers think human powered boats may be having some deleterious effect on the whales I would have no objection to adding a rule that says we must move to as near to shore as safely possible if Orcas are sighted (or out from in front of them if they are approaching).

Sincerely yours,

PUBLIC SUBMISSION

As of: February 01, 2010
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Tracking No. 80a6df99
Comments Due: January 15, 2010
Submission Type: Web

Docket: NOAA-NMFS-2008-0327

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

Comment On: NOAA-NMFS-2008-0327-0001

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

Document: NOAA-NMFS-2008-0327-DRAFT-0034

Comment from Sandy Buckley

Submitter Information

Name: Sandy Buckley

Address:

3641 Bailer Hill Road

Friday Harbor, WA, 98250

Email: limekilnwhalewatcher@yahoo.com

Phone: 3603780976

General Comment

I have attached my comments below

Attachments

NOAA-NMFS-2008-0327-DRAFT-0034.1: Comment from Sandy Buckley

I wanted to begin by thanking all of the people who worked so hard to create the Proposal at hand, especially Lynne Barre. It is clear that a lot of thought and consideration went into its design ---I personally think this is one of the best papers issues by NOAA. Hopefully it has also educated the public about issues impacting our region.

My name is Sandy Buckley and I live on the west of San Juan Island, approximately 3 miles south of Lime Kiln at the north side of an area called Hannah Heights. I live 500 yards off the water on a hill that allows me a 180 degree view of the Straits. When I moved here 6 years ago I had no idea of the issues facing the critical habitats in the region, the tenuous nature of so many populations in the Salish Sea, nor did I realize the nature of the industry watching the whales in our waters.

Over the years I have taken it upon myself to become more educated and work closely with the whale watching networks, scientists and various interest groups to better understand the varied opinions about the current issues facing the whales (and other species') survival. As I have become more educated I have also worked to share that accumulated knowledge via my blog, and I have embraced this beloved icon along with all of the others who have traveled to this region --- the scientists who come to provide insight into sustainability, outdoor enthusiasts and visitors----

<http://fridayharborhappenings.blogspot.com/2009/10/porposed-vessel-impact-regulations-let.html#links>

I understand that with their addition to the list of endangered species, NOAA was tasked with developing protocols to address the critical elements impacting their survival. One element is vessel noise, which has already been established as a potential contributing factor to their survival. I am not a scientist nor am I an expert on orca whales. I do know that the proposed vessel regulations have merit and are backed by the best available science- the obligation afforded by the ESA listing. I've followed the Public Hearings on the Proposed Vessel Regulations, attending the last in Friday Harbor on October 5th---and walked away disheartened by the special interests and monetary interests exhibited by the majority of the attendees.

As a resident on the west side of the island I get to see first hand how education and enforcement are not adequate- my observations correlate with the data being kept by Soundwatch- data that suggests that in 2006 ALONE there were 1,281 documented incidents during working hours wherein boats were not adhering to guidelines. I have watched the vessels (referred to by the Whale Watch operators themselves as a "flotilla") literally swarm the whales for hours a day - private boats, whale watching industry vessels, and fishing boats- all hoping to either catch a glimpse of the orcas or benefit from their presence. There have been times where we have counted 24 whales and 97 boats at the height of the summer- some following guidelines, others in the path, many inshore of the whales, some leapfrogging, others motoring along side the whales in an attempt to "get a good photo." The voices from the microphones echo up the hillside- telling visitors about the whales and pointing out behaviors as they occur- a spyhop, a tail lob, oh look, a breach! And all the while, Soundwatch and Straitwatch attempt to keep the whales out of harms way- zigzagging north and south warning boats and educating. Engines roar above water, fishing boats speed through the whales following tide fishery and chasing the salmon themselves. As the day wears on and "enforcement" and "education" boats head home, the remaining vessels crowd in closely to the whales well through the sunset hours, each taking their moment to be free of laws and rationale- closing the day with brilliantly close interactions which we watch helplessly from shore every single night that the whales are here. I had to stop focusing on the violators- it was causing me too much stress in my environment- I became hoarse from yelling at the boats to at least cut their engines and the like. I now try to watch with a

different perspective, waiting for the day the regulations are ENFORCED and reporting the most egregious violations directly to NOAA. And it is not only me...click [here](#) or [here](#) for more stories just like mine.

On the other hand, I have nothing against whale watching or private boaters- I realize that not everyone can or wants to watch from shore. I have even recommended one tour operator to prospective clients, having personally seen the efforts they make towards true regional stewardship. However, I truly believe this proposed rule is a critical piece in the puzzle to protect the whales, with action being long overdue...even if that means sacrifices need to happen- it is time for the rubber to hit the road.

200 YARD APPROACH REGULATION

Existing [Be Whale Wise Guidelines](#) and [San Juan County Watercraft Regulations](#) require boats to maintain a 100 yard distance while viewing whales. Current collaborative research CLEARLY has documented changes in behavior, feeding (decreased foraging) and communication patterns when boats are present, with the behaviors increasing commensurately with the number of boats. Concerns are that 1) the whales will spend less time foraging & 2) they will use more energy- between energetics, less foraging and louder talking, the stressed whales may actually wind up burning more stored energy than is necessary. Studies have also shown that both behavior and voice changes are dramatically reduced at 200 yards.

Opponents to the increase in yards suggest that "people will not be interested in watching whales from that distance." To the contrary, one could say that additional respect for the tenuous fragility of the species will be instilled in viewers and their experience will be enhanced when the whales are not surrounded by boats. I think we have lived off the species long enough- and we have done this at their expense. The whale watchers unilaterally opposed this portion in a statement issued but did not complain when the whales were listed as endangered- bringing more customers to the islands. I will absolutely agree, though, that the 200 yards will have no less impact without better education, funding and ENFORCEMENT. This is up to our federal government to decide- and hopefully the public outcry will make them aware of how much our community cares.

PARKING IN THE PATH PROHIBITION

This is the most common infraction on the books and also carries the greatest risk to the whales. Parking in the path of whales is already part of the voluntary guidelines- this addition would now allow enforcement under law (if passed). Hopefully it increases compliance with increased enforcement efforts and presence.

NO GO ZONE

The west side of San Juan Island between Eagle Cove and Mitchell Bay has been proposed as a one-half mile seaward buffer against the effects of vessels, creating a seasonal sanctuary (much like Robson Bight) for the whales and an enforceable regulation if passed. In the past, there has been a VOLUNTARY 1/4 mile no go zone in the exact same area on the west side of the island. The distinction of the zone makes a clear, readily avoidable area which can be easily enforced if violated. Studies have also clearly shown this is a known foraging area for the orcas and has already been earmarked as a critical habitat for salmon and eelgrass restoration. This is also the area where I have personally seen the most heinous violations.

Following the original Proposed Recovery Plan comment period, I find it interesting that many local associations commended the plan and suggested even stronger efforts. Some specifically suggested a no go zone on the west side of SJI, better reflecting the existing critical habitats and shoreline recovery strategies, citing this addition as a great adjunct to Salmon Recovery efforts.

That being said, every special interest group has completely balked at this portion of the regulations, questioning the science behind it. In doing so, people who are not scientists have chosen to question the validity of studies by internationally respected people...names like David Bain, Robin Baird, John Ford, Graham Ellis, Rob Williams, Richard Osborne, Katherine Ayres, Dawn Noren Adams and so many more. Some chose to ridicule NOAA and Lynne Barre's proposal as if this was not one of the most comprehensive and well written documents ever issued by the agency. The lack of respect shown by some was uncharacteristic of the people in this area--these are the very scientists who have no vested interests in the scientific outcome and are only striving to determine the best means by which to ensure the survival of a struggling population.

FINAL THOUGHTS (FINALLY!)- THE SUGGESTIONS

I am in favor of the proposed regulations with a request that NOAA consider the following:

- 1) In retrospect, perhaps NOAA should have worked with fishermen and local officials to ensure universal understanding while shaping a system of reserves amenable to all...just like the Southern California MLPA process. How can this now be managed to bring the community together?
- 2) I cannot comment on the commercial fishing issues raised at the public hearings- the suggestion that "all of the fish" are in that 1/2 mile proposed NO GO Zone---but this will wind up being a source of contention if not litigation if not adequately addressed prior to implementation.
- 3) I believe it is unfair to include kayaking in the no go zone- forcing the kayakers offshore by 1/2 mile poses threats to their safety.
- 4) I do not agree that a SLOW ZONE should replace the proposed NO GO ZONE. I have watched many sailboats and private anglers traveling less than the 7 knots suggested.... traveling over the top and inshore of the whales. I think diluting this NO GO zone will also make enforcement more difficult.
- 5) I am in favor of suggestions for a permitting system (for both commercial fisheries and whale watch operators) including hefty fines for violators and permit removal with violations. Let violators pay for the enforcement.
- 6) Some consideration needs to be given to enforceability with Canada and San Juan County so that litigation can be avoided to the best possible extent.

Thank you for your time. Sandy

Subject: Proposed Northwest Whale Regulations
From: Ken O'Brien <Obrienjk1@comcast.net>
Date: Wed, 21 Oct 2009 15:41:17 -0700
To: Orca.Plan@noaa.gov

My wife and I have been boating in the Northwest for about 30 years and have co-habitated with the whales all that time. Here are our comments relative to the proposed plans:

1. The one half mile "no-go zone" on the west side of San Juan Island from June through September would create a serious navigational hazard. Fog is a frequent visitor to this area and closing it off would force boats out into the shipping lanes that are pretty close to shore - a very bad idea in fog. We have transited this area in the fog and staying close to the west side of San Juan Island is the only safe choice. By the way, you don't always get to decide whether or not to run in fog - sometimes it descends almost instantly and you have no choice.

2. An increase in the minimum allowable distance from the whales to 200/400 yards is probably warranted. However, this is sometimes easier said than done. A couple of times we have been fishing, essentially sitting still, and the whales have come through and there is nothing you can do but put the engine in neutral and let them pass. We have actually had whales swim directly under our boat while we sat there - and they seemed to know to stay clear and went about their business. I'm inclined to think that the notion of boats hitting whales (or visa versa) may be a stretch of someone's imagination.

3. Let's talk about the real problem. And that is the proliferation of aggressive whale watch vessels (and possibly other commercial ventures). Modern technology has allowed the various commercial whale watch operations to coordinate their information so that the location of the various pods is known 24/7. So the whales are potentially "exposed" all the time.

My wife and I used to own property on the west side of SJI and early on, it was a serene spot. But more recently, we might be on our lot facing away from the water and it was obvious if there whales in the area, by the unbelievably loud roar of the whale watch boat engines, coming to see the action. In fact, we could hear the roar when the boats were on their way but several miles out.

On another occasion, we were heading South for Cattle Pass to catch the slack tide, and were near the pass when whales showed up from south of the pass. It appeared that we could transit safely without disturbing them but were quickly in the middle of several speeding whale watch boats. We finally retreated to Griffin Bay and waited for the crazyness to abate.

So what should be done? Some would argue that more research is needed. Perhaps so, but anyone who has been out there knows what the real problems are. We suggest:

1. Increase the mimimum allowable distance to 220/400 yards as proposed
2. Regulate the whale watch operations with respect to:
 - number of commercial boats observing whales at any one time - by the way, they have the technology to do this, see 3., above.
 - maximum size of boats (smaller is better)
 - maximum engine size, with noise limitations
 - maximum allowable speed in the vicinity of the whales
3. NOAA should take a look at the "system" in place at Glacier Bay as a possible model. By the way, over the years we have seen numerous infractions of the existing orca rules and have yet to see any regulatory authority in the area to deal with the situation. The lack of sufficient personnel is not a supportable argument.

We appreciate the opportunity to provide input but are not optimistic that reason will prevail over commercial/political interests.

Sincerely,

Ken and Julie O'Brien
obrienjk1@comcast.net
360-598-2024

Subject: Comments re Proposed Vessel Regulations

From: Sharon Grace <parons@rockisland.com>

Date: Tue, 12 Jan 2010 20:00:59 -0800

To: Orca.Plan@noaa.gov

Attached please find my comments to the Proposed Protective Regulations for Killer Whales in the Northwest Region under the Endangered Species Act and Marine Mammal Protection Act.

Sharon Grace

SG Comments re Proposed Protective Regulations for Killer Whales 1 12 10.pdf	Content-Type: image/pdf Content-Encoding: base64
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SHARON GRACE
175 Gretchen Way
Friday Harbor, WA 98250
360-378-3377 Phone
360-378-6498 Fax

January 12, 2010

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

**Re: Comments—Proposed Protective Regulations for Killer Whales in
the Northwest Region under the Endangered Species Act and
Marine Mammal Protection Act**

Dear Sirs/Mesdames:

I am a resident of San Juan Island. For the last eight years I have engaged in land-based whale-watching and have regularly observed and photographed orca and vessel interactions off the west side of the island. I attended two of the three meetings NOAA held regarding the proposed regulations. I submit these comments based on my observations of both the whales and the meetings.

1. Enforcement Is the Key to Any Laws Enacted to Protect Orcas

I strongly believe that NOAA's proposed rules regulating vessels to protect orcas in the Salish Sea are right on target and enthusiastically support all of them, with the modifications set forth below. However, without enforcement, both the existing laws and the proposed regulations are meaningless, except to create animosity among interested parties. We do not need that.

San Juan County, Washington State and the federal government need to find the money required to initiate daily enforcement of the laws protecting the orcas,

whether it be under the Marine Mammal Protection Act, the Endangered Species Act, Washington statutes or the County ordinance.

Fines for violating the protective laws should be realistic and money realized from the fines should be used only to implement more enforcement. The fines should be similar to those levied for traffic tickets. The fines should be in specific amounts, perhaps starting as low as \$100.00. They should escalate based on the seriousness of the violation and the number of violations the vessel or operator has accumulated. For example, separating a mom from a calf, driving over whales, splitting groups or resting lines, herding orcas or causing whales to change direction (all of which I have observed repeatedly), are more serious violations than simply coming five or ten yards too close to an orca. Fines for persistent violators should be increasingly higher, similar to vehicle code violators. Ignorance of the law should not be a defense.

The schedule of fines should be widely available to the public, so that each vessel operator and owner can determine the risk he or she is taking by violating the law. From what I have observed just from land based viewing off the west side of San Juan Island, plenty of violations occur on a daily basis to make an enforcement program a "profit center" for the enforcement agencies. A sustained, active and daily enforcement effort will: (1) immediately lessen vessel impacts on orcas, while salmon restoration and cleaning up toxic areas of the Salish Sea are underway; (2) protect the endangered whales so future generations will have an opportunity to enjoy them; and (3) generate funds to make enforcement self-sustaining.

In the event that enforcement generates more money than necessary to make enforcement efforts self-sufficient, any surplus monies should be designated specifically for salmon restoration.

2. Modifications to Proposed Regulations Based on Observation and Public Comments at the Meetings

a. Human Propelled Vessels Should Be Allowed Restricted Access to the "No Go" Zone

Human propelled vessels (meaning vessels such as kayaks, rowboats and paddle boats) should be permitted in the "No Go" zone with reasonable time, place and manner restrictions. San Juan Island is a prime destination for kayaking. Human propelled vessels do not generate underwater noise that interferes with orca communication and foraging. These vessels do not present as great a risk of striking and injuring the orcas as do power vessels. The beaches within the "No Go" zone are some of the best kayak launching locations on the west side of San Juan Island. And,

it is often dangerous for kayakers and other such vessels to be more than one-half mile off the west side of San Juan Island.

The regulations should contain reasonable restrictions for human propelled vessels. Human propelled vessels should be permitted to launch in the "No Go" zone from specified hours, perhaps 9:00 a.m. to 6:00 p.m. They should be prohibited from travelling towards whales. When whales are less than 200 yards away, the vessels should be required to stop moving, "raft up" in the case of kayaks, and remove paddles or oars from the water. In all other aspects, human propelled vessels and their operators should be subject to the same regulations, laws and fines as other vessels and operators.

b. Commercial and Recreational Fishing Vessels Should Be Allowed Limited Access to the "No Go" Zone, but only while Engaged Actively in Fishing

This comment is based on the assumption that the proposed regulations are meant to protect the whales from vessel interaction and interference, rather than to preserve the salmon stock. If a secondary purpose of the regulations is to preserve the salmon stock, this comment should be ignored.

For eight years I have observed many fishing vessels on the west side of San Juan Island. Just like whales, the fishing vessels engage in different behavior at different times. This depends on whether they are traveling, fishing or whale watching. During the fishing seasons, I have seen fishing vessels run over the top of the whales, cut the whales off, and travel at high speed close to the whales, probably more regularly than any other vessels, as the fishers travel to and from the prized fishing areas. I have also seen fishing vessels stop seemingly on top of the whales to get a closer look. Sometimes commercial vessel operators are the worst offenders, sometimes recreational fishers are the greatest offenders. Yet I have observed few problems with fishing vessels while they are actively engaged in fishing, with the exception of congestion through which orcas seem adept at maneuvering. If other research or comments corroborate my observations, fishing vessels, whether commercial or recreational, are the greatest risk to whales when they travel or when they "whale watch," rather than when they fish. If this is true, then the regulations should be modified to permit fishing vessels, both commercial and recreational, to enter the "No Go" zone to fish, but not to travel, whale watch or engage in other activities.

This exception to the "No Go" zone should not be used to make the "No Go" zone meaningless. The exception should be applied only to fishing vessels entering

the "No Go" zone to actively start fishing, or exiting the "No Go" zone immediately after stopping active fishing. Fishing vessels should be required to travel to and from their destination fishing area outside the "No Go" zone. While fishing vessels are in the "No Go" zone, regulations should require the vessels to operate at a speed no greater than five to seven mph. Preferably, the regulations governing how fishing vessels enter and exit the "No Go" zone to fish, and how they behave within the "No Go" zone while fishing, should be developed in conjunction with the interested parties. Except for this narrow exception for active fishing, all fishing vessels should be subject to the proposed regulations.

3. The Economic Impact of the Proposed Regulations Is Positive

The west side of San Juan Island is one of the few, if not the only place, that people regularly can view see orcas from land during the summer months. This fact draws many people to the greater Puget Sound/Victoria/Vancouver area. The economic impact of the proposed regulations, with the modifications suggested above, is hugely positive in maintaining this economic draw in the long term. Any potential short term economic impacts should be ameliorated with the modifications suggested in these comments. Moreover, if the regulations are successful at protecting the orcas, then the orcas will have a greater chance to thrive, rather than become extinct, and there is a greater likelihood they will remain in their core summer range. If the orcas do disappear from the Salish Sea, the economic impact will be devastating for all those who make their livelihood from the presence of the orcas, as well as for those of us who are immensely enriched just by the presence of the orcas.

4. Photographs Taken in 2009 Show the Regular Occurrence of Vessels Flaunting the Current Laws to Protect the Orcas

I am mailing under separate cover a disk containing some of the photographs I took during 2009 showing dates and times of vessels in violation of the current laws enacted to protect the orcas. Please consider the photographs in conjunction with these comments.

These comments are based on the assumption that there will be sufficient money for enforcement. If there is not, then the proposed regulations should not be enacted. Thank you for the opportunity to provide comments.

Respectfully,

Sharon Grace

Subject: Comments on proposed rules to protect Southern Resident killer whales

From: Robin W Baird <RWBaird@cascadiaresearch.org>

Date: Thu, 14 Jan 2010 19:59:01 -0800

To: Orca.Plan@noaa.gov

CC: Robin W Baird <RWBaird@cascadiaresearch.org>

I am writing to comment on the proposed rules to protect southern resident killer whales. As someone who has worked on and run small commercial whale watching vessels in the area (from 1987-1989), has worked as a naturalist on larger vessel natural history trips in the San Juan Islands as well as elsewhere, and who has been undertaking scientific research on southern resident killer whales for most years since 1986, I strongly support the proposed regulations. In particular, a 200 yard approach rule will reduce vessel impacts, while continuing to allow vessel-based observations of the whales. I also support a zone where vessels are prohibited along the west side of San Juan Island, although I think there needs to be consideration of kayaking launching sites at San Juan County Park. NMFS should consider shifting the zone south and east, to include the area southeast of the proposed exclusion zone, to Cattle Point, as that area is an important feeding area for southern resident killer whales. Lastly, rules or regulations without enforcement is ineffective, and additional enforcement and monitoring effort is needed.

Sincerely,
Robin W. Baird, Ph.D.
Research Biologist
Cascadia Research Collective

Subject: Proposed Federal Vessel Regulations for Southern Resident killer whales
From: stopthehunt@aol.com
Date: Fri, 15 Jan 2010 01:06:39 -0500 (EST)
To: Orca.Plan@noaa.gov

Dear Lynne Barre and NOAA Fisheries;

Thank you for the opportunity to comment on your proposed vessel regulations. I am a certified marine naturalist and I spent 9 summers working on boats with the Southern Resident killer whales. In the past I have been just as elated as my passengers when treated to a close and personal view of an orca. I strongly believe that, when done properly, whale watching can provide much needed education to the public, create a lasting connection, and inspire stewardship. I also fully support federal regulations, because I don't believe these two statements must be mutually exclusive. The claims from many people that the proposed federal regulations are going to spell disaster for the entire economy of the San Juan Islands are completely absurd. How much revenue will be lost if the whales are gone? Right now, the whale watching industry has the opportunity to send a very powerful message to the rest of the world – that the orcas are more than just a source of income. They can prove that they care deeply about these whales and support regulations to protect them.

I feel very strongly that people can and will have an exceptional whale watching experience while staying 200 yards away. I have experienced this myself several times. And the whale watching industry is already maintaining a voluntary distance of ½ mile from shore at Lime Kiln. Extending this no-go zone along a larger corridor should not be a huge hardship. If the operators and naturalists are doing their jobs well and providing proper education, any passengers who truly care about these whales will understand and appreciate the regulations. Granted, naturalists will have a more challenging job to do because they won't be able to rely on the orcas “putting on a show” as a way to entertain their audiences. They will have to move beyond the show and develop effective education skills in order to connect their passengers with the whales. The naturalist profession will need to be taken more seriously and naturalists will have to be professionals who are highly skilled and trained in what they do. Simply put, what these regulations will do is separate the effective naturalists and operators from those who need more training.

I do believe that vessel interference is the least harmful of the three identified threats to the Southern Resident killer whales. But given that they are facing other stressors in their lives, this issue has to be addressed. It has been shown through research that the potential exists for decreased foraging and increased stress in the presence of boats. Therefore we have to be proactive and make some changes now. We don't have time to discuss it for years and wait for irrefutable proof. We have a tendency in this country to wait until it is too late or almost too late before we can agree to make changes on the federal level. Take PBDEs as an example. We all know they are toxic to marine mammals yet they're still out there. We still don't have a federal ban. If people had listened to Rachel Carson just a few years earlier, how many Bald Eagles, Brown Pelicans, and Peregrine Falcons could have been saved? What if we hadn't listened to her at all and DDT had never been banned? Would our country's national symbol now be extinct? Washington's state mammal is in trouble and it is our responsibility to mitigate whatever harm we may be causing them. The researchers are telling us that vessel traffic is potentially causing a negative affect on Southern Resident killer whales, and we have to listen to them now. Waiting for undeniable evidence could mean the loss of even more whales.

I thank you for the time and effort you put into creating these regulations. I urge you to pass them as

they are currently written with the following exceptions:

1. Since their acoustic impact is virtually non-existent, allow non-motorized vessels within the exclusionary zone as long as they agree to follow a standard of behavior while in the vicinity of killer whales.
2. Issue research permits in such a manner as to ensure that there is only one research vessel at any given time within 200 yards of Southern Resident killer whales. While research is extremely valuable to the recovery process, the boats being used create noise and potential disturbance just as other vessels do.
3. I recommend that you consider adding Salmon Bank as a specially designated protected area, as research is showing that it is particularly important feeding habitat. If the concern is that vessels are potentially affecting foraging, then Salmon Bank must be considered in these federal regulations.
4. I also urge you to consider extending these regulations along the entire coast of the United States and make them applicable in Oregon and California as well.

Sincerely,

Cindy Hansen

Subject: orca proposal

From: sam vittardi <seaquest1@gmail.com>

Date: Fri, 15 Jan 2010 15:39:13 -0500

To: Adventure Quest - Sea Quest Kayaking <whales@sea-quest-kayak.com>, "Agharia, Brigitte" <Brigitte.Agharia@t-systems.com>, bikeride09 <bikeride09@googlemail.com>, "Brinton, Louise A" <BrintonL@aetna.com>, chris <petroschristine@bellsouth.net>, Christiane <freeorca@telus.net>, Cindy Savage <connect121@yahoo.com>, cindy@cynthiabsavage.com, Dave Rinella <rinellad@yahoo.com>, Debici@cs.com, Ernie Willaman <erniewill@glyco.com>, freeorca@shaw.ca, gillie dent <sashyeski@googlemail.com>, jeanette easley <easleyjeanette@hotmail.com>, jessica baer <simplystainedglass@hotmail.com>, Jimmy Ali <jalli01@sbcglobal.net>, John Seyfried <john1@oberlin.net>, Kathryn McBride <kathryndmcbride@gmail.com>, Kishia Williamson <kishia.williamson@sbcglobal.net>, Kurt Shaffer <kurtshaffer@ameritech.net>, KWJules@aol.com, Mark - Adventure Quest / Sea Quest Kayaking <mark@sea-quest-kayak.com>, mark@barabasz.com, Melanie Dailey <tranquiltouchmd@yahoo.com>, melissa <melissa4florida@comcast.net>, mrsorganic@aol.com, Orca.Plan@noaa.gov, rich@designtechohio.com, Salvatore Consalvi <salvatore2go@yahoo.com>, sam vittardi <seaquest1@gmail.com>, Sarah Fina <isis.tee@gmail.com>, SIGNGUYZ <signguyz@bellsouth.net>, silvrblk@hotmail.com, Ter Sestito <tasestito@yahoo.com>, Tracey Condon <playagirlhb@earthlink.net>, Welcome to MySpace <noreply@message.myspace.com>, yvonne@bendnet.com

As a fellow conservationist I hope you will agree with me on this delicate issue . thanks for your consideration.

I have been a resident of San Juan Island for the past 28 years. I am a frequent boater and use kayaks, sailboats, and motorized craft in my hobbies as birder, whale watcher, photographer, and scuba diver. Back in the 1980's I conducted censuses of marine bird species in the San Juan Islands for the Dept of Wildlife and Fish & Wildlife Service.

Back in the "old days" of the 1980's I watched commercial fisherman shoot at whales with rifles and throw concussion grenades at the whales at least once a month. Every summer day the whales would have to negotiate a maze of nets, sometimes hundreds of gill nets, that were amassed in the orcas primary feeding area on the west side. None of this deterred the whales in any way from using these waters.

I believe that your current focus on whale / vessel interactions is somewhat misplaced. Yes, some things need to change, hence my proposals below. However, the main concern for the orcas' continued survival should be:

1) restoring healthy salmon populations to Washington/Oregon and, 2) reducing bioaccumulated toxins in the environment such as PCB's. These issues are *overwhelmingly more important* than vessel interaction and NOAA personnel should be placing their greatest efforts in these areas.

Here are my suggestions for NOAA's orca management plan.

1. I support your proposal to require that **MOTORIZED vessels** (human-powered craft exempt) stay 200 yards away from orcas.
2. I support your proposal that **MOTORIZED vessels** keep clear a 400 yard right-of-way ahead of the whale's path; human-powered craft should keep a 200 yard right-of-way ahead of the whales path. It should be recognized that human-powered craft have severely lowered and thereby reduced line-of-sight which often limits their ability to spot orcas. Also, their inherently slow speed combined with wind/current effects can make it more difficult to quickly clear the way compared to motorized vessels.
3. I recommend that the orcas' critical foraging area on the west side of San Juan Island be considered a unique management area. I do not support your proposed blanket "no-go zone" as currently designed. Reductions in vessel-whale interactions can be achieved by giving right-of-way to the whales in this congested area. This

unique area should be regulated in the following ways:

A. Create a large "slow zone". Make all vessels go slower than 7 knots in an area extending from Kellet Bluff to Cattle Point when within half-mile of shore throughout the year.

B. Create a "whale right-of-way zone" for MOTORIZED vessels (human-powered craft exempt) when whales are present between May 1 and Sept 30 extending from Battleship Island to Eagle Point. Vessels should be required to move off shore by 1/4 mile (440 yards) when whales are present within 1/4 mile (440 yards) of a vessel and when the vessel and whales are within 1/4 mile (440 yards) from shore.

C. Create an "no-go zone for motors" for MOTORIZED vessels (human-powered craft exempt) from Edwards Point (located just south of Deadman Bay) around Lime Kiln Point and up to San Juan County Park to be in effect year-round. This "no-go zone for motors" would extend out to 1/2 mile offshore. This area would be a kayak and human-powered craft-only zone, all other restrictions applying. Absolutely no exemptions for recreational or commercial fishing.

D. SoundWatch / The Whale Museum has devised an excellent code of conduct / management / educational plan for dealing with kayakers and human-powered craft that is referred to as K.E.L.P. This should be supported and continued.

Thank you for allowing me to contribute my input.

Mark Lewis

Subject: Response to Orcas Recovery Plan
From: catteam@interisland.net
Date: Fri, 15 Jan 2010 13:51:28 -0800 (PST)
To: Orca.Plan@noaa.gov

Hello Lynne,
Attached position paper on the proposed Orca Recovery Plan and No Go Zone
off San Juan Island.

Tim R. Jones
Friday Harbor

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From:
Captain Tim R. Jones
Marine Response Team Inc.
Dba Close Encounters Ecotours
Friday Harbor, Washington 98250

January 15, 2010

To:
Lynne Barre and Donna Darm
NOAA Fisheries Service
Protected Resources Division
Northwest Regional Office,
National Marine Fisheries Service
7600 Sand Point Way, NE
Seattle, WA 98115

E-mail: orca.plan@noaa.gov

Position Paper Recovery plan for Southern Resident killer whales

As a native Washingtonian and thirty five year resident of the San Juan Islands, I've decided to weigh-in on the proposed Orca Recovery Plan that includes limiting vessel traffic within one half mile of the southwestern shore of San Juan Island. My response is in the eleventh hour due to my trying to understand the issues, see the big picture and respond in an enlightened manner. I have found a great deal of information to wade through with conflicting ideas, facts and opinions.

A little about myself.

I am a native Washingtonian, as is my father (living at 97). My grandfather was born in Seattle, Oregon Territory about four months before Washington became a state. We have all been sport fisherman with a great interest in protecting the marine environment. I first saw Orca or Black Fish as we called them then on a sport fishing trip to Neah Bay with my dad, Grandfather and Great Uncle in 1953. It was one of those experiences a boy never forgets.

I moved to Orcas Island in 1975 and in 1978 started a marine related business. I obtained a masters license in 1985 and have since assisted thousands of boaters in trouble. I've towed, assisted and salvaged recreational boats, commercial fishing boats and even some large vessels such as the Washington State Ferry Elwha. Jacque Cousteau is my mentor. One of my sons carries Cousteau as middle name. I've raised four children here in the islands and they have all seen the Orca up close on many occasions.

I've spent nearly 10,000 hours on the water, most of that in San Juan County. I've been as far north as Cape Scott on the North end of Vancouver Island, transited Johnstone Strait and spent much of my youth on the waters of Puget Sound.

In my business operations here in the islands, I've often encountered the whales, even before there was a commercial whale watching industry. My business activities were varied and included transiting the West side of San Juan Island assisting gill netters and purse seiners in need of help. I can attest to the density of commercial fishing boats in those days. Hundreds of them, nets so close together I couldn't navigate the southwestern shore without becoming trapped, unable to locate the beginning of one net and the end of another. I once found myself (my boat) in one of the seine nets as it was being closed. I've salvaged sunken commercial fish boats and discarded tons of rotting salmon.

I've sport fished (mostly salmon) the island archipelago for years and noted a steady decline in salmon beginning about 1985. I've taken family and friends out to see the Orca whales on many occasions and have formed my own opinions about the whales and their feeding and hunting habits. I've observed some very interesting Orca behavior that has been instrumental in forming my opinions, many of which are in conflict with conventional wisdom being espoused by academia, the scientific community, local whale advocates and NOAA.

The first thing I'd like to say on behalf the Orca whales is that they are very smart. I've noted a trend among whale advocates, academia and even NOAA that suggests that these entities are trying to convince the general public that the Orca are essentially dumb as fence posts. With a brain half again to twice the size of human beings, it's my belief that Orca can do things with sound and acoustics that you and I could not even imagine.

I attended NOAA's public meeting in Friday Harbor to gain public input on the proposed regulations. I noted the word "MIGHT" or "May" in front of NOAA's information about acoustic masking suggesting that acoustic masking: "88-100% estimated reduction in detection range from moving vessel at 100 yards, 38-90% reduction from vessel 200-400 yards. Increase in duration and amplitude of communication calls". This "statistic" is purely hypothetical, essentially an assumption.

My own experience observing the whales is that the opposite is true. That in fact whales USE human sounds to mask their presence from their prey. A large Orca is as big and heavy as a school bus and about as nimble. Salmon, the local resident orcas prey are fast and maneuverable. Fast as (dare I say) a jet ski compared to a bus. The Orca have in the long run the power and stamina to wear down a salmon, but the net nutritional value to the whale might be negative, putting forth so much energy for a comparatively small meal. An analogy might be a human walking a mile for a stalk of celery. The net calorie intake being negative.

So Orcas employ their very large brain to outwit, outsmart the salmon. As a commercial skipper, sport fisherman and occasional whale watcher, my experience suggests that Orcas use human small boat sound to corral salmon. My own boat seemed to attract

whales. The vessels diesel engine produced a low frequency sound into the water estimated at five hertz at idle. On many occasions, the whales congregated around my boat, using the engine sound as what I interpreted as an acoustic fence.

The Orcas would herd the fish up against the acoustic fence. I call this technique "The Black Wave" and have experienced it on a number of occasions. The whales press the fish up against the acoustic fence and then swim out about 100 yards, turn around and attack. I look around and here comes the black wave, an Orca on the attack, swimming at perhaps 15 knots just below the surface. Before the whale hits the boat, it submerges and gobbles up the salmon. The Black Wave is enough to scare the average individual. It surely scared me! I had a shot of adrenaline that lasted several days. My daughter said: "I couldn't look at it"!

Foraging?

I see the use of the term foraging used often to describe Orca food finding techniques. Big predators in my opinion don't forage. Orca foraging is the wrong term. They swim in areas they know to be productive feeding grounds. As mentioned above, the whales could expend a lot of energy running down a single salmon. So they herd the fish along until the fish hit a natural or man made barrier. Then the whales attack. Orca whales don't forage any more than the king of land predators, the lion forage. Lions use stealth to hunt and ambush prey. Lions use foliage and ground cover to mask their presence. Orca whales don't have foliage except kelp forests to hide behind. So the whales use anything and everything to mask their presence from salmon. In particular they use sound, especially human made sound to mask their presence.

Being a sport fisherman, I'm of the opinion that Orcas can tell one fisherman (the more productive ones) from other fisherman and will hang around specific boats. The relationship between humans and Orcas is an ancient one and symbiotic in that human's and Orcas are interested in the same food. Coastal Native American Art often depicts the Orca. The Whales of Eden demonstrates the relationship between humans and Orcas in South East Australia at the end of the 19th and beginning of the 20th century. Orcas appear friendly to humans and stories of Orcas saving the lives of overturned whalers is evidence of that relationship that the relationship is friendly and cooperative.

I believe the relationship of Orcas to humans is similar to the relationship of dogs to humans. Dogs relationship to humans it has been suggested, is one of the reasons humans have progressed so quickly. Humans and dogs form a cooperative hunting team. The same is true with Orcas. We haven't domesticated Orcas and invited them into our homes for obvious reasons. Nonetheless, the relationship is similar to our relationship with dogs. Not all Orcas may be friendly to humans as wolves (canines) are not domesticated. Some Orcas may never have contact with humans.

As a newspaper story from Ketchikan, Alaska demonstrates, Orca have very specific tastes and human isn't one of them. I'm referring to the boy about 11 years old wading in one of Alaska's inlets as a pod of Orcas swam past. One of the Orcas, a big male, noticed the boy, thinking he may be a seal. The big Orca made a quick U-turn and charged the boy. At the last moment the whale realized he's made a mistake and stops the charge. But having too much speed and momentum the big male couldn't stop and

rams the boy in the stomach, knocking him down and pushing him onto the shore. The boy was stunned but not hurt and the whale seemingly embarrassed, backs away and reassembles with the pod and swims off.

Big

Whales are icons. Whales are big and we humans like big things. Big cars, big houses, big meals, big buildings, big ships, big aircraft, big statistics, big bellies, big animals. We like whales because they are big and we like BIG. Size matters, you know!? And, the whales being air breathers have to surface every few minutes, so we humans can predict where we can again see them. Salmon on the other hand aren't so big and don't surface to breath, so we don't see them unless you are a sport or commercial fisherman, or see them in the fish ladder at the dam or locks. Out of sight out of mind!

Planktivores, like herring are even more rarely seen. They are little, and we humans don't care about little. As a sport fisherman, I'll tell you that without herring, you won't have salmon, regardless of the efforts to restore rivers and stream rearing habitat. Yet, in all the Orca media exposure, I rarely ever hear a word about the importance of herring. Whale advocates appear to not care about lesser species, like herring or plankton or apparently the marine environment in general.

Reading over NOAA's statistics about how and why the 1/2 mile, 6 square mile No-Go Zone is needed, I haven't seen a word about exactly how much time the resident pods spend in this zone? Subscribing to Orca Network and other websites that track and report on Orcas and other whale species and their locations, it appears to me that in 2009, the whales were not in the zone much of the time, instead in Canadian waters. Before new rules are made, how about documenting how many and how often the Orcas are actually in the proposed no go zone? Since many federal and state and local governments are struggling with budgets, how does NOAA propose to enforce the proposed regulations?

Stakeholders

The users of the waters of San Juan County are many (the stakeholders). The list includes the Navy, commercial vessels (shipping), ferries, sport and commercial fisherman, cruisers and kayakers to name a few. Many of these stakeholders are apparently untouchable. The Navy, for example isn't going to be told they can't blast their high power sonar in Haro Strait. The shipping industry whose vessels make a large acoustic signature aren't going to stop or slow down for a bunch of whales and NOAA isn't going to take them on to change they way they operate.

The commercial fishing industry, native and non-native has been hard hit by low fish numbers and license and boat buy-backs. Those that are left aren't going to concede anything more to NOAA. This leaves the kayakers, the pleasure craft community and the commercial whale watch boats. Since none of these have any clout or political pull with Olympia or Washington D.C. they will become the sacrificial lambs. It's a 'feel-good' solution to NOAA. NOAA's got to do something, right?

So the proposed rules put a few hundred people out of work during hard economic times. Somebody's got to sacrifice for the whales and those people are after all, just

statistics. It won't hurt whale advocates like Monika Harrington who looks out over Haro Strait from her home and makes the analogy in the *Journal of the San Juan Islands* that whale watchers are analogous to mean nasty bikers on Harleys. Monika's poor choice of words is hitting below the belt!

Perhaps Ms Harrington is living in a vacuum? I suspect that if she were to be monitored for a week recording every product that she purchases, uses and discards, she like everyone else would be equally responsible for the unfortunate state of the marine environment and "her" beloved Orcas. This issue goes way beyond the Orcas and their survival. The Orcas are the ambassadors of the environment, like the canary in the coal mine. They are speaking directly to us. "Wake up humans, it's later than you think!!" "Tipping Point" will likely be THE word of words in the 21st century.

The whales are just big predators, not deities. They are ambassadors of the marine environment because as stated above, we humans pay attention to them because they are big. They are speaking to us, saying: you humans have simultaneously over-fished the region and at the same time used the sea as an inexhaustible dump. These two incongruous uses have been on a collision course for about one hundred years. You and I are now witnessing that slow motion collision. The marine environment is now collapsing and can no longer sustain very large predators.

Despite salmon enhancement programs habitat is disappearing faster than it be restored: "But despite the ground we've gained, we are losing (salmon) habitat faster than we can restore it. Billy Frank Jr. 8/19/09 Journal of the San Juans

Solutions

In the Maritime (ship) publications that I receive, every other article today is about the commercial maritime industry going green. Tier Two low emission clean diesel engines. Low noise propellers. Diesel-electric drives. Hybrid marine propulsion. Energy efficient hull shapes. Non-poisonous hull antifouling.

I myself have entered the nature observing industry. I built a hybrid drive passenger vessel. My goal is to form a generational bridge between my generation (the boomers) and younger generations, especially children. My business model is based on appreciating the natural environment and doing so with a state of the art vessel which produces zero emissions and very low sound signature in electric drive mode. Learn more from my website: Close Encounters Ecotours closeencountersecotours.com

Source of Human Sound

Anyone who has viewed WWII submarine movies (*Run Silent Run Deep*, *Das Boot*) or contemporary submarine movies (*The Hunt For red October*) for example knows that it's propeller noise that gives away the vessels position. The large percentage of vessel noise is propeller noise, specifically propeller cavitation, not engine or machinery noise. A large amount of research was done for US Navy's submarine program to produce low noise propellers. This technology is now available to everyone and is now in use by cruise ships and increasingly by cargo and tanker ships. Their use on container ships is not so much reducing noise, but rather the low noise propellers are more efficient. Also the smoothness of the new propellers reduces crew fatigue on long hauls.

Future generations - Education

I applaud the whale watch industry for the education they transfer to the general public. No other organization has had such an influence on people's perception of the environmental issues surrounding the whales and the possible solutions. I don't believe you can mandate a solution to the Orca whales by restricting access to them.

Age of Optimism - Age of Pessimism

I'm a Boomer, born in 1946 and grew up in the wake of the Second World War. The late 40's and 50's were an age of optimism. We, the United States were the good guys, saving the world from Nazi tyranny and Japanese expansionism. Optimism was the order of the day and anything was possible. New technology brought labor saving devices to average homeowners. It was a wonderful time to be growing up.

I will call today's America the Age of Pessimism. My children, your children and grandchildren are growing up under a shadow of gloom and doom. Terrorism, global warming, financial collapse, threat of pandemic, 2012 end of the world, etc. etc. Even venerable institutions like National Geographic have stooped to broadcasting gloom and doom with apocalyptic programs. What effect does all this have on today's youth? Youth suicide on the rise, drug use, school shootings. Where will it end? What is missing? Optimism is what is missing for today's youth.

Memorable Experience

On September 12th, 2001, I received a call from my daughter. She was moving into her college dorm, about to start college in the big city. Having just graduated from Orcas Island High school, class of 35, she was entering a school of some 35,000. She was upset about what had happened the previous day and asked if she could come up and visit me in Friday Harbor for a day or two. I said sure! Come on up.

Zoanna arrived on the next morning's ferry about 11:30. I suggested we see if we could find some whales and then take an afternoon lunch in one of Friday Harbor's restaurants. Her response, "Good idea!" We motored out of Friday Harbor in my 23 foot assistance towboat and transited south to Cattle Point. We then turned southwest and motored down to Eagle Point where we stopped about 1/2 mile off shore. I saw one whale about a mile southwest but rather than run down there I shut down the engine and we drifted and talked. There wasn't another boat on the horizon. We talked about school, the big city, family and what had happened the day before.

After about 20 minutes a whale surfaced inshore of us and then another and another. Next thing we know we are surrounded by whales. We just sat there, didn't start the engine. One big male surfaced just upwind and very close. That animal had very bad breath! Whoa! We watched for an hour as the Orcas surfaced and slapped the surface around us. It was amazing! After an hour they slowly moved southeast. Once about 1/4 mile away, I started the engine and we motored back to Friday Harbor. On the way, we

talked about what an incredible experience seeing the whales had been and that somehow the world seemed brighter and more optimistic. The whales by their presence had somehow assured us everything was going to be okay.

I think it would be unfortunate if NOAA was to take this away from people, especially young adults and children. Young people especially need exposure to the natural world and Orca whales are the most inspiring sight to experience.

Seven, Age of Reason - Eleven, Age of Inspiration

I learned in school that age seven is considered the age of reason, the age where a child understands right from wrong. From my own experience, I've concluded that age eleven, at least for males, is the age of inspiration.

Eleven, the age where the brain is fully formed, and the body has not yet entered puberty. This is the age child I want to see the whales because I know that seeing them in their natural environment will have positive effects for a lifetime. For this reason, all eleven year olds will travel free on my charter boats. I was eight when I first saw the whales. I've never forgotten seeing them for the first time.

Today's kids need inspiration. Something natural and positive, their lives otherwise awash in a sea of pessimism. Let the children see the whales up close. This issue isn't just about the whales, it's very much about the human race and our and our children's collective future.

Conclusion

The down side is that **we are all** responsible in some way for the degradation of the marine environment. Even Ms. Harrington! The up side is that because we all are responsible, we all can be part of the solution.

You (NOAA) can't "fix" the marine environment and save the whales from the top down, starting with the king of the food chain (Adopt a Whale, No Go Zones). You have to start at the bottom of the food chain, with water quality, with micro organisms, plankton, then planktivores such as herring and candle fish, then salmon and other fishes. With all other members of the food chain healthy, then you'll have healthy Orcas. Not before. The San Juan Islands were once abundant with fish, especially salmon. What we see today is a skeleton of what was once here.

How many Orcas can the area sustain in a healthy state? Probably not more than 150 animals. In my opinion the area is too small to sustain more. Compare this area to the Super-Pods of Antarctica with several hundred members in a pod. The Antarctic pods are hunting baleen whales. There is a lot of food. The area is immense.

I just received an email from Jean-Michel Cousteau's Ocean Futures:

From Ocean Futures:

"For example, in early December, the U.S. Senate convened "Oversight hearings on the Federal Toxic Substance Control Act" to report on a two-year study that included findings showing that 250 foreign chemicals are now found in unborn babies whose only exposure is in the

womb. The report also cited a 2002 study stating that five percent of cancers, 10 percent of neurological disorders and 30 percent of asthma cases can be attributed to industrial chemicals. At Ocean Futures Society, we first became concerned over the toxins found in killer whales [<http://www.oceanfutures.org/action/toxic-flame-retardants>] and now we are worried about ourselves."

The whales were here long before human beings appeared on the planet and are going to be here long after human beings and their warring ways have blown-up their neighborhoods (excuse my pessimism). The whales have been here some two million years. Human beings maybe two hundred thousand years? The whales have been through a lot worse than human pressure, presence or interaction.

The whales have seen earthquakes, volcanoes, plate tectonics, continental drift, solar flares, sunspots, magnetic storms, pole reversal, bombardment by comets, meteors, asteroids, world wide floods, tsunamis, worldwide fires, erosion, recurring ice ages, cosmic rays and even tourists and NOAA is telling us that a kayak at 100 yards is going to adversely affect an Orca's (with a brain twice the size of a human's) ability to echolocate a salmon?

Is it fair at this point to mention that much of the problem of lack of food for Orca is due in part to NOAA's own lack of foresight, planning and management of marine wildlife, especially salmon? Perhaps mother nature will serve up the next chapter in the human environmental drama. Global warming and all that goes with it, perhaps that big earthquake we in the Northwest are overdue for replete with tsunami will change the focus from Orca back to human beings and survival? The whales and what they are telling us may be a harbinger of what is to come for human beings.

Things the Whale Watch Industry Can Do

The commercial whale watch industry has done a magnificent job in educating the public about the whales, the island marine environment and what everyone can do to do their part. There is more the whale watch industry can do to set the standard for everyone else. Below are a few ideas.

I propose that the commercial whale watch industry contact propeller manufactures and develop low noise propellers for small craft (less than 100 feet in length). I also would like to see gasoline engines phased out of the whale watch industry because of carbon monoxide emissions.

I propose that Tier Two Emission Standard diesel engines be the only acceptable propulsion engines used in whale watch fleets. Lastly that all new construction commercial whale watch boats be equipped with dry exhaust which exist the top of the boat rather than wet exhaust at the stern at water level.

Repeating myself, I don't believe that small boat traffic has any adverse impact on Orca whales or their ability to navigate or echo-locate fish. If there is a whale reaction to small boats, that reaction is positive, improving the whale's stealth. However these boat

modifications will set the standard for the general public and demonstrate that we can all do something to help clean up the marine environment.

Don't get me wrong, I too like the whales and I'm especially intrigued with their intelligence. Man has been looking up at the heavens and wondering if there is other intelligent life in the universe. There is other intelligent life here on this planet and they are right here in our backyard. They are called Orca and they may be even smarter than man. But they aren't any more important than the salmon or the herring or the myriad other species swimming around in our local waters.

Below are the voluntary Be Whale Wise Guidelines which are adequate to inform the boating public of what is expected of them.

Also Washington State law RCW 77.15.

Be Whale Wise Guidelines

1. Be cautious and courteous: approach areas of known or suspected marine mammal activity with extreme caution. Look in all directions before planning your approach or departure.
2. Slow down: reduce speed to less than seven knots when within 400 meters/yards of the nearest whale. Avoid abrupt course changes.
3. Avoid approaching closer than 100 meters/yards to any whale.
4. If your vessel is unexpectedly within 100 meters/yards of a whale/stop immediately and allow the whale to pass.
5. Avoid approaching whales from the front or from behind. Always approach and depart whales from the side, moving in a direction parallel to the direction of the whales.
6. Keep clear of the whales' path. Avoid positioning your vessel within the 400 meter/yard area in the path of the whales.
7. Stay on the offshore side of the whales when they are traveling close to shore. Remain at least 200 meters/yards offshore at all times.
8. Limit your viewing time to a recommended maximum of 30 minutes. This will minimize the cumulative impact of many vessels and give consideration to other viewers.

State of Washington Laws presently on the books:

RCW 77.15.740

Protection of southern resident orca whales — Penalty.

(1) Except as provided in subsection (2) of this section, it is unlawful to:

- (a) Approach, by any means, within three hundred feet of a southern resident orca whale (*Orcinus orca*);

(b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;

(c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;

(d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or

(e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.

(2) A person is exempt from subsection (1) of this section where:

(a) A reasonably prudent person in that person's position would determine that compliance with the requirements of subsection (1) of this section will threaten the safety of the vessel, the vessel's crew or passengers, or is not feasible due to vessel design limitations, or because the vessel is restricted in its ability to maneuver due to wind, current, tide, or weather;

(b) That person is lawfully participating in a commercial fishery and is engaged in actively setting, retrieving, or closely tending commercial fishing gear;

(c) That person is acting in the course of official duty for a state, federal, tribal, or local government agency; or

(d) That person is acting pursuant to and consistent with authorization from a state or federal government agency.

(3) Nothing in this section is intended to conflict with existing rules regarding safe operation of a vessel or vessel navigation rules.

(4) For the purpose of this section, "vessel" includes aircraft, canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sailboats.

(5) A violation of this section is a natural resource infraction punishable under chapter [7.84](#) RCW.

[2008 c 225 § 2.]

Notes:

Findings -- Intent -- 2008 c 225: "The legislature finds that the resident population of orca whales in Washington waters (*Orcinus orca*), commonly referred to as the southern residents, are enormously significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals." [2008 c 225 § 1.]

Intent -- 2008 c 225: "The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW." [2008 c 225 § 3.]

I'll leave the reader with a variation on a piece of the dialog from the motion picture *Never Cry Wolf*, produced by the Disney Studios and from the book of the same name by Farley Mowat.

" Better stop worrying about the whales and start worrying about yourselves, your children and your grandchildren!"

Just say NO to the No Go Zone! Current law and guidelines are adequate to protect the whales. Say **NO** for your children and for your neighbor's children and grandchildren.

The NO GO ZONE is a NO GO!

Subject: Vessel regs comments
From: Brooke Nelson <brookesing@gmail.com>
Date: Mon, 11 Jan 2010 22:39:01 +0000
To: Orca.Plan@noaa.gov

January 8, 2010

Brooke Nelson
819 25th Ave. S.
Seattle, WA 98144
brookesing@gmail.com

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:

I am grateful for the opportunity to comment on proposed vessel regulations to protect endangered Southern Resident Killer Whales (SRKW). As an educator and conservationist working in partnership with NOAA to protect this community of orcas I submit the following:

Vessel interference is a primary threat to the recovery of the SRKW community. I support precautionary measures based on the best available science to help relieve anthropogenic pressure on this fragile and unique population. Of note is that a population weakened by lack of prey and heavy contaminant loads may be more susceptible to the stress of vessel impacts. Research suggests that vessel effects alter SRKW behavior (Noren, 2009 and Bain, 2003-2005) and Northern Resident Killer Whale studies supplement this data (Williams, Ashe 2006). Also of note is that SRKWs increase the amplitude of vocalizations in the presence of vessels (Holt, 2009). In addition to altering the behavior of SRKWs, vessels are likely to have negative effects by interfering with echolocation and communication, polluting air at the water's surface, and by putting whales in physical danger of a ship strike.

Despite NOAA's best efforts to educate and inform the public, Soundwatch Boater Education Program data shows that voluntary *Be Whale Wise* guidelines and Washington State and San Juan County regulations have not been effective enough at decreasing harassment and harmful interactions between vessels and SRKWs. In fact, during the summer of 2009 Soundwatch documented a record 2,427 violations by vessels on the water with orcas present (Soundwatch Observed Incidents Summary 2009). I would like to emphasize that new regulations will not be effective without sufficient support from law enforcement on the water. Federal, state and local governments should work collaboratively and with adequate funding.

I strongly support regulating a 200 yard distance between vessels and killer whales. This measure will lessen vessel effects on SRKW behavior, decrease acoustic impacts, provide a buffer from noxious fumes at the surface, and decrease the likelihood of a collision. In addition, I strongly support the prohibition on parking in the path of killer whales for many of the same reasons.

In response to commercial whale watch operators who suggest that it is difficult to have a ‘teachable moment’ and/or a meaningful experience at 200 yards I respectfully submit evidence from eight years working as a naturalist and educator at Seattle Aquarium that suggests otherwise. It is extremely rare for wild whales to be seen from the downtown waterfront and there are no captive cetaceans at Seattle Aquarium. Visitor surveys consistently name Seattle Aquarium’s Puget Sound Orcas exhibit to be a favorite among guests, who point to information they learned about local orcas to be a highlight of their visit. I enjoy a high level of enthusiastic engagement with Aquarium guests by utilizing my training as a naturalist interpreter and simple orca-related props, photos, and videos. Thus I would urge whale watch vessels to focus on excellent interpretation by trained naturalists. I would also suggest that whale watch companies can better manage guest expectations by not using marketing photos that depict orcas within an unsafe and unlawful proximity to boats.

I also support the proposed seasonal no-go zone on the west side of San Juan Island. This area is a small but important portion of the critical habitat defined in the recovery plan. Unfortunately, this same stretch of shoreline is popular with commercial fishers, whale watch companies, and recreational boaters, fishers, and kayakers. I recognize that many commercial and recreational interest groups and private citizens oppose this regulation. My reasons for supporting this proposal include the following:

- Resident killer whales have been shown to be more vulnerable to vessel disturbance while feeding than during resting, travelling or socializing activities. Killer whales were predicted to be 2.7 times more likely to be engaged in feeding activity on the southwest side of San Juan Island than they were in adjacent waters (Ashe, 2009).
- The SRKW traveling path has become more spread and less predictable in recent years. It has become increasingly difficult for even well-intentioned marine vessels to stay out of the path of whales. The no-go zone will create a safety buffer between boats and SRKWs and decrease the number of speeding recreational boats in transit through critical orca habitat.
- With respect to the kayaking community, research suggests that kayaks alter the direction of travel of SRKW, while admittedly leaving the waters quieter than power boats and the air and water unpolluted. The main reason the west side of San Juan Island is such a popular kayaking destination is because of the opportunity to see orcas. If kayakers are concentrating on the west side of San Juan Island and having a detrimental effect on the SRKW, kayakers should relocate to other regions.
- It is in the best interest of commercial groups to make every effort to rebuild the SRKW population for their future commercial success and the enjoyment of future generations.

It is not my intention to demonize the boating public. Indeed, the SRKWs face myriad complex challenges to their recovery. It is apparent that even were NOAA able to prevent 100% of the interactions between vessels and SRKWs, the population would continue to decline due to lack of prey and persistent and increasing levels of bioaccumulated toxins. Salmon habitat – including dam removal – and marine pollution must be addressed by NOAA **in relation to SRKW recovery**. The existing Chinook salmon recovery plan should be incorporated into the orca recovery plan. NOAA’s 2009 Biological Opinion on water projects in California’s Central Valley (<http://swr.nmfs.noaa.gov/ocap.htm>) finds that because these projects harm Chinook, they harm SRKW. We urge NOAA to apply this same logic to the Columbia-Snake Rivers Biological Opinion,

and come to the same conclusion as in the Central Valley BiOp.

My concerns about the regulations as they are proposed include:

- They do not address tanker and container ship traffic that add noise to the environment in addition to presenting the threat of a large oil or fuel spill.
- They do not address the use of sonar by military vessels throughout the SRKW range.
- They do not address other anthropogenic disturbances such as seismic exploration.

I encourage NOAA to examine the following suggestions for the benefit of the SRKWs and other protected species that share their range:

- Speed limits for all water craft within proximity to protected marine mammals within Washington State waters.
- The creation of a marine protected area on the west side of San Juan Island (see Ashe, 2009).

Some suggest that 'reasonable practical efforts' are necessary to protect this population. I submit that 'reasonable practical efforts' have been in place since well before the ESA listing and that meaningful sacrifices must be made to protect this valuable resource. The long-term needs and the rights of an endangered population must be placed before the short-term desires of the public for the future benefit of both human and SRKW populations.

I support the proposed regulations and will continue to work with NOAA Fisheries to educate the public about SRKWs and the recovery plan. I would like to see NOAA move quickly and audaciously towards implementation.

Sincerely,

Brooke Nelson

Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)

Vessel regs comments BN 1-10.doc

Content-Type: application/msword
Content-Encoding: base64

Subject: Proposed Killer Whale Vessel Regulations
From: Stain less <stainless_band@hotmail.com>
Date: Fri, 15 Jan 2010 15:35:21 +0000
To: Lynne.Barre@noaa.gov

I have read and agree with the comment letter submitted by Debra Stevens

Troy Lang
stainless_band@hotmail.com

Hotmail: Free, trusted and rich email service. [Get it now.](#)

comment on Proposed Killer Whale Vessel Regulations.

Subject: comment on Proposed Killer Whale Vessel Regulations.

From: Troy&Debi <fishcatchr@dishmail.net>

Date: Thu, 14 Jan 2010 23:30:48 -0800

To: Lynne.Barre@noaa.gov

Dear Lynn,

Attached is my comment letter on the Proposed Killer Whale Vessel Regulations. I hear NOAA is moving from the San Point location. I sincerely hope the budget concerns across government agencies improve.

Best Wishes,
Debra Stevens
Fishcatcher Charters
fishlady@hotmail.com
425-343-4012

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January 14, 2010

Ms. Donna Darm
Asst Regional Administrator, Protected Resources Division
NW Regional Office, National Marine Fisheries Service
NOAA, U.S. Department of Commerce
7600 Sand Point Way NE
Seattle, WA 98115

Subject: Proposed Protective Regulations for Killer Whales in the Northwest Region

Dear Ms. Darm,

I appreciate the opportunity to participate in this public comment process. I attended all meetings and appreciated the huge public turnout for the meetings. The public provided valuable insight and additional information regarding the whales and flaws in reports that were the basis of the proposed proposal. Your office adapted quickly to the need for additional meetings and extended comment period. Thank you for your expertise in handling this highly disputed proposal in such a professional manner.

I will identify my comments and preferred alternatives then provide the research and experience that supports my opinion.

1. **A no-go zone should not be in the proposal.** This idea appears to have originated from a special interest group using inappropriate methods of information collection, misleading and false statements. It does not benefit the whales and is not a geographical representation of the southern resident whale's environment.
2. **I support the Fisherman's Coalition go-slow zone as appropriate.** (Eagle Point to Mitchell Point). Although I wish to make additional points regarding any zone adopted.
 - 2.1. **Please consider a Sunset clause to adoption of any vessel restricted zone** in case funds are not allocated to perform research. We already know that the studies so far lack any facts to show a no-go or go-slow zone provide a benefit to the southern residents.
 - 2.2. **The phrase 'when whales are present'** should be included in any 'zone'. I understand that this causes additional enforcement concerns. Although, if the go-slow zone idea works and is proven by research to benefit whales, it could work wherever the whales are in their travels.
3. **Navigation chart amendments** are needed to aid vessel operators and enforcement if any 'zone' is adopted. This becomes more important if adoption of a 'zone' includes any penalty for violation.
4. **Dept of Commerce needs to fund both NOAA and WDFW.** WDFW has some of the best marine mammal biologists as staff, education ability, and enforcement capability if provided the budget. The Dept of Commerce needs to provide funds for both the WDFW and Regional NOAA office for research and enforcement. To depend heavily on a non-profit enterprise, without licensed Captain's, adopted rules, definitions and appeal procedures that is prejudice against all vessel disturbance is not a benefit to the whales, the vessels, or the non-profit organization or government agency reputations.
5. **Education before enforcement.** No fines should be levied against citizens that have not been made aware of the rules.
 - 5.1. The prior Guidelines were created and not distributed to all vessel operators/owners.
 - 5.2. Adopted rules should have basis in fact. To regulate small vessels is relatively easy with relatively small benefit to whales.
6. **Penalties should not be adopted without rules easily understood and definitions provided.** Phrases such as 'do not intentionally approach within a specific distance' to be defined so it is easily

interpreted only one way and written with an understanding that vessels and operators can be regulated although the natural behavior of whales remains at will.

6.1. **Approach means 'under way'.**

6.2. **Intentionally parking in the path should be defined as parking in the path at the time the vessel stopped.** If a whale or whales alter course after the vessel has stopped outside the prior obvious path, that vessel should wait until the whales pass. The vessel should not be made to turn on its motor and move. Marine Mammal Monitoring, Canada's equivalent to Soundwatch recommends motors off near whales especially under 100 yards when it is safe to do so.

7. **Vessel approach distance should be 100 yards** as provided for in RCW 77.15.740 and to be consistent with Canada.

8. **Sportsfishing Charters to be allowed to view at 100 yards same as Whale Watching vessels.**

Charters operators are USCG Captains and provide the valued benefit of education to general public. Although charter boats do not specifically target whale watching, we are on the water a large part of the time and have become familiar with marine mammals, fish species and the environment our clients enjoy for the day. Many of the important vessel restrictions I'm in favor of are actually to prevent harassment of the whales such as leapfrogging and getting in front of a path intentionally.

Whale behavior was not included in the studies or proposal. It is not uncommon to have an Orca appear suddenly next to a fishing boat and watch the occupants. The whale moves off when it desires. A few years ago I had 3 young girls, age 8 through 12 on board for a birthday party. We caught our salmon and moved away from shore and other trolling fishing boats, motor off, to take pictures. The girls were laughing and had high pitched giggles most of the day and more so while holding their salmon for the pictures. A pod was spotted way off in the distance and their giggles increased in volume. Suddenly a whale appeared about 20 feet of our port side and stayed there on top the water just watching for about 15 minutes. Another appeared nose up at the front of the first whale as if to see what was so interesting then sunk straight down after a minute and disappeared. The girls and I were in awe and they fell in love with Orca's for life. The whale waved a fin before it disappeared into the water. There are times when I'm nowhere near San Juan Island and see a pod far off, heading a different direction than I am. I'll stop, further than 400 yards off, turn off the motor and drift. There are typically, two or three 'scouts' way in front of and leading the pod. A few times the scouts have turned sharp and gone right by my boat, not stopping, and then changed heading to their original direction after they pass. I can't help but smile and wonder, 'Are they they're looking for the girls?' It is not uncommon to have one whale show up to look then return to the pod or surprise us and pop up right next to the boat and just hang out for awhile, usually not more than a couple minutes. It's always a surprise as we're watching the pod from several hundred yards. You can regulate the vessel operators but the whales are curious. It's not possible to predict their behavior.

Natural whale behavior is why I so adamantly oppose a penalty or regulation for vessels not staying a certain distance away. Appropriate actions are for a vessel to stop if closely approached by a whale unless this poses a life safety issue (drifting into rocks if without power as an example). If a group of vessels were approached by a whale, it would be an unruly and unsafe action for them all to motor up and try to move. Anyone advising such a regulation, in my opinion, could not possibly hold a USCG Captains license or have knowledge of 'rules of the road'. To cause vessels to move swiftly and increase motor noise is also the opposite of what is reported as good for the whales. The whales deserve 'predictable behavior' from us. They have no problem navigating through vessels with downriggers lines to the bottom and are not intimidated in the least. These amazing creatures are the king of the sea.

Why is the no-go zone not a feasible idea?

1. It removes only the boats that can easily be regulated while the supporting documents used in the proposal actually state there is no known impact on the whale population by vessel disturbance.
2. Exempting treaty tribes creates the opportunity for treaty tribes to fish the area more heavily and with no limit or competition while pushing non-treaty tribal and non-tribal commercial fishing to areas of Puget Sound deemed unsuitable for additional fishing pressure. This creates a far worse scenario for salmon recovery efforts in the Puget Sound and does not prevent vessel presence in the zone.

3. J pod is the most frequent visitor through this area and I see them about 20% of the time. Most often I see them traveling outside of the proposed 'zone'. The J pod population appears stable and has been increasing in numbers.
4. The whales do not avoid the area when vessels are present. They are use to and not adversely impacted by fishing boats.
5. Knowledge and coordination between this proposal, the North of Falcon process, international and state agreements did not exist when or was not provided to NOAA-F when proposing this no-go zone.
6. 'Regardless of perceptions, an ongoing (since 1990) study of boat/whale interactions has been unable to document any impact of boats on killer whale behavior. Long-term impacts are not apparent either; whales' use of the area has remained stable or increased over the last 20 years.' KILLER WHALES AND BOATS IN THE HARO STRAIT AREA: BIOLOGY, POLITICS, ESTHETICS AND HUMAN ATTITUDES by Robin W. Baird, Robert Otis and Richard W. Osborne, January 19, 1998 <http://www.cascadiaresearch.org/robin/kwinex.htm>

If a zone is adopted, why is a go-slow zone a better idea?

1. Fishing boats are trolling at less than 7k. The sound of small fishing boats is not in the same acoustic range as whales therefore, masking is not an issue.
2. The huge economic impact of removing fishing from this zone does not benefit the whales and devastates the recreational fishing industry and affiliated marine and tourist economies. As learned in the public testimony, Rosario Strait and much of the area west of this zone are closed to fishing as part of a salmon recovery plan.

What do we know from supporting documents about vessel disturbance?

1. Vessel disturbance is not an impact on the population.
2. The whales get used to predictable behavior.
3. A change in behavior does not equal adverse impact.
4. Boats running fast alongside the whales to get ahead of them, called leap-frogging and running fast through the pod is harassment just as that type of maneuver by vehicles on a highway would be termed 'reckless'.

What do we know from supporting documents about noise?

1. Whales are displaced by the acoustic devices used on open net pens to prevent seal and sea lion deprivation. Are these acoustic devices used in the usual route of any southern residents?
2. Noise from small vessels does not mask the ability for the whales to find prey.
3. No study concludes an effect by small vessel noise.
4. Masking effects are very insignificant but noticeable from in front of the whales and within 50 to 100 yards from the side. Leap-frogging adds speed that increases acoustic volume increasing masking. The masking has greatest effect from in front of whales. This should prove that when whales are close, vessels should not be required to turn on their motors and attempt to 'get away from the whales'.

What do we know from supporting documents about prey?

1. Recreational fishing rules allow each licensed fisher to keep one King salmon per day, if they are able to catch their limit. This is not a significant number.
2. Only one report on prey was obtained for this proposal. Additional research and funding for that research is needed.
3. If commercial fishing, providing a needed human food supply, turns to net pen harvesting, regulations are needed. Open net pens have inherent adverse effects. Closed net pens cost more initially. If regulations requiring closed pens and newer technology are too slow in adoption, new pens will be at a disadvantage financially to the many existing open pens. This is an industry

that is needed and our opportunity to help it blossom in to an environmentally safer alternative is immediate.

What do we know from supporting documents about pollution?

1. Toxic contaminants in southern resident whales, PCB's and PCDD/F's were three times higher than known to be immunotoxic for harbor seals and were three to five times higher than in northern resident whales.
2. Pollution is reducing prey.
3. The recreational fishing public, charter industry and associations are the most active section of the population working toward enhancing habitat from headwaters to the ocean and advocating the clean up and preservation of our natural resources.

What do we know about whale behavior:?

1. No reports provided on the routes and populations of the separate pods.

It appears obvious that the threats impacting the health and longevity of the Southern Residents are pollution and prey. Pollution and poor habitat are a threat to prey. The inability to manage treaty tribe fish harvests along with non-treaty commercial harvesting predictably, creates a special circumstance in this state.

I, along with other recreational fishers in this state am proud and feel protective of our Orca's, other wildlife and beautiful environment. When clients see the whales or other wildlife, they feel it as well. It becomes a memory and something to tell their friends and relatives. They too become possessive of the awesome beauty and bounty. We are lucky the residents of Washington are increasingly choosing to live 'green' and support the efforts made to reduce pollution. I encourage clients to join a club and volunteer on habitat rehabilitation projects. The state lacks funds but it's the citizen who can make a difference.

Vessel Disturbance

Williams et al 2006

Boats do have an effect on behavior of whales in this study, although the upper high of the effects are still very low.

Williams et al 2002a

Research of vessel effects consists of 'approaching' by whale watchers and not non-whale watching approaching vessels of the northern resident whales. Behavioral responses to human interaction are reduced over time. The whales get used to predictable behavior. Behavior changes occur with time of day and tide changes.

Williams et al 2009

Vessel traffic is a priority research because it lends itself most readily to management and mitigation. Reported changes in breathing patterns as a function of boats have been inconsistent. The trend in swimming speed with respect to vessel traffic has been inconsistent across studies (e.g. contrast Kruse 1991 with Williams et al 2002b). If the detection of vessel effects requires such delicate methodology, are these effects really worth mitigating against? 1-3 vessels cause whale behavior changes and more vessels caused a return to no changes. Behavior changes occur with tide changes and time of day. Clearly, managing boat traffic around whales does not address prey limitation or larger problems, boat traffic is a demonstrated threat that lends itself to immediate mitigation.

Bain et al 2006

Strong behavioral responses to disturbance do not always indicate population level effects. Inter-specific variability in site fidelity and alternative suitable habitat make it difficult to inter population-level consequences from sensitivity to disturbance. The presence of vessels inhibited foraging behavior. This may lead to a reduction in energy acquisition, and a priority research would be to address directly through field studies whether prey capture actually is affected by vessel presence. Surface active behavior (SAB) shows significant differences depending on vessel activity, although such results are inconsistent in their magnitude and direction. Average inter-breath interval and swimming speed do not show consistent changes across studies, and probably are not useful measures of the impact of vessel traffic. Future research should focus on prey acquisition, and potential impact through mechanisms such as noise and stress.

Baird 2002

Impacts of boats are subtle. Of the killer whales of Washington and B.C. only one fatality was due to a boat in 40 years, unlike other whales or locations. These whales have been exposed to boats on a daily basis. It is unlikely that large numbers of boats or close approaches by them would deter whales from a forage area. Effects of boat sounds are unknown.

Bain 2007

Vessels closer than 100m effect whale behavior.

Noren et al 2007

Concludes there are implications for extending the 100m zone defined in 'whale wise' and Further research is needed to assess the impact continued vessel traffic may have on Southern Resident killer whales.

Kriete 2007

Orca Relief Citizens Alliance name negative impacts by whale watching boats *not determined by studies*. Recommends private fishermen to pull in their lines and remain stationary with their engines, depth sounders and radars turned off until whales have passed.

Marine Mammal Monitoring 2002

Canada's equivalent to Sound Watch. Suggests motors off near whales, especially under 100m. No leap-frogging, chasing or parking in the path intentionally.

May 2005

Regulation and Compliance Motivations: Examining Different Approaches

Explains the motivation to comply with guidelines or rules.

Kruse 1991

Johnstone Strait, B.C. One summer of daily observations of whales both non-disturbed and disturbed when boats arrived and approached. When approached by several boats, whale speed increased no course deviation. Vessels outside 400m had no effect.

Koski 2004, Koski 2006, Koski 2007, Osborn et al 1999 WHALE MUSEUM/SOUNDWATCH PUBLIC OUTREACH/BOATER EDUCATION PROJECT ANNUAL REPORTS. Stated goals: on the water boater education, collect data on vessels and through this, reduce vessel disturbance to killer whales. Data provided includes the number of educational handouts distributed and Incidents observed. Activities listed as 'incidents' include vessels within 440 yards of a voluntary no-go zone,

kayaks, airplanes flying lower than 1,000 feet and vessels shoreward of whales as well as inappropriate vessel/airplane behaviors in an attempt to indicate status of compliance to voluntary whale wise guidelines. No information on individual pods or behavior. *It appears an assumption is made that all vessel disturbance impacts whales adversely without a prior scientific determination. No data on individual pods and misleads a reader to assume the southern residents live right where the data is collected although San Juan Island is a small portion of the southern resident environment. Large emphasis on enforcement activity by this private group.*

Lusseau et al 2009

The effect of boats present appeared to be only significant when boats were within 100m and 400m. All discussion of vessel or small vessel acoustic effects included the word 'may' or 'potentially' but no solid statistics or conclusions. The report summarizes with the need for years of study.

Vessel Disturbance and Noise

Trites et al 2007

Research done in B.C. showed a subtle effect of vessels on the time whales spent in the Robson Bight – Michael Bigg Reserve, but no effect on their numbers. The magnitudes (tiny) of the statistically significant effect of additional boats on whale number and group hours were small and probably of no biological importance. Whales are displaced by the acoustic devices used on open net pens to prevent seal and sea lion deprivation.

Jelinsky et al 2002

Johnstone Strait, B.C. Primary researched effects of whale watching. No association between whale speeds in relation to vessel movement pattern. Whale spacing did not vary significantly with vessel behavior. Acoustic effects of outboards on inflatable's was high compared to the low effect of boats with inboard motors. Concluded that slow cruising boats should approach no closer than 50m to avoid hearing loss and changes in behavior, and that a cruising speed of about 10 km h is recommended within a few hundred meters.

Noren et al 2009

Research vessel stayed 100m from southern resident whales during the two years of study. Surface active behavior (SAB) occurred during all activity states and more likely when approached closer than 100m by a vessel especially a fast moving vessel. Acoustic masking occurred when the vessel leap-frogged in front of the whale, not a noticeable difference when parallel.

Noise

Erbe 2002

Underwater noise of whale-watching boats and potential effects on killer whales (*Orcinus orca*), based on an acoustic impact model indicated a lack of cooperation to test the noise of various boats and motors. Future research could determine how to reduce boat noise. Although boat noise had impacts, the study concluded whale watching as beneficial to whales by raising public awareness.

Holt 2008

NOAA Technical Memorandum: Sound Exposure and Southern Resident Killer Whales.

Measurements of these sounds within the relevant frequency range of killer whale hearing (i.e., 1–100 kHz) are needed. Such studies should further investigate the effects of vessel size, propulsion type, operating speed, and vessel orientation on the sound levels emitted. The ability to assess

zones of audibility and masking are dependent on knowing the appropriate bandwidth to quantify anthropogenic sounds. The effective filter bandwidth of the killer whale auditory system is unknown and has been estimated through indirect methods. However, these methods are often not accurate compared to direct measurements.

Morton and Symonds 2002

Acoustic harassment 'deterrent' devices have been used since the 1980's, in B.C., to cause marine mammal pain. This is used to keep them away from net pens and by other commercial fishing enterprises to protect the fish harvest. Whales leave the area and return when acoustic deterrent devices are not used.

Williams 2002b

Leap-frogging adds speed that increases acoustic volume increasing masking. The masking has greatest effect from in front of whales.

Holt et al 2009

Concluded that background noise caused by vessel traffic caused whales to increase call volume. 'Could' have energetic effects.

Romano et al 2004

Acoustical experiments for effects on marine mammals did not include Killer Whales. Effects between species tested ranged widely. Acoustics caused by sport fishing boats was not performed.

Noise and Pollution

Bain 2001

Acoustic deterrent devices at aquaculture operations have potential to cause disruption of movement patterns or even abandonment of an area. More critical problems are pollutants and the reduction of prey. Toxic contaminants in southern resident whales, PCB's and PCDD/F's were three times higher than known to be immunotoxic for harbor seals and were three to five times higher than in northern resident whales.

Pollution

Kriete 2002

Dead southern resident killer whales were found to have very high PCB's in their blubber. The cause of death for J18 was a decreased immune system and infection. Whale watching is thought to cause a 3% increase in travel distance and acoustic masking issues.

Prey

Ford and Ellis 2006

Selective foraging by fish-eating killer whales indicates 96% salmonoids. Rockfish were abandoned after partial consumption. Chinook and chum salmon represented 94% of the salmonoids.

Whale Statistics

Carretta et al 2004

NOAA Technical memorandum U.S. PACIFIC MARINE MAMMAL STOCK ASSESSMENTS: 2003

Live-captive fishery from 1967 to 1973, is estimated to taken 47 killer whales, mostly immature. Since, 1995 the population declined to 80 whales. During this decade, study indicates no net taking by commercial fishing. N.W. Marine Mammal studies show no human caused mortalities or serious injuries from non fishing sources 1997 to 2001. NMFS established a Biological Review Team (BRT) for ESA status review of stock, 2001, and determined Southern Resident Whales are not a "species"

under the ESA and that a listing of “threatened” or “endangered was not warranted.

Hoyt 2001

WHALE WATCHING 2001: WORLDWIDE TOURISM NUMBERS, EXPENDITURES, AND EXPANDING SOCIOECONOMIC BENEFITS

Lusseau and Bejder 2007

Energetic challenges as added traveling or reduced foraging can lead to reduced individual fitness. Shifting into long term avoidance of specific areas.

Gaydos and Raverty 2007

Killer whale Stranding reports since 2005. No southern resident whales were found stranded.

THE FOLLOWING REPORTS ARE NOT APPLICABLE:

Foote et al 2004

No actual evidence. A one page article in nature.com.

Ford et al 2000

This report was not provided on the CD handed out by NOAA-F.

Duran and Valiente 2008

Only the first page provided on CD. Refers to swimmers effects on spinner dolphins and sound on the behavior of toothed whales.

Allen and Read 2000

HABITAT SELECTION OF FORAGING BOTTLENOSE DOLPHINS IN RELATION TO BOAT DENSITY NEAR CLEARWATER, FLORIDA

Bauer and Herman 1986

EFFECTS OF VESSEL TRAFFIC ON THE BEHAVIOR OF HUMPBACK WHALES IN HAWAII

Constantine et al 2004

Dolphin-watching tour boats change bottlenose dolphin (Tursiops truncatus) behavior

Dean et al 1985

ANALYSIS OF HUMPBACK WHALE (Megaptera novaeangliae) BLOW INTERVAL DATA
GLACIER BAY, ALASKA, 1976-1979

Forest Thesis April 2001

The Hawai’ian Spinner Dolphin, Stenella longirostris:

Glocknir Ferrari and Ferrari

Individual identification, behavior, reproduction and distribution of Humpback Whales in Hawaii

Gregory and Rowden 2001

Behaviour patterns of bottlenose dolphins (Tursiops truncatus) relative to tidal state, time-of-day, and boat traffic in Cardigan Bay, West Wales

Jurasz and Palmer 1981

Humpback Whale vessel interactions in Glacier Bay National Monument, Alaska

Krieger and Wing 1984

Humpback Whale Forage in Alaska, 1983

Lusseau 2003a_ConservBio

Effects of tour boats on the behavior of Bottlenose Dolphins

Lusseau 2005

Residency patterns of Bottlenose Dolphins, New Zealand

Nichols et al 2001

Observations of interactions between Hector's dolphins (*Cephalorhynchus hectori*), boats and people at Akaroa Harbour, New Zealand

Noris et al 1985

THE BEHAVIOR OF THE HAWAIIAN SPINNER DOLPHIN

Salden 1988

HUMPBACK WHALE ENCOUNTER RATES OFFSHORE OF MAUI, HAWAII

Van Parijs and Corkeron 2001

Boat traffic effects the acoustic behavior of Pacific Humpback Dolphins

Visser and Fertl 2000

Stranding, resighting and boat strike of Killer Whale off New Zealand. (The Killer Whale went on to live normally)

Baker and Herman 1983

The impact of vessel traffic on Humpback Whales, Alaska

Bejder et al 2006 decline abound

Decline in Relative Abundance of Bottlenose Dolphins Exposed to Long-Term Disturbance

Constantine 2001

INCREASED AVOIDANCE OF SWIMMERS BY WILD BOTTLENOSE DOLPHINS

Courbis 2004 Thesis

BEHAVIOR OF HAWAIIAN SPINNER DOLPHINS (*STENELLA LONGIROSTRIS*) IN RESPONSE TO VESSELS/SWIMMERS

Glockner-Ferrari and Ferrari 1990

Reproduction of the Humpback Whale, Hawaiian Waters

Hall 1982

Humpback Whale population and traffic study, Prince William Sound, Alaska

Lusseau 2003b_MarEcolProgSer

Male and female bottlenose dolphins, New Zealand

Lusseau 006

THE SHORT-TERM BEHAVIORAL REACTIONS OF BOTTLENOSE DOLPHINS...

Mathews 2000_SeaLyons_Vessels

Reactions of Steller Sea Lions in Glacier Bay

Nowaceki et al 2003 North Atlantic right whales (*Eubalaena glacialis*) ignore ships but respond to alerting stimuli

Visser 1999

Propeller scars on and known home range of two orca (*Orcinus orca*) in New Zealand waters

Watkins 1986

Whale reaction to humans in Cape Cod, MA. minke, fintail, humpbacks.

RE: ½ mile no-go zone comments on proposal

My name is Debra Stevens. For over 30 years I've volunteered with other sportsfishers rehabilitating fish habitat and am a semi retired city planner of 20 years which btw makes me want to thank the NOAA staff for all the work involved in these public meetings.

I'm also a Coast Guard Master Captain, owner/operator of Fishcatcher Charters, a member of the Charter Boat Association of Puget Sound and National Association of Charter boat Operators.

I believe the environmental assessment to be in error and this proposal to cause a probable significant adverse impact for life safety, local economy and to my business. This may be due in part to a misunderstanding about sports fishers, fishing charters and the benefit to the whales that would be lost.

The Orca's don't stay in the proposed no-go zone. Sports fishers don't chase the whales. We see them when we're slowly trolling or running to or from port. The whale watching boats are usually my first clue Orca's are approaching, I appreciate that. Depending on where I am, that may give me time to move away. I don't want to travel if the whales are too close so turn off the motor and sit while they go by. They've never acted as if I'm a threat or in any kind of competition.

My charter specializes in 'Custom Marine and Fishing Adventures' in the east end of the Strait and San Juan Islands. Some clients are on vacation from around the world. Since the economic downturn, more Washington residents are vacationing in the area. My trips combine fishing with other services including, geocaching by water, family vacations where kids catch kelp greenling and help Mom and Dad catch salmon. They are enthused to see the area by water, hear some of the history, see marine wildlife, some want to fish for the experience and release fish after identifying the species and picture taking. They've never seen hawks and eagles fighting, the sea lions or seals on the rocks or the Orca's except on TV. They plan where in the islands to stay for next year's vacation. They gain camaraderie to marine life and the natural environment. I promote joining organizations to rehabilitate habitat and preserve marine resources. They experience the bounty and beauty of the area and go away in awe.

My clients know in advance that if we see the whales, we'll be waiting until they pass by. Without exception they say the Orca's are the highlight of the day. They leave wanting to learn more and protect them. I have to tell you how much I enjoy sharing my love of the whales, marine life and salmon fishing. Many clients already try to live green and once they have this personal experience, even for a day, it leaves a lasting impression. They go home and share their experience with many.

Orca's are highly intelligent and social. They choose to travel near boats and people at times and choose when to be playful. It seems no one is considering their natural behavior. I wonder how they would feel about a boat constantly having to start its motor and move quickly away if they approach when due to their natural behavior they want to

Subject: Hi Lynne and NOAA - vessel regs comment
From: ">>>" <pacificfusion@gmail.com>
Date: Thu, 17 Sep 2009 12:24:57 -0700
To: "orca.plan@noaa.gov" <Orca.Plan@noaa.gov>

Dear NOAA,

Perhaps the most useful vessel regulation to enforce would be coordinated days without destination traffic.

That is, no inbound whale watch vessels, private boaters, research, sound/straitwatch, etc. - nothing which departs specifically to find orcas.

This would give the endangered whales 'time off' from the effects of vessel traffic, also creating a 'control group' day. Meanwhile, shore-based viewing opportunities and acoustic studies on the hydrophone network would be improved.

Although the vessels which seek orcas as a destination do have the animals' interests in mind, each also has their own human interests in mind.

To simply coordinate days when no boats are allowed to hunt orcas would assist with research, providing time to study whales in the absence of vessel noise. By coordinating these breaks, the negative effect upon wildlife maritime industry would be minimal if any.

Thanks for your consideration, and your work to conserve SRKWs.

Cheers,

Sneed

www.consynpro.com/marine-naturalist

Letter to the National Oceanic and Atmospheric Administration

Comments on the Orca Recovery Plan

From:

Shane Elben
PO Box 2942
Friday Harbor, Washington 98250
(360) 378-8628

January 14, 2010

Please do not let a small group of people whose livelihoods depend on the exploitation of the orca stop you from enacting new laws and enforcing all laws dedicated to protect the endangered orca.

Here is a sampling of the scientific findings which show the detrimental effect of boats to these whales:

Bain, et al (2006)

Effects Of Vessels On Behavior Of Southern Resident Killer Whales (Orcinus Spp.).

Bejder (2006)

Decline in Relative Abundance of Bottlenose Dolphins Exposed to Long-Term Disturbance.

Lusseau (2004)

The Hidden Cost of Tourism: Detecting Long-term Effects of Tourism Using Behavioral Information.

Lusseau, et al (2006)

Estimating relative energetic costs of human disturbance to killer whales (Orcinus orca).

Mattson, et al (2005)

Effects of Boat Activity on the Behavior of Bottlenose Dolphins (Tursiops truncatus) in Waters Surrounding Hilton Head Island, South Carolina.

Lusseau (2005)

Residency pattern of bottlenose dolphins Tursiops spp. in Milford Sound, New Zealand, is related to boat traffic.

Lusseau (2006)

The Short-Term Behavioral Reactions of Bottlenose Dolphins to Interactions with Boats In Doubtful Sound, New Zealand.

Lemon, et al (2005)

Response of travelling bottlenose dolphins (Tursiops aduncus) to experimental approaches by a powerboat in Jervis Bay, New South Wales, Australia.

Finneran, et al (2005)

Temporary threshold shift in bottlenose dolphins (*Tursiops truncatus*) exposed to mid-frequency tones.

Williams & Ashe (2006)

Northern Resident Killer Whale Responses to Vessels Varied With Number of Boats.

Erbe (2001)

Underwater noise of whale-watching boats and potential effects on killer whales (*Orcinus orca*), based on an acoustic model.

Ross et al (2000)

High PCB concentrations in free-ranging Pacific Killer Whales, *Orcinus orca*: Effects of age, sex and dietary preference.

Baird et al (2000)

Bias and variability in distance estimation on the water: Implications for the management of whale watching.

Ylitalo (2001)

Influence of life history parameters on organochlorine concentrations in free-ranging killer whales from Prince William Sound, Alaska.

These whales will surely disappear if NOAA does not follow through with their legal responsibility to stop the illegal pursuit of the orca. Please enforce the laws that have been put in place to protect this orca population. Please do not allow NOAA to be swayed or influenced by the companies that break these laws each and every day of their operation in order to make money off of this endangered species. If NOAA continues to look the other way while these whales are harassed virtually every day of each spring and summer season then it will be a travesty when they disappear for good. What will San Juan County do when there are no tourists flocking here each summer to see these breathtaking creatures? Please NOAA, please take action now so that we don't look back in 20 years and wish that these laws would have been enforced sooner to save the lives of the small, unstable, endangered, beautiful and majestic population of the southern resident orca. By enforcing the laws already in place and thus requiring people to watch whales from the shore will still bring the county tourist dollars while also ensuring that our orca population will be here for tourists as well as locals to enjoy for many more years to come.

I'm sure you know the following sections of the law well, but here they are again:

From the ESA

Definitions(19) The term "take" means to harass, harm, ██████████, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

31 ENDANGERED SPECIES ACT OF 1973 Sec. 9SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2)and 10 of this Act, with respect to any endangered species of fish or

wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

- (A) import any such species into, or export any such species from the United States;
- (B) take any such species within the United States or the territorial sea of the United States;
- (C) take any such species upon the high seas;

From the MMPA

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

Level A Harassment means any act of ██████, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of ██████, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Looking at these existing federal listings protecting the orca, we should no longer allow the orca to be illegally pursued by businesses based solely on violating these laws.

Please enforce the existing laws and stop the pursuit of this federally protected endangered species. I would really love to share the beauty of the orca with my grandchildren some day from the shore and not just through old photos. But, unless NOAA takes action to protect them now, they will surely be extinct species by then. Please listen to the science devoted to the orca and not those profiting from exploitation of the species. Please take action now and give the orca the chance they deserve to recover their population rather than let them continue on their current path towards extinction.

Sincerely,

Shane Elben

Subject: Orca Recovery Program - WE NEED PERMITS! Control the number of boats not the distance!

From: David Angus <david.angus@gmail.com>

Date: Sun, 10 Jan 2010 16:05:34 -0800

To: Orca.Plan@noaa.gov

To Whom It May Concern,

I am a whale watching skipper with over 10 years of experience in the local Victoria industry. The measures being put forth, such as: the half mile no go zone off San Juan Island, and the 200m viewing distance; I believe are well intended but will not reduce significantly the disturbance of the SRKW.

The proximity of vessels to whales resulting in a detrimental effect on the animals is debatable and there is even evidence to the contrary, for example the increased numbers in J-Pod over the last 10-15 years. **What is needed is not further distance from the animals but a reduction in the number of boats.** The animals have become habituated to our presence, what they require are fewer boats to 'dodge' as they forage.

The US and it's Canadian counterparts need to **develop a permitting system that makes the Orca excludable from competition, so as to avoid yet another tragedy of the commons.** Have we not learned anything from the last 75 years of fisheries management? With a permitting system we could reduce the number of boats 'on scene' with the whales, thereby reducing the ambient stresses and motor noise. Each company would receive a daily quota of whale watching trips which they could sell at a premium over a non-whale 'nature tour'. This would help maintain profitability in the industry and give consumers more choice. Enforcement of the quota system would be extremely easy and relatively cheap. Each registered whale watching vessel could be monitored by their DSC radio code. All that would be needed is a tracker boat whose signal would indicate the location of the whales. Lower numbers of boats around the whales would mean fewer enforcement boats on the water.

The 200m distance for viewing whales will kill many of the smaller competitors in the industry and their will be hundreds of people without work. A permitting system would reduce the economic impact that the necessary changes to the guidelines will cause.

Please seriously consider the permitting option. **The problem is not the distance to the whales, it is the number of boats.**

Sincerely,
David Angus

Subject: comments on vessel rule
From: Barbara Marrett <bmarrett@rockisland.com>
Date: Thu, 14 Jan 2010 13:41:28 -0800
To: Orca.Plan@noaa.gov

Thanks for soliciting comments.

Sincerely,

Barbara Marrett

See attached letter

NOAA Marrett comment.doc	Content-Type: application/msword Content-Encoding: base64
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Barbara Marrett
Post Office Box 101
Friday Harbor, WA 98250
bmarrett@rockisland.com
360-378-5242

January 14, 2010

Donna Darm and Lynne Barre
Protected Resources Division
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Input to the NOAA Proposed Regulations to Protect Killer Whales from
Vessel Effects in the Inland Waters of Washington.

Dear Ms. Darm and Ms. Barre,

Wise protective strategies for Southern Resident Whales and the ecosystem they depend on will help protect our local kayak and whale watch industries which, in turn, contribute greatly to the health of our local economy.

I am writing to encourage you to commit to funding a rigorous enforcement program for protecting the whales as part of your proposed regulation. This appears to be one of the most significant shortcomings of your current proposal. Education without *enforcement* is effective only for those who care about the protection of the orcas.

The West Side of San Juan Island is a prime destination for private boaters, commercial and private fishers. Wild life viewing is a source of revenue for responsible as well as irresponsible operators, without enforcement a very strong incentive for some to ignore the rules exists.

The West Side is critical habitat not only for whales but rockfish and salmonids migrating to the Fraser River and is one of the most efficient places for orcas to feed. I encourage you to look at limiting motorized vessels proximity to the shoreline in prime feeding areas.

The unlimited presence of motorized vessels in these areas creates the potential for a persistent source of disturbance and pollution of critical habitat. While creation of a go-slow zone and perhaps an increased yard distance will certainly

help with noise disturbance, the presence of hundreds of motorized boats has a cumulative negative effect on the environment. I encourage you to look at a **vessel permitting systems**, which gives preference to existing commercial businesses that have a track record of stewardship. Money from permitting craft actively engaged in whale watching activities could help fund enforcement. This protects and rewards existing responsible businesses.

Allowing the number of vessels following the whales to grow without any limit doesn't make sense even with other regulations in place. Limiting the number of vessels has worked well in other whale watching areas.

I appreciate the opportunity to comment.

Sincerely,

Barbara Marrett

Subject: Proposed Killer Whale Vessel Regulations
From: Sandi Ugrin <san_juan_dream@yahoo.com>
Date: Thu, 14 Jan 2010 04:57:26 -0800 (PST)
To: Orca.Plan@noaa.gov

Although this is off subject: protect the endangered salmon or we will have no whales. If there were adequate salmon, especially Chinook, the effect of vessels would be minimal. To do anything less is like putting a band-aid on the leak in a dam.

Writing laws, regulations, and rules has no impetus unless there is enforcement. Education: Currently, Soundwatch has their hands full with education. The current law, regulations, and rules are based on the foundation and hard work accomplished by Soundwatch. Soundwatch needs to receive federal funding to keep them on the water every day the orcas are present.

Enforcement: In order for the boating community to take seriously the rules, guidelines, and regulations there must be enforcement. Thank goodness for Soundwatch! The well educated commercial "fleet" has become part of the boat monitoring/enforcement system. They will shout out on the radio to educate (eg. stop from running over whales) a boater, (if possible) position their boat between the over zealous boater and the whales to slow them down, give the boater a horn blast to get their attention before they run over the whales, and summon assistance from enforcement. I've seen an egregious act, by a private boater, happen right in front of enforcement and they did nothing until called by a commercial operator. (Lest you think I'm out on a boat, I'm not. I prefer to do my whale watching from land). Serious protection for the whales can only be accomplished with competent, adequate, consistent, focused, action based enforcement. Enforcement boats bobbing on the water is not enforcement. Without consequences, the current rules and regulations are not taken seriously. Call violators on channel 16, issue warning tickets, begin a data base of violators.

Future system management: Permit commercial whale watch boats (US and Canadian) and commercial kayak companies. With that registration comes education and the agreement to follow the law, regulations, guidelines.

I live on the Westside of San Juan Island at Hannah Heights. I see and hear (via marine radio) first hand what is going on in Haro Strait. For example, on August 6th, I watched a neighbor in his kayak aggressively paddle out into the path and sit there, caused a group of whales to make a radical course change to avoid him, second small group went underneath his boat, he continued to sit there as more whales went past further away (yet under 100 yards) from him. (My camera failed and would not focus.) His blatant disregard was the worst violation of 3 out of 4 private boats with no commercial operators or Soundwatch around to get photos. I went to the community beach and talked to him. With: "I LIVE here, how do you know it was me, the whales came to me, how could I have paddled out in a 3 knot current" as his response. I also watch enforcement boats enjoy a day of sitting on the water day after day. If Soundwatch had taken that attitude since 1993, would we have data for laws, regulations, and rules? I think not.

Sandi Ugrin
PO Box 2954
276 Straits View Dr
Friday Harbor, WA 98250

Subject: vessel regulations comments
From: Darcie Larson <darcielarson@yahoo.com>
Date: Wed, 13 Jan 2010 16:32:30 -0800 (PST)
To: Orca.Plan@noaa.gov

January 13, 2010

Darcie Larson
12208 NE 137th PL
Kirkland, WA 98034
darcielarson@yahoo.com

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:

Thank you for this opportunity to provide comment on the proposed vessel regulations to protect the Southern Resident Killer Whales (SRKW). As a lifelong Puget Sound area resident who has worked as a salmon recovery advocate and marine naturalist since 1999, I applaud NOAA's attention to the plight of the SRKW, while at the same time wish to express my concern about the lack of action on key issues like toxins and prey.

In regards to the increase in allowable approach distance to 200 yards, mounting scientific studies are showing that this is probably the right thing to do to protect the SRKW. While my previous work as a whale watch naturalist makes me keenly aware of the magic that comes from a close approach by killer whales, this often happens according to the whales behavior, and will continue to happen whether we dictate a 200 yard minimum or not. I feel that most passengers would consider 200 yards "close" in most circumstances based on my experiences, and that many commercial whale watch boats already strive to stay at least 200 yards away from whales under current guidelines. I feel that the whale watch industry has an important role to play in educating the public about conservation of not just one species, SRKW, but of the whole ecosystem. I feel this education is best done by trained naturalists, preferably trained and certified by a governing organization such as the Salish Sea Marine Naturalist Association or similar body (one that requires continuing education and a commitment of volunteer hours). NOAA has already supported continuing education of marine naturalists, the naturalist workshop in Port Townsend in March 2009 being one example, and I hope to see support of similar educational opportunities for naturalists in the future.

In addition, I support the prohibition on parking in the path of killer whales. Although this is part of the Be Whale Wise guidelines, in practice many boats, both commercial and private, continue to engage in "leapfrogging". Unfortunately it is just too tempting for many to do this to get a better look at the whales and it seems clear that stronger regulation is needed.

As far as the creation of the "no-go zone", I agree with the comments submitted by People for Puget Sound in this matter. I agree in concept with a "no-go zone" akin to the Robson Bight protected area

in British Columbia, but have concerns about the scientific basis, actual size, exemptions for some types of operations, access to public parks, unintended consequences, feasibility of enforcement, and other questions.

The SRKWs face myriad complex challenges to their recovery. It is apparent that even were NOAA able to prevent 100% of the interactions between vessels and SRKWs, the population would continue to decline due to lack of prey and persistent and increasing levels of bioaccumulated toxins. Salmon habitat – including dam removal – and marine pollution must be addressed by NOAA in relation to SRKW recovery. The existing Chinook salmon recovery plan should be incorporated into the orca recovery plan. NOAA's 2009 Biological Opinion on water projects in California's Central Valley (<http://swr.nmfs.noaa.gov/ocap.htm>) finds that because these projects harm Chinook, they harm SRKW. We urge NOAA to apply this same logic to the Columbia-Snake Rivers Biological Opinion, and come to the same conclusion as in the Central Valley BiOp.

My concerns about the regulations as they are proposed include:

- They do not address tanker and container ship traffic that add noise to the environment in addition to presenting the threat of a large oil or fuel spill.
- They do not address the use of sonar by military vessels throughout the SRKW range.
- They do not address other anthropogenic disturbances such as seismic exploration.

The effort and resources being put into studying the effects of vessels traffic on orcas has produced some good scientific results which have recently shifted my thinking a bit on what regulation is necessary to protect SRKW. However, I have concerns that the limited resources available to NOAA are being eaten up by this obvious target. Boat traffic is visible and audible to people, and in many ways is the easiest to regulate of the factors affecting SRKW. The complex causes of salmon declines, the invisible toxins that pollute our waters; these problems are much less tangible, and more difficult to regulate. I urge NOAA to take a hard look at how limited resources are being used in the fight to protect the endangered SRKW.

Sincerely,

Darcie Larson

PUBLIC SUBMISSION

As of: February 01, 2010
Received: September 28, 2009
Status: Pending_Post
Tracking No. 80a2e257
Comments Due: January 15, 2010
Submission Type: Web

Docket: NOAA-NMFS-2008-0327

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

Comment On: NOAA-NMFS-2008-0327-0001

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

Document: NOAA-NMFS-2008-0327-DRAFT-0020

Comment from John Martin

Submitter Information

Name: John A Martin

Address:

PO Box 408

Burlington, WA,

Phone: 3607577001

General Comment

The "no go" 1/2 mile off shore area off San Juan Island from May 1 to September 30, the tribes are exempt from this rule. I had no idea there is a difference between Native American boats and other boats.

posted to "Piscatorial Pursuits"

Subject: posted to "Piscatorial Pursuits"
From: Maurice Austin <mja@rockisland.com>
Date: Wed, 29 Jul 2009 22:49:26 -0700
To: Orca.Plan@noaa.gov

...from the San Juan Islander:

"In addition, the proposed regulations would set up a half-mile-wide no-go zone along the west side of San Juan Island from May 1 through the end of September, where generally no vessels would be allowed.

There would be exemptions to the rules for some vessels, including those actively fishing commercially, cargo vessels traveling in established shipping lanes, and government and research vessels. The no-go zone would also have exemptions for treaty Indian fishing vessels, and limited exceptions for land owners accessing private property adjacent to it."

'kay, I'm all for protecting the orcas, but the "exemptions" here seem to set up a commercial/tribe-only fishery at the expense of recreational anglers...as if my flasher/hoochie is more disruptive to the orcas than a friggin' purse seiner. Please.

I'm interested in your comments, and so is NOAA. More info and comment link here:

<http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Killer-Whales/ESA-Status/Orca-Vessel-Regs.cfm>

--mja

Subject: Comments Regarding Protective Regulations for Killer Whales
From: Steve Cavender <Steve@OlympicSolutions.net>
Date: Wed, 29 Jul 2009 21:43:07 -0700
To: Orca.Plan@noaa.gov

Subject: Comments Regarding Protective Regulations for Killer Whales

**RE: 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**

Comments Below:

While I support the protection and recovery of Orcas, I adamantly oppose further regulations that would restrict sport fishing in the area. It is my firm belief that sport fishing boats, actively engaged in fishing, would have no negative impact on the whales.

I would like to see the language spelled out clearly, as part of the exemptions to read, **“Sport or commercial fishing vessels actively engaged in fishing”**.

Exceptions: We considered six specific categories of vessels that should be exempted from the vessel regulations: (1) Government vessels, (2) cargo vessels transiting in the shipping lanes, (3) research vessels, (4) sport or commercial fishing vessels actively engaged in fishing (5) vessels limited in their ability to maneuver safely, and (6) vessels owned by individuals who own shoreline property located immediately adjacent to the no-go zone when such vessels are transiting to or from the property for personal, non-commercial purposes. These exceptions are based on the likelihood of certain categories of vessels having impacts on the whales and the potential adverse effects involved in regulating certain vessels or activities.

I certify that I am a resident of Clallam County Washington

Steve Cavender
387 Zaccardo Rd.
Sequim, WA 98382

Cellular: (360) 477-9365

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Subject: Plan

From: Joe Sambataro <fishlover5@comcast.net>

Date: Fri, 04 Sep 2009 20:39:44 -0700

To: Orca.Plan@noaa.gov

To NOAA:

I am a sport fisherman. I care about the Orca Whales. I am sure you do too.

What I don't understand is why do you provide exclusions for commercial fishing? If there is a real need for the ½ mile no go zone, then it should apply to all fisherman, not just the sports fisherman. In fact, the commercials do the most damage and take the most fish from this half mile area. They spread nets that kill everything in its path, including possibly whales. Sport fishing is the least intrusive.

When I am sport fishing, the boat is moving at about 2-3 mph. Clearly not a disruption to the whales.

Please consider either:

- 1) **Excluding all fishing vessels** from this no go zone in your proposal – sport, commercial and tribal, or
- 2) **Provide an exclusion for sport fishing** – just as you have done for the commercials. It is only fair.

Thanking you in advance for your consideration,

Joe Sambataro
709 Birch Place
Edmonds, WA 98020
425-771-7566

Chinese Proverb - "Now is the time you own; the past is a golden link. Go fishing my brother, it is later than you think!"

Subject: Comments on the proposed "No-Go Zone" and other regulations

From: Traci Walter <traci.walter@yahoo.com>

Date: Wed, 14 Oct 2009 14:27:21 -0700 (PDT)

To: Orca.Plan@noaa.gov

Good Day,

Attached is a pdf of my comments to add for your consideration.

Cheers,

Traci

NOAAregs.pdf	Content-Type: application/pdf Content-Encoding: base64
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Traci Walter
PO Box 1632
Friday Harbor, WA 98250
traci.walter@yahoo.com

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

10/14/09

To the folks at NOAA,

I want to thank you first off for all the hard work you all do. I am in support of the new regulations with a couple comments or suggestions. I believe that kayaks should not be kicked out of the west side. Non- motorized vessels should be a better way to see the whales. What I would like to see from the kayak industry is no more than 10 boats, and if the whales are near, they have to raft up. I have seen many times when kayaks spread the whole way down on the west side, not one rafted up. It should be made a law that kayaks have to raft up when close to whales until they pass.

I also do not agree with letting any fisherman in the no go zone. I understand there are native treaty rights, but the extinction of a species should take precedence over humans exploitation of an already endangered fish stock. I have heard that on these native fishing boats, that they are required to throw back Chinooks and other protected species. I have been told by someone who has been on the boats, that it's not true. They keep everything they catch. This is absurd. Especially when one fishing boat, "Anna J", sank while fishing in bad conditions, and having too much in their net. How many salmon lost their lives in that boat? I saw the fuel spill that night and was devastated that it happened right in Orca habitat. I would urge you to somehow keep all fishing vessels off the west side

at whatever cost not only for the orcas food supply, but to prevent any oil/fuel spills that could end their existence. I have also repeatedly seen those commercial fishing vessels with their engines full tilt, heading right into a pod of whales. I have seen this many times. I don't care what they think they are entitled too, but the whales need to come first.

I would also suggest that a permanent whale sanctuary be made right off lime kiln/land back area. Something like Robson Bight. I would be in favor of no boats year round within a mile or so radius of Lime Kiln. This would help bring people to shore to watch, instead of a boat. That way, a pleasant experience can be guaranteed if no boats are allowed in that area. I was recently at Lime Kiln Park when a boater went right into the path of the whales. My mother has come to visit me and came on a whale watch tour when I was a naturalist. She expressed concern to me about all the boats surrounding the whales all the time. Someone who really doesn't know much about whales recognized that it looks silly to have more boats on the water than whales.

I would also be in favor of a permit system for the whale watch operators and potentially private boaters who have completed some kind of education course and obtained a permit. It is my feeling that those who profit the most from exploiting the whales, should be responsible for enforcing laws. I would like to note at this time that none of these regulations mean nothing without enforcement. Money seriously needs to be allocated to protect these whales out on the water. If people get hit with huge fines and a precedence is set, I believe fewer people would break the law. I would also suggest a system in which if no one is on the water, a boater would just go ahead and break all the rules in the book. Perhaps a few cameras on the west side could aid in catching law breakers when enforcement boats are not available.

As far as education goes, I would like to see this kind of thing made mandatory in a boater education class. You could even have an online slide show course with a quiz at the end for people to renew their license. I would make it mandatory that all marina in Puget sound place these new regulations in an obvious location in a big sign. People need that information repeated and shoved down their throats before they will recognize and obey it.

In conclusion, I support what NOAA suggests based off the best available science. I think you should disregard people's suggestions who benefit monetarily, for money will always be their primary concern. Please protect the whales as best as you can. I feel that these whales have had some many atrocities committed against them. First man shot at them cause they thought killer whales were the devil, then we round them all up and kidnap or kill their children so they can perform for humans in a bathtub (don't even get me started on Lolita!), we have polluted their ecosystems so much that they are considered toxic waste! Its appalling! Now, we hover over them day and night for more money. Money that never goes back to the whales or their environment, salmon included. I'm not sure people in the region realize the ramifications if the SRKWs do go extinct. One thing is certain, if the whales go, I go. I would not live here without them.

Best,

Traci Walter

Subject: Proposed Vessel Regulations for ESA endangered Killer Whales

From: Nathan Jones <nate@nathanjonesinteractive.com>

Date: Tue, 22 Sep 2009 16:48:34 -0400 (EDT)

To: Orca.Plan@noaa.gov

To whom it may concern,

I applaud your efforts to save the Killer Whales and believe they are magnificent creatures worthy of saving. Unfortunately, I'm troubled by the vessel exclusions and will not support these regulations. As I'm sure you are already aware, commercial fishing is one of the MANY causes of decline of our ESA listed native salmon and steelhead species and granting one group exception over another is completely biased. I will however support these regulations if all vessels are excluded. I hope you will re-evaluate the regulations based on these concerns and re-configure with an unbiased approach.

Sincerely,

Nathan Jones

CCA Member/Sport Fisherman/Puget Sound Advocate

206.499.5077

Subject: Concern about the Orca plan
From: Shawn Steele <Shawn.Steele@microsoft.com>
Date: Wed, 30 Sep 2009 22:17:17 +0000
To: "orca.plan@noaa.gov" <Orca.Plan@noaa.gov>

Although I agree that boats can impact the Orca population, I'm concerned about the proposed plan. Specifically I'm concerned that it groups all activities together, exempting commercial fishing vessels, doesn't address the Canadian side of the Orca habitat, and doesn't address water quality or pollution. My interest in the rulemaking is as a private vessel owner who sails around the San Juans every couple years.

The Orca seem to circle the islands, so it seems that reducing whale watching activities in the US part of the habitat would pressure the whale watchers to the Canadian side of the boarder. Possibly that would increase the stress on the whales in that area, limiting any benefit of the US restrictions, while reducing economic benefits on the US side of the border. My own encounters have been somewhat random, and probably only 20-30% of the time I've seen Orca (and the whale watching crowd) have actually been near the proposed restricted area. Indeed they've often been in Canadian waters.

I'm concerned that commercial fishing vessels are some of the loudest activities in the area, and they also catch the same fish the Orca are trying to eat. Exempting them would seem to limit the benefit of the proposed laws.

Typically when I see the whales they are in or near the proposed restricted area. However, they don't spend all their time at lime kiln point. Commercial whale watchers follow them everywhere. The whales are often in nearby areas such as near Stuart Island, Moresby Island, or Pender Islands.

I'm also concerned about the general restrictions of vessels. I have seen many vessels of different types in this area, and they have very different impacts on the Orca. Some commercial whale watchers are more careful of Orca than others, and some seem to just want to get as many customers as possible. Sound travels very well underwater, so it's difficult for me to imagine that a 200 yard limit and ½ mile restricted zone will reduce the sound pollution from one of the fast whale watching RIB boats that zoom in from miles away at high speed to slow down only at the last minute and watch whales. There're orders of magnitudes of difference in that impact vs a pair of kayakers watching whales from close to shore. (For some reason, kayakers seem to stay further away anyway ;-). Orca can undoubtedly hear freighter traffic in Haro strait as well.

I have a 25' sailboat with a 9 HP outboard, which is much quieter than many of the other vessels out there, and often I'm under sail. I think my acoustic footprint is much smaller than other whale watchers. Similarly there is a big difference in powerboat noise between different powerboats. Some large displacement boats are quieter, many planing boats are much noisier, like the high-speed whale watchers or ski boats. I don't kayak, but I don't think it's necessary to restrict the quieter, and often more ecologically sensitive, community because of other classes of vessels.

The large majority of vessels near the whales seems to usually be commercial whale watching. Perhaps greater effect would come from better regulation of the commercial activities. (I've seen private boats do stupid things, so I'm not saying they're better behaved, but the commercial groups visit repetitively whereas many private vessels visit the area only rarely.)

So my specific requests are:

- Commercial fishing shouldn't be exempt from any rules.
- Work to ensure the rest of the environment is OK too, including water and food quality, and the

Canadian side of the border.

- Restrict vessels appropriately for the impact they cause. Fewer restrictions for a quiet well behaved kayak, more restrictions for a very noisy boat.
- Consider the impact of commercial whale watching. Perhaps the noisier operations could quiet their behavior or something.

-Shawn

Shawn Steele

2821 131st PI NE

Bellevue, WA 98005

Subject: Comment: Proposed San Juan Island No Go Zone
From: John Tyler <jstthree@hotmail.com>
Date: Mon, 14 Dec 2009 07:45:19 -0800
To: Orca.Plan@noaa.gov

I am a pleasure boat owner who operates a 48' power boat extensively (5 months every year) in Washington & British Columbia waters.

I fully support, and encourage NOAA to implement, the No Go Zone!

However, I sincerely believe that three aspects of it must be changed.

1. Restrict all fishing boats from the area as well; that includes native and non-native boats. This will also have the added benefit of having the fish population in the area recover more quickly, since it is presently very depleted.

2. Place an access corridor, from Washington State's State Park Launch Ramp through the No Go area to 1/2 mile off shore. This will allow the kayaks to access the waters; if the feel comfortable enough to be that far off shore.

3. Access to the No Go area should be allowed, on a 'case by case' and 'permit' basis, for water borne research vessels.

Access to the area for 'emergency purposes only' and 'necessary access to private property along the shoreline' are aspects that must be retained.

Thank you for your time and attention.

John Tyler
5301 Old Stump Dr NW
Gig Harbor, WA 98332
253-851-4451
jstthree@hotmail.com

Subject: Comment on No Go Zone--San Juan
From: Jane Cable <janecable@rockisland.com>
Date: Wed, 29 Jul 2009 10:50:49 -0700
To: Orca.Plan@noaa.gov

I am a boater and a kayaker. I was absolutely astounded at the number of kayak boats at Lime Kiln State Park last Saturday. No doubt they were there to see the whales. That can't be any better or safer than all the other boats milling around. Unfortunately, it always seems too much of everything eventually ruins the activity. What about issuing licenses in limited numbers for a short period. One would just need to take a chance like fishing and crabbing.

Subject: Comments on Protective Regulations for Killer Whales in the Northwest Region

From: PETER S MARSHALL <psmarshall@q.com>

Date: Sun, 25 Oct 2009 00:48:37 +0000

To: Orca.Plan@noaa.gov

Dear NMFS:

My comments on the proposed regulations are attached. I also sent a hard copy of the attached letter to the Assistant Regional Administrator in Seattle. Please put me on your contact list for notice of any further modifications, public meetings, publications etc.

Sincerely,

Peter S. Marshall

ORCA Letter to NMFS.doc	Content-Type: application/msword Content-Encoding: base64
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3030 109th Ave. SE
Bellevue, WA 98004
October 24, 2009

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

Subject: Protective Regulations for Killer Whales in the Northwest Region

Dear Sir or Madam:

I am writing to comment on your proposed regulations under the Endangered Species and Marine Mammal Protection Acts, prohibiting vessels from approaching within 200 yards and/or parking in the path of killer whales, and from entering a conservation area along the west side of San Juan Island. While I definitely support the overall purpose and provisions of the recovery plan for Southern Resident killer whales, I believe it goes too far in excluding kayaks and similar non-motorized watercraft from the proposed no-go zone.

First, let me say that I have not yet had the good fortune to see Orcas from a kayak near San Juan Island. I've attempted to be there at the right time, launching my kayak several times from the San Juan County Park/Smallpox Bay site and once from Snug Harbor. Each time I was a few hours too early or too late, according to others who saw them on those days. So if I am at all typical, kayak encounters with Orcas in that area are rare as well as low-impact.

My personal observations of kayak and other boat interactions with whales are based most vividly on the unusual appearance of a resident pod in Dye's Inlet, between Silverdale and Bremerton, for a two-week period approximately 19 years ago. The whales were presumably feeding and socially interacting as they would elsewhere in Puget Sound. I was there on 3 different days. The kayaks and other non-motorized boats were much less intrusive than the power boats. Whales occasionally did come in our direction, dove under our stationary kayaks, and came up on the other side swimming on the same paths. They did not seem to avoid us, and the kayakers' actions typically were above the water line, trying frantically to deploy cameras at the right moments. Most of the power boats were recreational rather than commercial whale-watching boats, but from other observers I understand that many of today's commercial boats tend to be even more extreme in high-speed chasing and sometimes attempting to intercept the Orcas.

Based on my understanding of the recovery plan, and the vessel threats to whales, allow me to make the following five comments about the proposed regulations.

Kayaks differ significantly from other vessels of concern.

Several participants at your September 30 hearing spoke eloquently about this, and some of the written comments I've seen did also. Suffice it to say that acoustic masking and vessel strikes are virtually impossible with kayaks. Because of their quiet, low speed and fairly large turning radius, behavioral disturbance is also unlikely or very minor. (see comment on scientific studies below) In fact, in my experience over some 60 years of sea kayaking, I find that most people get into it precisely because their boats minimize disturbance of the environment.

The proposed rules, in explaining the reasons for excepting 6 categories of vessels from the regulations, say that all together they comprise only 6 percent of vessels within ½ mile of the whales. I would guess that even on the best weekend days of the summer season that kayaks would increase that by only a negligible amount. And the qualitative nature of their impacts, compared to the other six vessel categories, would be vastly smaller, i.e. virtually no additional adverse impact.

The proposed rules would grant private shoreline property owners exceptional privilege in the no-go zone, compared to kayakers restricted to publicly-accessible sites.

While there are probably legitimate reasons for not interfering with customary shoreline private property and related vessel navigation rights, the whales themselves would probably be unable to appreciate the distinction in who is operating the boats (probably fast power boats) in the no-go zone. The proposed rule would therefore have a disproportionate adverse impact on those who are not lucky enough to own shoreline property on the west side of the island, without any offsetting improvement of the whales' exposure to vessel strikes, behavioral disturbances or acoustic masking.

Kayakers would be unnecessarily put at risk compared to people on other vessels

The proposed ½-mile-wide no-go zone from Mitchell Point to Eagle Point is approximately a 12 mile distance. To get to the prime Lime Kiln Lighthouse whale watch point would be a good 16-mile round trip paddle from the south, 8 miles from the north, and all offshore at least ½ mile. This is a hefty commitment of time and effort, very disproportionate to those who make the trip in a high-speed powerboat. Changeable weather, wind, tides can significantly add to the required effort. For less-experienced paddlers or those no longer young, it might be too much. The cost and time to transport a car and kayak to San Juan Island or another launching site further diminish the number of people who can ever hope to see resident Orcas from the very low-impact vantage point of a kayak. So the no-go zone exclusion, while it may superficially seem to treat all vessels even-handedly, is very discriminatory.

The scientific basis for excluding kayaks from the no-go zone appears very flimsy.

The proposed rule excludes kayaks from the no-go zone, because "... While kayaks are small and quiet, they have the *potential* [my emphasis] to disturb whales as obstacles on the surface,...they *may* startle whales by approaching them without being heard...some kayakers *may* be less likely to follow rules...*may* be more apt to overestimate distance...and *assume* they are *less likely* to disturb wildlife than other vessels..." As I mentioned in my comments at your September 30 public hearing in Seattle, all of this language with respect to kayak impacts sounds very tentative and speculative. I have not read all the studies you cited to back up these assertions, but refer you to Anne and David Lednicer's presentation at the Sept. 30 hearing, and their paper titled [Analysis of Research Used by NOAA to Support Banning of kayaks from Haro Strait.](#) They raised serious doubts about applicability of the Mathews 2000 study of vessel behavior in Glacier Bay where Steller sea lions were the main concern rather than whales. While the Jelinski 2002 research did say that kayakers and other small boaters failed to heed the ecological reserve boundaries in Johnstone Strait, it also noted that kayaks and sailboats were the only vessels that did not track whales, and that kayakers spent an average of only 2 minutes with the whales as opposed to charter vessels that averaged 73 minutes with them..

Other comments:

- The 200 yard separation rule seems good, if it helps reduce all the impacts. Two football fields is easy for most boaters to estimate. I looked at a rural-type mailbox 200 yards from where I stood with ordinary binoculars, and could see it in plenty of detail. I think the commercial whale watch operators who said this would ruin their business are wrong. Just provide and/or tell customers to look at them with binoculars.
- Staying out of whales' paths as much as possible is a good regulation, enforceable by occasional observations from the Lime Kiln Park location, and photographic documentation of any clear infractions.
- Commercial operators and perhaps even non-motorized boats including kayaks could be required to display some kind of ID that can be tracked from shore. This kind of ID can provide everyone with more incentive to observe the regulations, and it need not be burdensome.
- The most sensible modification of the proposed regulations would be to allow kayaks and other non-motorized boats in the no-go zone, for reasons described above. If such a blanket modification is determined to be impossible, the no-go zone should at least be modified to allow kayak launching and crossing of the zone from San Juan County Park. In addition, why not allow non-motorized boats to operate within 50 or 100 yards of the high water line where it is safer, leaving the remaining 780 yards or so offshore for exclusive whale use?
- There might need to be a further rule limiting the size of commercial or even privately-organized groups of kayaks, and recommended dispersion of them when they are in the no-go zone so that their impact is minimized.

Thank you for the opportunity to comment. Thank you for launching this important step in protection and recovery of an endangered species. I hope it will be possible for the interested public to keep track of any further modification of the proposed regulations. I would appreciate being on your contact list for that purpose.

Sincerely,

Peter S. Marshall

Subject: My idea...

From: James Christensen <ramjimbo@hotmail.com>

Date: Wed, 30 Sep 2009 16:48:10 -0700

To: Orca.Plan@noaa.gov

Dear NOAA,

First, let it be known that I am an occasional kayaker on the west side of San Juan Island, where I generally camp at and launch from San Juan County Park, hoping to observe, within regulations, the resident orca population.

I like the idea of giving these whales more room. I also think that have people interested in observing these whales can be a good thing for them, in terms of cultivating sympathy for their plight within the human population.

I believe that if this plan is adopted as proposed, power and sailboat observers will still frequent the area, including commercial whale watching operations, and that they will (hopefully) just stay outside the proposed .5 mile distance from shore. Sometimes the whales will themselves be outside the .5 mile protected zone and these observers will be amongst the whales (and hopefully abiding by the existing rules of engagement).

It is much less practical for kayakers and observers in other human-powered craft to stay outside the proposed zone because we generally do not travel as far, and launch much more locally (forcing us to paddle longer distances and stay further from shore might even endanger less experienced kayakers).

On the other hand, we can safely stay much closer to shore than non-human-powered boats. This leads to my suggestion, which is that the no-go zone be established such that it extends from .5 miles away from shore to 100 feet (or even 50 feet) from shore, leaving a narrow paddle zone very close to shore for human-powered craft.

In my years of observing the whales, I would guess that they are more often further than .5 miles from shore than they are within 100 feet from shore.

Making this adjustment to the proposed no-go zone rules, assuming a 100 foot along-shore allowance for human-powered craft, would reduce the no-go zone by less than 4%, and would allow a thriving commercial and recreational activity to continue.

Thank you for your consideration,

James Christensen

Subject: Orca Plan
From: Robert Livingston <rlivingston@me.com>
Date: Wed, 30 Sep 2009 18:58:24 -0700
To: Orca.Plan@noaa.gov

An exception should be made for human powered craft: kayaks/canoes. This is a major kayaking areas that would be closed.

Kayakers do not move fast enough to harass whales. They do not make much noise.

They should be restricted from paddling toward whales, but should not restricted from the whole area.

Perhaps kayakers could be restricted to stay within 100 feet of shore if the biologists thought that was important.

This burden falls unfairly on the kayakers.

Robert Livingston

Subject: Comments on proposed no-go zone for killer whales

From: hansenings@comcast.net

Date: Thu, 01 Oct 2009 02:26:11 +0000 (UTC)

To: Orca.Plan@noaa.gov

National Marine Fisheries Service:

The proposed 1/2 mile offshore exclusion zone along the west coast of San Juan Island will cut off kayak access to Posey Island and Roche Harbor from the west and will disrupt the Cascadia Marine Trail. The exclusion would prevent circumnavigation of the island and appreciation of the spectacular scenery and wildflowers along the bluffs. This interference could be avoided by allowing a narrow corridor along shore, even 100 or 150 feet from the rocky coastline, for human powered craft. Kayaks very close to shore could stay out of whales' way, and would not disturb their communications patterns either, as engines and propellers would. If human powered craft do not go as far out as the whales travel, and do not contribute to the noise hazard, why prevent them from passing through? Not all kayakers are using the waterway to try to encounter whales. Other uses should be accommodated.

Please tailor the regulations to allow use of the near-shore area, not reaching the killer whales' pathways, by quiet vessels passing through.

Ingrid W. Hansen
14639 - 25th AVE SW
Burien, WA 98166-1620

(206) 244-9984
Hansenings@comcast.net

Subject: Orca Regulations for Kayakers and Whale Watch Companies off of San Juan Island
From: Michele Wassell <creativefreedomphotography@gmail.com>
Date: Mon, 24 Aug 2009 12:16:31 -0700
To: Orca.Plan@noaa.gov

It is NOT the kayakers and whale watch companies causing any issues / harm to the Orcas. It is the larger shipping boats (freighters), private boaters that don't have any common sense and of course the salmon. I was on San Juan Island this past August and June for a few weeks and the only disturbance I observed were 16 private boaters going at least 40 mph if not more through a large pod of Orcas and several of them just barely missed driving right over their heads as they come up for air. I have turned in about 90% of them and the other 10%, I didn't have photos of the boat or the side that has the numbers. :(.

The Orcas seem to enjoy the kayakers and whale watch boats as they "choose" to approach them along side and check them out. The Orcas are very sociable animals and when they do not feel threatened, they enjoy the respectable boats and kayakers.

When you drop a hydrophone down in the water to listen to the Orcas, and if there are cargo ships in the waters nearby, that is all you hear are the ships as their noise over powers the Orcas. The Whale Watch boats motors are so quiet that you can still hear the Orcas clearly and beautifully over the sound of the motors.

Ken Balcomb is the best person for advice on this as he is the number one person in this world that knows the most about the Orcas and what is best for them!!

Regards,
MW

Subject: Orca whales recovery plan for the San Juan Islands
From: christy carli <cmcarli@hotmail.com>
Date: Wed, 12 Aug 2009 23:10:01 +0000
To: Orca.Plan@noaa.gov

Dear NOAA

This is a copy of a letter that I recently wrote to our local newspaper, here in Friday Harbor, Washington. I have lived on San Juan Island for over twenty-four years and I have spent countless days on the water, and I have had countless encounters with the Orca Whales. What I have written here, I believe is the truth, not baseless emotional chatter that many people who oppose boat operated whale watching are presenting as fact.

Letter to the editor

I have read enough letters to the editor from people who think that whale watching boats are harassing the Orcas, that we are causing them to become disoriented in their environment, that we are causing them stress and making it impossible for them to find food. The reference between whale watch boats and Harley Davidson's was just too much for me to sit back and not respond to. I am speaking only for myself and do not imply that I speak for any other whale watch operator. In four years of whale watching I have never once seen the whales act in distress manner(whatever that is)or in anyway change their behavior, or their direction because of my boat. What I have seen over and over and over again is a highly intelligent animal who seems to enjoy the fact that we are watching them. I have sat and watched countless times where the whales wait to breach until they are near my boat. I have seen whales suddenly turn and swim right at my boat, making a radical direction change only to "inspect" us before they continue. Why? After four years I truly believe this; they are interacting with us, they are having fun with us. If you don't think this is possible, google Orca Whales of Eden, it's amazing. However there is one boating hazard out on the water that I think needs to be addressed and that is the "Mom & Pops" boats racing through the Orcas at thirty knots. Well I for one and I think most other whale watch operators are out there helping Soundwatch, getting on the radio and telling "Mom and Pops" to slow down, or we are blasting our horns at them, or standing on our boat waving our hands trying to get them to slow down. I think we do a service out there, and I think the whales benefit from us being there, and please do not forget the joy and education that we bring to thousands and thousands of visitors who come to the San Juan Islands just to see the whales. Lastly, the Orca Whale population did not start its decline until the very year the United States Navy (who still blast sonar so loud that it kills Dahl porpoises) moved into Everett.

Coincidence? Maybe
William Carli
Friday Harbor, WA

I support the protection of killer whales.

Subject: I support the protection of killer whales.
From: "Thompson, Libby" <Libby.Thompson@morganstanley.com>
Date: Tue, 04 Aug 2009 16:11:02 -0400
To: Orca.Plan@noaa.gov
CC: salguire@aol.com

I see too many whale watching boats, going 28 knots past small boats, kayaks, sea animals, etc. and I almost got run over sailing my 14 foot Sunfish close to shore at Center Island this weekend. There must have been 3 whale boats go by full of people while I was sailing during a 30 minute sail. I feel for the whales, and I don't blame the whale if it relocates.

Thank you.

Libby Thompson
Vice President
Financial Advisor
Morgan Stanley Smith Barney
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Friday Harbor, Wa 98250
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I support the protection of killer whales.

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Subject: sea kayaking
From: Paula Terkelsen <terkspj@charter.net>
Date: Mon, 24 Aug 2009 16:08:01 -0400
To: Orca.Plan@noaa.gov

In August 2009 I had the pleasure of sea kayaking with Outdoor Odysseys off San Juan Island. The experience was amazing especially because we were lucky enough to see orcas. There organization did a great job of making us aware of our responsibility to the whales. We stayed very close to the shore and were quick to raft –up at each sighting. I believe that efforts to preserve our wildlife have to strike the right balance; allowing the public to experience the wildlife by having close experiences, because that is how people become impassioned to support preservation, and limiting those influences that are endangering species. I hope efforts to support the orcas can find that balance. Good luck.

Peace,
Paula Terkelsen
Chicopee, MA

Comments on Proposed Puget Sound Vessel Regulations to Protect Killer Whales

Please write your comments below and give to a NOAA representative, or mail to: Assistant Regional Administrator, Protected Resources Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115.

The commercial fleet is down from 375
seiners to 70 and 1500 Gill netter to
300 licenses. The commercial fleet
has diminished by approx 80% participation
while whale watch industry & sports
has grown

Ray Fersman

Comm fish

purse seiner 40 years
in islands

Subject: Whale Watching

From: guy nibler <guynibler@yahoo.com>

Date: Tue, 06 Oct 2009 00:08:18 -0700 (PDT)

To: Orca.Plan@noaa.gov

I am a boater in the San Juan Islands and the only vessels that we see intruding on the whales spaces are the whale watch companies. I have seen them run right up on them and even cut them off right in there path. Please leave the average boaters alone for they respect the whale and seem to give them plenty of space. It's the whale watch boats mainly from Canada that I have seen with bad practices.
Thank You,